

Completed acquisition by Ecolab Inc. of The Holchem Group Limited

Final report

8 October, 2019

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who conducted this inquiry**

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The Competition and Markets Authority has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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Glossary

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 Section 35(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 Christeyns Food Hygiene Limited (Christeyns).
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.

Findings

1. The reference

- 1.1 On 24 April 2019, the CMA, in exercise of its duty under section 22(1) of the Act, referred the completed acquisition by Ecolab of Holchem for further investigation and report by a group of CMA panel members (the Inquiry Group).
- 1.2 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 an SLC within any market or markets in the UK for goods or services.
- 1.3 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. We published our provisional findings on 6 August 2019. Since then we have engaged in further information gathering and analysis, including an assessment of responses of customers to telephone questionnaires submitted by the Parties, and have held further hearings with the Parties and other industry participants.
- 1.4 This document, together with its appendices, constitutes the Inquiry Group's findings published and notified to Ecolab and Holchem in line with the CMA's rules of procedure and its obligations under the Act.² Further information, including a non-commercially-sensitive version of submissions from the Parties can be found on the inquiry case page.³
- 1.5 In our Issues Statement of 14 May 2019 we said that we would focus our investigation on the area in which the CMA's phase 1 investigation found that the Merger gives rise to a realistic prospect of an SLC.⁴ That is, in the supply of formulated cleaning chemicals (and ancillary services) to F&B customers in the UK. In its phase 1 decision of 10 April 2019 the CMA said that it did not consider there was a realistic prospect of an SLC in the supply of formulated cleaning chemicals to institutional customers in the UK. In its phase 1 decision the CMA found that the Parties' combined share of supply to

² [Rules of procedure for merger, market and special reference groups \(CMA17\)](#), paragraph 13 and section 38 of the Act.

³ [Ecolab/Holchem case page](#).

⁴ [Ecolab/Holchem Issues Statement](#).

institutional customers is low, there are numerous alternative options to the Parties and the Parties are not close competitors.⁵ Although this did not preclude us from considering competition effects on institutional customers, no new evidence on institutional customers has been brought to our attention by third parties. Therefore, our findings concern only the supply of formulated cleaning chemicals (and ancillary services) to F&B customers in the UK.

2. The Parties

Ecolab

2.1 Ecolab is a global supplier in water, hygiene and energy technologies and services to customers operating in the foodservice, food processing, hospitality, healthcare, industrial, and oil and gas markets.⁶ Ecolab submitted that its business is divided into four 'segments':

- Global Industrial: this segment is divided into the water, F&B, paper, life sciences and textile care operating segments, which provide water treatment and process applications, and cleaning and sanitizing solutions, primarily to large industrial customers within the manufacturing, food and beverage processing, chemical, mining and primary metals, power generation, pulp and paper, pharmaceutical and commercial laundry industries.
- Global Institutional: this segment is divided into institutional, specialty and healthcare operating segments, which provide cleaning and sanitizing products to the foodservice, hospitality, lodging, healthcare, government, education and retail industries.
- Global Energy: this segment serves the process chemicals and water treatment needs of the global petroleum and petrochemical industries in both upstream and downstream applications.
- Other: this segment consists entirely of the pest elimination services.

2.2 In the UK, Ecolab supplies cleaning chemicals to industrial customers in the agriculture, F&B, life sciences and professional laundry services segments. It supplies institutional customers in the foodservices, hospitality, health, buildings and education/government segments. Ecolab operates five production plants in the UK.

⁵ Phase 1 Decision.

⁶ About Ecolab.

- 2.3 Ecolab is incorporated in the US and listed on the New York Stock Exchange. Its global turnover in 2018 was approximately £11.3 billion (US\$14.7 billion) and its sales to UK F&B customers was approximately £.

Holchem

- 2.4 Holchem is a UK based supplier of cleaning chemicals and ancillary services primarily to customers active in the F&B industry, as well as distributors in the institutional segment in the UK and the Republic of Ireland.
- 2.5 Holchem, prior to the Merger, was a private company incorporated in the UK and owned by several individuals and family trusts. The global turnover of Holchem in 2018 was approximately £ and Holchem submitted that over 90% of this was in the UK.

3. The Merger and its rationale

- 3.1 Discussions between the Parties started in 2017. £. On 30 November 2018, Ecolab (through two wholly-owned subsidiaries) entered into a sale and purchase agreement (SPA) to acquire the entire issued share capital of Holchem. The transaction completed on the same day. The final purchase price was approximately £.
- 3.2 The sale was not conditional on competition authority clearance. £.
- 3.3 The Parties submitted that Holchem has well-established UK customer relationships, expertise and reputation in the F&B cleaning chemical business, particularly among domestic industry participants that are complementary with Ecolab's smaller UK footprint and corporate accounts focus. The Parties submitted that Ecolab bought Holchem in order to strengthen its position in F&B and in the food segment in particular.⁷ The Parties submitted that the two businesses are complementary: Ecolab is focuses on customers who tender international contracts whereas Holchem is focused on large UK-only customers.
- 3.4 Ecolab told us that the Merger would lead to some procurement and general and administration savings; however, these were not the main rationale for the Merger. As a result of the Merger Ecolab said they saw growth opportunities to improve Ecolab's UK F&B business, which '£' and this may also benefit the wider European business as 'good tools, good systems, good insights, we could use that well in the rest of Europe'.

⁷ Parties' Initial Submission, paragraph 5.28.

- 3.5 Ecolab also told us that ‘through coming together, stabilising our organisation, we would force ourselves, because of the stability ✂. With more customers rolling over their contracts it would lead to ✂.
- 3.6 We have seen support for the Parties’ submitted rationale in Ecolab’s valuation of Holchem. Ecolab’s due diligence found that Holchem had a customer retention rate of around ✂ which approximated to a ✂ useful life for Holchem’s customers. This high degree of expected customer retention, combined with forecast future growth in the UK and Europe and cost synergies, supported a purchase price in an amount equal to a multiple of ✂ EBITDA⁸ for the 12 months preceding completion. Moreover, the deal documentation discusses Holchem’s customer relationships and technical expertise as being valuable to Ecolab.

4. Jurisdiction

- 4.1 Section 23 of the Act says that a relevant merger situation has been created if:
- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24 of the Act; and
 - (b) either the turnover threshold or the share of supply test (or both), as specified in section 23 of the Act, is satisfied.
- 4.2 Section 129(1) of the Act defines an ‘enterprise’ as ‘the activities, or part of the activities, of a business’, and a ‘business’ includes ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.
- 4.3 We consider that both Ecolab and Holchem are enterprises, as each operates a business which supplies cleaning chemicals and ancillary services for the food and beverage industry.
- 4.4 On 30 November 2018, Ecolab acquired 100% of the issued share capital of Holchem. As a result, Ecolab has ownership and control of Holchem. We are therefore satisfied that the enterprises of Ecolab and Holchem are under common control and have ceased to be distinct within the meaning of section 26 of the Act.

⁸ Earnings before interest, tax, depreciation and amortisation.

- 4.5 Section 24 of the Act requires that a reference must have been made by the CMA within four months of material facts being notified to the CMA or being made public.
- 4.6 In this case, the Merger completed without material facts about the transaction being notified to the CMA or being made public. Ecolab did not issue a public announcement at the time of the Merger on 30 November 2018, but it did issue a press release shortly after, on 5 December 2018, stating: 'The acquisition is subject to clearance by the Competition and Markets Authority'.⁹ The press release therefore erroneously indicated that the Merger had not completed. Ecolab subsequently gave notice of material facts of the Merger to the CMA on 18 December 2018 (including confirmation that the Merger had in fact completed on 30 November 2018) and the CMA confirmed to the Parties that it considered that the necessary facts had been notified to the CMA on 18 December 2018 for the purposes of the time limits in section 24 of the Act.¹⁰
- 4.7 On this basis, the CMA was required to make a reference by 18 April 2019. On 10 April 2019, having found a realistic prospect of an SLC, the CMA extended the period for a reference until 3 May 2019, by a notice under section 25(4) of the Act, to allow the Parties to offer undertakings in lieu of a reference. No such undertakings were offered and a reference for a phase 2 investigation was made within the relevant time limit, on 24 April 2019.
- 4.8 Ecolab and Holchem overlap in the supply of formulated cleaning chemicals and ancillary services to F&B customers in the UK with a combined share of supply of [30-40%] and an increment of [10-20%] (measured by sales value) in the UK. The share of supply test in section 23(4) of the Act is therefore satisfied.¹¹
- 4.9 For these reasons, we have found for the purposes of section 35(1)(a) of the Act that a relevant merger situation has been created by the Merger.

⁹ [Ecolab to acquire cleaning solutions provider Holchem](#), Ecolab press release 5 December 2018.

¹⁰ This is in line with [CMA guidance](#) which says that material facts about the merger means information on the identity of the parties and whether the transaction remains anticipated (including the status of any conditions precedent to completion) or has completed (paragraph 4.44).

¹¹ The share of supply test is satisfied if the parties will, after the merger, collectively supply or acquire 25% or more of goods or services of a particular description, in the UK as a whole or in a substantial part of the UK, provided that the merger results in an increment to that share. See [Merger Assessment Guidelines](#), paragraph 3.3.3.

5. The counterfactual

- 5.1 Before we turn to the effects of the Merger, we need to determine what we would expect the competitive situation to have been absent the Merger (the counterfactual).¹² The counterfactual is a scenario against which the expected effects of the Merger can be assessed. The counterfactual takes events or circumstances and their consequences into account to the extent that they are foreseeable.¹³
- 5.2 The CMA may examine several possible scenarios against which to assess the competitive effects of a merger; but ultimately only the most likely scenario will be selected as the counterfactual.¹⁴
- 5.3 The Parties submitted that both Holchem and Ecolab would continue as independent competitors in the UK F&B market absent the Merger. We have not received any evidence to indicate that anything other than the pre-Merger conditions of competition would have prevailed absent the Merger.
- 5.4 Therefore, we conclude that the counterfactual in this case should be the pre-Merger conditions of competition.

6. Market definition

- 6.1 Market definition provides the appropriate framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of a 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.¹⁵ We have taken these factors into account in our competitive assessment.

Product market

- 6.2 The Parties overlap in the supply of formulated cleaning chemicals and ancillary services for professional use in the UK. Professional users can be split into industrial and institutional customers.

¹² [Merger Assessment Guidelines](#), paragraph 4.3.1.

¹³ [Merger Assessment Guidelines](#), paragraph 4.3.2.

¹⁴ [Merger Assessment Guidelines](#), paragraph 4.3.6.

¹⁵ [Merger Assessment Guidelines](#), paragraph 5.2.2.

- (a) Industrial customers include those who use cleaning chemicals to clean manufacturing and processing equipment and premises, and who normally purchase in bulk directly from cleaning chemical suppliers.
 - (b) Institutional customers include those who use cleaning chemicals and associated products to clean their premises and equipment at which products or services are offered to consumers, including public customers (eg hospitals, schools) and commercial customers (eg hotels, restaurants). Institutional customers tend to purchase cleaning chemicals through distributors, but larger customers buy directly from the cleaning chemical suppliers.¹⁶
- 6.3 As mentioned in paragraph 1.5, we have restricted our inquiry to consider the overlap between the Parties in the supply of formulated cleaning products (and ancillary services) to F&B customers (a subset of industrial customers) in the UK.
- 6.4 The Parties submitted that they agreed with the CMA's phase 1 decision that the relevant frame of reference should be the supply of cleaning chemicals to F&B customers.¹⁷ However, they disagreed with the exclusion of unformulated products from the frame of reference.
- 6.5 Using the supply of formulated cleaning chemicals and ancillary services to F&B customers as our starting position, in this section we consider whether the market should be broadened by including:
 - (a) unformulated products; and
 - (b) supply of formulated chemicals for other industrial purposes.
- 6.6 We then consider whether the market should instead be segmented by:
 - (a) the food, beverage and dairy industry segments; and
 - (b) customer size.

Unformulated products

- 6.7 There are some alternatives to using formulated cleaning chemicals for F&B customers to clean manufacturing plants:

¹⁶ Ecolab largely supplies institutional customers directly, whereas Holchem almost exclusively supplies through distributors.

¹⁷ [Parties' Initial Submission](#), paragraph 3.1.

- (a) Unformulated chemicals consist of the basic chemicals which can be used in several cleaning processes. They include products such as caustic soda, hydrogen peroxide, fluoride and nitric acid. Formulated products may have the same active ingredient to clean and kill microorganisms (eg bleach) but these are combined with other chemical properties that may add efficacy (eg foam to extend surface contact and reduce labour) or aesthetic qualities (eg scent).¹⁸
- (b) There are alternative cleaning solutions which involve using ozonated or electrolysed water.¹⁹

6.8 In the following section both unformulated chemicals and alternative cleaning solutions are referred to as unformulated products. The Parties submitted that the market should include unformulated products as F&B customers can choose to use unformulated chemicals or alternative cleaning solutions to meet their cleaning needs. They suggested, for instance, that an F&B manufacturer may decide to use a combination of both raw caustic and a formulated product depending on the application or location within the factory. The Parties told us that the cleaning outcome in terms of killing microorganisms is the same between formulated and unformulated products, but differences occur regarding the amount of energy and water needed, which are important considerations to the customer, as well as other factors. For example, formulated chemicals can exude a desired scent or increase the amount of foam produced to reduce labour. Hence, an interplay of factors can influence whether a formulated or unformulated product will be most suitable.

6.9 The Parties submitted that unformulated suppliers are a constraint on their business and therefore are part of the relevant market. We considered the Parties' arguments at length and they are discussed fully within the competitive assessment chapter of this report.²⁰ Our finding is that unformulated products are not part of the product market but offer some limited constraint on the Parties. Most customers told us they would not be able to use unformulated products to meet their cleaning needs.²¹ Those

¹⁸ [Parties' Initial Submission](#), paragraph 6.2.

¹⁹ Electrolysed water and ozonated water are made by the customers on site using equipment which alternative cleaning solution suppliers provide. The business model is therefore different to that of formulated suppliers and traditional unformulated suppliers.

²⁰ See paragraph 7.208 and following.

²¹ We received information from many smaller customers with only three out of 142 telling us that they could switch to unformulated chemicals to meet all their cleaning needs. We also received information from several larger customers with 11 out of 23 stating they could not use unformulated chemicals for any of their needs, four stating they could only use it for some of their needs and four who thought they would need further checks before deciding whether they could use it for all their needs. Responses to the Survation questionnaire commissioned by the Parties (discussed further at paragraph 7.143 below) were consistent with the responses to our questionnaire.

customers that suggested they would be able to use unformulated products mostly suggested they would only be able to do so for some of their demand. In addition, the customers we heard from often purchase unformulated products from existing formulated suppliers with few circumstances where unformulated suppliers are directly competing for a large proportion of chemical supply.

- 6.10 We note that in the five examples of switching given to us by the Parties, two customers switched less than 10% of their annual purchases from the Parties to unformulated products and two other customers switched less than half of their annual purchases.²² This provides some indication, from a demand-side perspective, that unformulated products are not sufficiently substitutable with formulated chemicals.
- 6.11 Furthermore, we consider that customers require a level of service and expertise with the supply of cleaning chemicals which is not provided by unformulated suppliers.²³ Our investigation has found that the provision of service and technical expertise, alongside the supply of cleaning chemicals, is highly valued by customers and is a key factor when it comes to choosing suppliers. These support services are not offered with unformulated chemicals. We have been told by the two large competitors faced by the Parties that competing with unformulated chemical suppliers just on price is very difficult and that most customers require these additional services.²⁴ This provides further evidence from a demand-side perspective that unformulated chemicals are not close substitutes for formulated chemicals.
- 6.12 The above also provides evidence from a supply-side perspective that unformulated chemicals are not in the same market as formulated chemicals. A provider of unformulated chemicals which does not have the capacity or expertise to provide the technical support services as well could not seamlessly provide these to meet customer demand.
- 6.13 The Parties argued that unformulated chemicals should nevertheless be included in the relevant market because the level of switching to these products in response to a price increase, indicated by customer questionnaire responses, exceeded a 'critical loss' threshold based on a weighted average of the Parties' margins. The Parties calculated that it would not be profitable for the merged entity to raise prices by 10% if more than (approximately) 26% of its sales switched to other suppliers. The Parties submitted that our customer questionnaire responses indicated that more than this amount of

²² These examples are discussed further at paragraphs 7.212 to 7.215 below.

²³ See Figure 1 and paragraphs 7.218 and 7.222.

²⁴ See paragraphs 7.218 and 7.222.

sales would switch away. We place very limited weight on this analysis for two reasons.

- 6.14 First, this type of analysis is of limited applicability in a market such as this where suppliers typically negotiate prices with customers rather than using list prices, and so set prices (and therefore margins) that can vary significantly between customers.²⁵ The Parties submitted that we should not dismiss the critical loss analysis on the basis of margins varying, and that average margins are suitable to use.²⁶ However, we do not consider that it is warranted to assume that the Parties' overall average margins are representative of the margins that they would lose from customers switching some of their purchases to unformulated products (which are the relevant margins for this 'critical loss' analysis). This is because prices and margins differ both between customers and between products and unformulated products can only be used for certain applications.
- 6.15 Second, the Parties' analysis assumes that smaller customers who said they could switch some of their demand, and larger customers who said they might or might not switch to unformulated products (without specifying the portion of demand) would switch 50% of their total demand. This is likely to overestimate switching, since we heard that unformulated chemicals can most often only be used in very specific applications and not for a customer's whole supply.²⁷ For larger customers, the overestimation is likely to be greater as the responses of larger customers were uncertain as to whether they would switch at all.
- 6.16 We have therefore placed significantly more weight on the third party evidence discussed at paragraphs 6.9 and 6.11 above.
- 6.17 In summary, our view is that although unformulated products are a viable alternative to formulated products under certain circumstances and a small number of customers indicated they might switch were there to be a price rise, the evidence more strongly shows that unformulated chemical suppliers would act as a limited constraint, and only for a small proportion of the market. We have seen in the Parties' data that historical switching between unformulated and formulated products is rare and we have seen no evidence that this is likely to change in the future. Most customers we heard from stated either that they could not use unformulated chemicals for any of their supply or that they did not know whether this was possible. The evidence

²⁵ The Parties themselves submitted that margins vary very significantly product by product and from customer to customer and make a margin analysis impractical. [Parties' Response to Issues Statement](#), footnote 6.

²⁶ [Parties' response to Provisional Findings](#), paragraphs 6.29-6.32.

²⁷ See paragraphs 7.217 to 7.237.

from customer responses to questionnaires strongly suggests this is because a critical choice factor for customers is the level of service and expertise they receive from suppliers. Unformulated suppliers do not offer any level of service aside from delivery and thus are not direct competitors to the Parties. Accordingly, we do not consider that unformulated products are within the relevant product market. However, we note that whether or not unformulated products are within or outside the relevant product market has no material bearing on whether the Merger has resulted, or may be expected to result, in an SLC, and we have considered any constraint they may impose on the Parties in our competitive assessment.

Supply of formulated chemicals for other industrial purposes

- 6.18 There are several non-F&B industries which also purchase formulated chemicals including agriculture, life sciences, and professional laundry services. During our inquiry the Parties made no additional submissions of evidence regarding expanding the product market to include non-F&B segments.²⁸ Hence, our arguments mainly reiterate the phase 1 decision.²⁹

Demand-side substitutability

- 6.19 We find that, with respect to demand-side substitution, there is little evidence to suggest that non-F&B segments should be included within the product market. We found that F&B customers generally require suppliers to have F&B specific knowledge, expertise and services when purchasing cleaning chemicals, and suppliers with activities only in non-F&B segments (non-F&B suppliers) would not be able to provide this
- 6.20 With regard to customers requiring specific F&B knowledge, the Parties submitted that a ‘considerable proportion’ of their customers made purchases of less than ₤ per annum³⁰ and thus ‘will not have a formalised support and service program’. They argued that this means that the demand of these customers is substitutable across a wider range of suppliers (ie one that does not require suppliers to have specific F&B knowledge). We do not consider that this view is consistent with what customers have told us. If this were the case we would expect smaller F&B customers to identify price as the main reason for choosing their supplier. Instead, we received around 150 responses from the Parties’ smaller customers and on average these

²⁸ For the avoidance of doubt, we have used the terminology ‘non-F&B segments’ to mean the supply of formulated cleaning products (and ancillary services) to industrial customers focused on activities outside the food and beverage sector.

²⁹ [Phase 1 Decision](#).

³⁰ ₤ for Ecolab and ₤ for Holchem.

customers listed service rather than price as the reason for choosing their current supplier.

Supply-side substitutability

- 6.21 From a supply-side perspective, the available evidence suggests that non-F&B suppliers are not able to quickly and easily start supplying F&B customers. A number of suppliers listed by the Parties as competitors told us that they were active in non-F&B industries and had no or minimal sales to F&B customers, for reasons including lack of F&B expertise.³¹

F&B segments

- 6.22 We also considered whether to segment the product market to a more granular level of food, beverage, and dairy customers (the composite parts of the wider F&B market).
- 6.23 The Parties submitted that although a distinction is often made between food, beverage, and dairy, this distinction is based purely on the output produced and there is no difference to the hygiene requirements of each segment. They also told us that although the food segment requires more open-surface cleaning compared to the beverage and dairy segments, which are more 'clean in place' (CIP)³² focused, there is considerable overlap between them with respect to the customer needs of each segment.
- 6.24 In accordance with the Parties' initial submission³³ we find that there is substantial supply-side substitutability between the F&B segments. In particular:
- (a) The manufacturing processes, equipment, packaging, and delivery methods required for producing and distributing cleaning chemicals are identical for the food, beverage, and dairy segments.
 - (b) There is considerable overlap in the products provided to customers in each of these segments.
 - (c) The four largest competitors (the Parties, Diversey and Christeyns) are active across each of food, beverage and dairy customers.

³¹ Similarly, Holchem and others only supply in F&B and have negligible sales to other industries.

³² We understand that F&B processing equipment is either CIP, or 'cleaned out of place' (COP), with CIP referring to cleaning of the interior surfaces of pipes, vessels, process equipment, filters and associated fittings, without disassembly. COP instead cleans equipment items by removing them from their operational area and taking them to a designated cleaning station for cleaning.

³³ [Parties' Initial Submission](#), paragraph 3.10.

- (d) Ecolab's UK (and European and global) business plans cover the full F&B market.
- (e) Many applications of the cleaning chemicals are almost identical across food, beverage, and dairy activities.
- (f) Ecolab have staff who service customers across food, beverage and dairy activities.

6.25 We therefore consider that the appropriate product market is the supply of formulated cleaning chemicals and ancillary services to F&B customers. We note that there is some evidence of differences between the food, beverage and dairy segments (for example, Holchem's sales staff specialise by segment) and these are explored in our competitive assessment.

Customer size

6.26 The Parties submitted that they offer distinct levels of service based on customer size. Ecolab uses a threshold of total annual sales to the customer of £250,000 to separate its 'very small customers' from 'small customers' and similarly £1,000,000 to separate 'small customers' from 'large national customers'. Ecolab submitted that customers with different spend levels receive different intensity of support – on average it will visit customers once per year for every £1,000,000 in sales.

6.27 Holchem uses a service level model which separates customers into bands £250,000. Each band receives a different level of service, differentiated by the number of site visits.³⁴

6.28 Other suppliers also indicated that customers of different sizes have different requirements. For example, large customers generally require more site visits, safety training, and quality reviews than small customers because they supply supermarkets which generally have stricter rules and requirements. Thus, across the market, different sized customers receive a level of service contingent on their value.

6.29 As discussed in our competitive assessment below, we found that more suppliers are able to compete for smaller customers (although these customers still predominantly view the large suppliers as their best alternatives). However, we do not consider it appropriate to define a separate market for smaller customers, as we have not seen any evidence that suppliers who can compete effectively for larger customers are unable to

³⁴ £250,000

compete for small customers – indeed, all of the suppliers that supply larger customers in the market also supply smaller customers.

- 6.30 While we have not defined separate markets for customers of different sizes, we take these differences into account in our competitive assessment. In particular, for ease of evidence-gathering and analysis we have drawn distinctions between ‘Large customers’ with over £50,000 of annual cleaning chemical purchases and ‘Small customers’ with under £50,000 of purchases. This threshold was chosen as ✂.
- 6.31 However, while we have used the threshold of £50,000 to inform our analysis, we do not consider that there is a sharp distinction between customers spending over and under £50,000. Rather, we consider that there is a continuum of customers by size, with larger customers tending to require greater levels of servicing. This is reflected in the more granular levels of service differentiation provided by the Parties as discussed above.

International customers

- 6.32 Some F&B customers are international businesses which source their cleaning chemicals on a multi-national basis and have a UK presence. We refer to these customers as ‘international customers’.³⁵ Suppliers who can only supply cleaning chemicals in the UK cannot serve the demands of these customers, and we found that such customers would be very unlikely to switch to purchasing on a national basis – this is discussed further at paragraphs 7.75 to 7.81 below.
- 6.33 This might provide a basis for finding a separate market for sales of cleaning chemicals to international F&B customers. However, as the Parties would not overlap in such a market, we have not carried out a competitive assessment on this basis.
- 6.34 Conversely, we do not consider there is any basis for finding a separate market for UK-only customers which would exclude international customers. This is because we have not found that there are any barriers that would prevent suppliers who currently supply international customers with sites in the UK from also supplying UK-only customers, as indicated by the fact that

³⁵ Some F&B customers which are international businesses do not source their cleaning chemicals on a multi-national basis but instead source on a country-by-country basis. For the avoidance of doubt, we do not include these customers in our definition of ‘international customers’ but group them with ‘UK-only’ customers. Where we discuss all F&B customers which are international businesses (including both international customers and some UK-only customers), we refer to these as ‘multinational customers’.

the suppliers who currently supply international customers in the UK (Ecolab and Diversey) both also supply UK-only customers.

- 6.35 We have therefore not segmented the market between international and UK-only customers.

Geographic market

- 6.36 The Parties consider that the appropriate geographic market is national in scope.

- 6.37 We have not received any evidence to suggest an alternative geographic market. Thus, we consider a national market definition is appropriate for the following reasons:

- (a) Suppliers need a UK manufacturing plant to ensure prompt delivery of chemicals and relevant service requirements, but do not need more localised production; and
- (b) Suppliers require UK based staff with experience, relationships and expertise – suppliers can ‘fly in’ (ie send staff based in other countries to visit UK customer sites) to get started but it is difficult to build up any meaningful level of business with this approach.³⁶

Conclusion on market definition

- 6.38 We find that the appropriate market definition in this case is the supply of formulated cleaning chemicals and ancillary services to F&B customers in the UK. In the rest of this report when we refer to the ‘supply of cleaning chemicals’ or to ‘the market’ we mean the supply of formulated cleaning chemicals and ancillary services to F&B customers in the UK unless otherwise stated.

7. Competitive effects in the supply of cleaning chemicals for F&B customers

- 7.1 In this chapter, we consider the competitive effects of the Merger as they relate to the supply of cleaning chemicals and ancillary services to F&B customers in the UK. We assessed whether removing one Party as a direct independent competitor might allow the merged entity to increase prices,

³⁶ See paragraph 8.6(c).

lower the quality of their products or customer service (for example, technical support services), reduce the range of their products/services, and/or reduce innovation.³⁷ This is a horizontal, unilateral effects theory of harm.

- 7.2 This chapter concludes that, subject to any countervailing factors,³⁸ 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. This conclusion is made on the basis that the merging parties are close competitors and that a substantial proportion of customers in the market will, as a result of the Merger, have fewer viable alternative suppliers from what was already a limited choice set. We are therefore concerned that because of the Merger prices will increase, service quality will decrease, the range of products/services will reduce, and/or the incentives to invest in innovation will be dampened.
- 7.3 This chapter provides our reasoning for this finding, and is structured as follows:
- (a) We first consider the different players in the market and the market shares of the Parties and other suppliers.
 - (b) We describe key relevant characteristics of customers in this market.
 - (c) We assess the closeness of competition between the Parties.
 - (d) We assess the remaining constraint on the Parties from other competitors.
 - (e) Finally, we set out our findings of the impact of the Merger on competition.

Market shares

- 7.4 In this section we consider the market shares of the Parties and other suppliers in the market for the supply of cleaning chemicals and ancillary services to F&B customers in the UK.

Approach to market share calculations

- 7.5 The Parties submitted estimates of market shares using market size figures estimated using a model constructed by Ecolab. The model estimates the market size by combining public data on UK output of F&B products in several segments with Ecolab data on selected customers' hygiene spend

³⁷ [Merger Assessment Guidelines](#), paragraph 5.4.1.

³⁸ Assessed in chapter 8 below.

per unit of output. We have used the estimates from Ecolab's market size model as our basis for estimating market shares.

- 7.6 We have concluded that the relevant market should be limited to formulated cleaning chemicals, as discussed in the previous chapter.³⁹ We therefore adjusted the market size to exclude unformulated products.⁴⁰ This resulted in a total UK F&B market size estimate of approximately £120 million.⁴¹
- 7.7 The Parties submitted that sales of unformulated chemicals should be included in the market size, because the vast majority of demand that is currently being satisfied by these chemicals could be satisfied by formulated chemicals and formulated chemical suppliers compete for this demand.⁴² However, the fact that these sales could be addressed by formulated chemical suppliers does not imply that they are part of the relevant market.⁴³
- 7.8 To estimate supplier market shares, we gathered data on sales from the Parties and their competitors and combined this data with the adjusted estimates of market size. We have excluded sales of unformulated products by Holchem, Diversey and Christeys when calculating these market shares.⁴⁴
- 7.9 We consider that this approach to estimating market size is reasonable, in the absence of reliable third-party data on the market, although we recognise that it is likely to result in imprecise estimates since it is based on extrapolating from a small number of customers. A more detailed discussion of the methodology and its appropriateness is included in Appendix C.
- 7.10 The Parties submitted that Ecolab's model may underestimate market size because:

³⁹ See paragraphs 6.7- 6.17 above.

⁴⁰ While sales of unformulated products were not included in the calculations of the market size, the Parties submitted that the market size estimates will include sales of these products ([Parties' Initial Submission](#), paragraph 4.20).

⁴¹ In the [Parties' response to Provisional Findings](#) they argued that it is not appropriate to use Ecolab's 'rule of thumb' regarding the proportion of the market that is made up of unformulated products as this is an unscientific estimate based on anecdotal evidence for Europe, and is not an accurate indicator for the UK (paragraph 3.5). We recognise that there is some imprecision in this figure but note that it was the best estimate that the Parties could provide. In any event, we have not relied heavily on market share estimates in reaching our conclusions.

⁴² [Parties' response to Provisional Findings](#), paragraph 6.33.

⁴³ The reasons for excluding unformulated products from the relevant market are discussed at paragraphs 6.7- 6.17 above.

⁴⁴ Ecolab does not make any sales of unformulated products. The Parties submitted that we should also exclude Holchem's sales of wipes, but we have included these sales in the calculations as we have not excluded wipes from the relevant market.

- (a) It is based on Ecolab's larger customers, who receive better prices (and so it will understate the average hygiene spend per unit of production); and
 - (b) The Ecolab model assumed the customers purchased entirely from Ecolab, but they are likely to source some products (such as unformulated products or niche cleaning products such as hand care and wipes) from other suppliers, which again will lead to underestimating the average hygiene spend per unit.⁴⁵
- 7.11 We consider that issues of this type are inherent to the approach of estimating market size based on a small sample of one supplier's customers. It is also possible that there may be biases in the other direction, for example if the customers sampled have more intensive requirements than other customers and so spend more per unit of production. We therefore consider that the market size may be either overestimated or underestimated by Ecolab's model.
- 7.12 However, our confidence that these market size estimates are not significantly inaccurate is increased by the fact that the estimates (after adjusting to exclude unformulated products) are broadly comparable to estimates provided by Diversey and Christeyns⁴⁶ and those used in the CMA's phase 1 investigation.⁴⁷
- 7.13 As discussed in the previous chapter, we have not segmented the market by customer type either with reference to international and UK-only customers, or with reference to customer size. We have not therefore calculated market shares for these customer segments. We have, however, calculated shares for the food, beverage and dairy segments as these are informative regarding the strengths of various suppliers in the different segments and therefore on the closeness of competition.

⁴⁵ The Parties submitted additional analysis at a late stage in our inquiry in which they had estimated the volumes of purchases of unformulated products by some of the customers included in the market size model, and based on these estimates submitted that the market size including unformulated products was at least £170 million. Given that the Parties provided limited underlying data which did not include the updated market size model used to derive their new estimate, we have placed very limited weight on this analysis. However, we note that using the Parties' revised market size estimate in our analysis would only reduce the Parties' combined market share by \propto [0-5%], which – particularly given that we have placed more weight on closeness of competition than market shares in reaching our conclusions – is not capable of having a significant impact on our assessment.

⁴⁶ Diversey estimated a market size of £97 million. Christeyns estimated a market size of £140 million, although this included some unformulated chemical suppliers.

⁴⁷ In the [phase 1 investigation](#), the CMA considered estimates from a third-party report by Freedonia of £100 million, the market size estimate used in the [Bain / Zenith merger investigation](#) of £110 million and estimates by the Parties ranging from £116 million to £245 million.

Market share estimates

7.14 Table 1 below presents estimated market shares for the overall F&B market between 2016 and 2018. The same market size estimate is used for each of the three years, as the Parties only provided a single estimate because of relatively stable demand.

Table 1: Estimated F&B market shares (2016 to 2018)

Supplier	2016 Sales	%	2017 Sales	%	2018 Sales	%
Ecolab	✂	[10-20%]	✂	[10-20%]	✂	[10-20%]
Holchem	✂	[20-30%]	✂	[20-30%]	✂	[20-30%]
Parties Combined	✂	[30-40%]	✂	[30-40%]	✂	[30-40%]
Diversey*	✂	[10-20%]	✂	[10-20%]	✂	[10-20%]
Christeyns	✂	[5-10%]	✂	[5-10%]	✂	[10-20%]
Niche Solutions	✂	[0-5%]	✂	[0-5%]	✂	[0-5%]
SC Johnson	✂	[0-5%]	✂	[0-5%]	✂	[0-5%]
Others (known)	✂	[0-5%]	✂	[0-5%]	✂	[0-5%]
<i>Remainder</i>	✂	<i>[30-40%]</i>	✂	<i>[30-40%]</i>	✂	<i>[20-30%]</i>
Total	✂	100%	✂	100%	✂	100%

*Diversey includes Zenith Hygiene sales for all three years. Zenith Hygiene was acquired by Bain Capital, Diversey's owner, in 2018. "Remainder" indicates the remainder of the market implied by the estimated market size after accounting for all suppliers which provided data to the CMA.

Source: CMA analysis based on data supplied by the Parties and third parties.

7.15 From these share estimates we note that:

- (a) The Parties have a combined market share of [30-40] %, with an increment of [10-20] % and the merged entity will be more than twice as big as the next largest provider (Diversey);
- (b) The four largest suppliers in the market are the Parties, Diversey and Christeyns;
- (c) The market is concentrated. The four largest suppliers account for [50-80]% of the market, and no other supplier has a share of above 5%; and
- (d) Shares have been broadly stable over the past three years for most suppliers.

7.16 The Parties submitted that the fact that the top three suppliers will account for a high combined share of supply post-Merger is entirely irrelevant as we are not considering a coordinated effects theory of harm. We consider that the high level of concentration implied by this result is relevant context for our assessment. However, in interpreting market shares we have had regard to

the extent to which the Parties and their main rivals are differentiated.⁴⁸ A supplier with a high market share may nevertheless be a weak competitive constraint on the Parties if it competes for a different category of customer.

- 7.17 In this market, customers vary considerably in their size and what they need from their cleaning chemical supplier.⁴⁹ Even if the cleaning chemicals are very similar, the type, the level and frequency of the support services are highly differentiated and customers have told us in response to our questionnaires and in our calls with them that they value highly the technical support services that the Parties and some other large suppliers provide.⁵⁰ We have taken account of the differentiation between suppliers in terms of the service they provide in our assessment.
- 7.18 Similarly, the Parties have argued that the Ecolab market share overstates their combined and incremental share as the numbers include international customers, which account for a large proportion of Ecolab's sales but for which Holchem cannot compete.⁵¹ In light of this difference, and differentiation between suppliers on the basis of the service they provide, we have focused our analysis below on the closeness of competition between the Parties and interpreted market shares only as a rough indication of likely competitive strength.⁵²
- 7.19 The Parties noted that, according to Eurostat data, there are over 6,800 F&B manufacturers in the UK, while the Parties only serve approximately 1,200 customers combined, or 16% of the total estimated number of F&B producers. This is lower than their combined value market share of [30-40]%. However, we do not consider that this statistic has any material bearing on the accuracy of the estimated market shares, given that there is significant discrepancy in the size of customers and that the Parties are focused on larger customers.

⁴⁸ [Merger Assessment Guidelines](#), paragraph 5.3.2.

⁴⁹ See paragraphs 7.28 to 7.33.

⁵⁰ See paragraphs 7.35 and Figure 1.

⁵¹ [Parties' response to Provisional Findings](#), paragraph 3.2.

⁵² [Merger Assessment Guidelines](#), paragraph 5.3.2.

Table 2: Estimated shares by F&B segment (2018)

Supplier	Food	%	Beverage	%	Dairy	%
Ecolab	✂	[10-20%]	✂	[10-20%]	✂	[30-40%]
Holchem	✂	[30-40%]	✂	[5-10%]	✂	[5-10%]
Parties Combined	✂	[40-50%]	✂	[20-30%]	✂	[30-40%]
Diversey	✂	[10-20%]	✂	[20-30%]	✂	[10-20%]
Christeyns	✂	[5-10%]	✂	[0-5%]	✂	[30-40%]
SC Johnson	✂	[0-5%]	✂	[0-5%]	✂	[0-5%]
Sopura	✂	[0-5%]	✂	[0-5%]	✂	✂
Niche Solutions	✂	[0-5%]	✂	[5-10%]	✂	[0-5%]
Others (known)	✂	[0-5%]	✂	[0-5%]	✂	✂
<i>Remainder</i>	✂	<i>[20-30%]</i>	✂	<i>[30-40%]</i>	✂	<i>[10-20%]</i>
Total	✂	100%	✂	100%	✂	100%

Source: CMA analysis based on data supplied by the Parties and third parties.

7.20 We also considered shares in each of the three F&B segments, set out in Table 2. As discussed above, while we do not consider that separate relevant markets should be defined for food, beverage and dairy, differences in shares between the segments were considered in our assessment of closeness of competition. The segment-level shares differ from the broader F&B market shares:

- (a) In food, Holchem has a higher share than in the market overall and other suppliers have slightly lower shares, and so the Parties have higher combined shares but the increment is smaller;
- (b) In beverage, Holchem is much smaller and the Parties have lower combined shares, while Diversey has a higher share; and
- (c) In dairy, Ecolab and Christeyns are much larger and correspondingly Holchem is much smaller than in the F&B market overall.

7.21 These differences in shares across segments reflect the fact that, while the major suppliers are all active across all F&B segments, different suppliers have different focuses, and therefore are differentiated from each other to some extent. Suppliers are likely to be stronger competitors in the segments in which they have higher shares, as they will have more relevant expertise, a stronger reputation and greater numbers of existing customers.

Conclusions on market shares

7.22 Our analysis of market shares shows that the Merger combines two of the four largest suppliers in the market for formulated cleaning chemicals and ancillary services to F&B customers in the UK, which is already concentrated. The merged entity will be significantly larger in this market than any of its

competitors. The same would be true if we looked at the food segment specifically. These market shares suggest that the Merger may be likely to result in a significant reduction in competition.

- 7.23 However, while market shares give an indication of the competitive strength of different suppliers in the market, they do not provide a complete picture. 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.⁵³ As discussed above, different customers have different requirements, particularly in terms of technical support and other ancillary services, and suppliers are differentiated in their expertise and focus (for example, Christeyns is stronger in dairy than in either food or beverage). It is also important for us to consider the closeness of competition between Ecolab and Holchem, relative to the closeness of their competition with other suppliers. We examine customer behaviour and closeness of competition in the following sections

Customer behaviour

- 7.24 How customers engage in a market can affect how we analyse and consider the evidence in a merger inquiry. For example, smaller customers might differ from larger customers in how they interact with suppliers; the market might be characterised by frequent customer switching or infrequent switching; and supply agreements might typically be for a long or short duration. In addition, it is important that we understand how customers make choices when selecting a supplier.
- 7.25 In this section, we outline the typical behaviour of customers in the market for the supply of cleaning chemicals and ancillary services to F&B customers in the UK. We also assess how these behaviours vary across different types of customers. We have found that the requirements of customers vary with the size of the business, the type of production they undertake and the industry segment that they are active in. We have found that each Party's pool of customers is broadly similar in terms of these characteristics with the exception of international customers.
- 7.26 We first note that customers purchasing cleaning chemicals for F&B production or processing are themselves businesses and not individual

⁵³ [Merger Assessment Guidelines](#), paragraph 4.1.3.

consumers, and the cleaning chemicals of interest in our inquiry are not branded consumer products.

7.27 The rest of this section proceeds as follows:

- (a) We first briefly summarise some of the key variations between customer types.
- (b) We then look in more detail at the factors customers consider when choosing their suppliers.
- (c) We explain the contractual arrangements in use in the market.
- (d) We consider how frequently customers switch suppliers and barriers to doing so.
- (e) Finally, we discuss market testing by customers.

Variation by customer type

- 7.28 We have found that the Parties' customers vary across several aspects including size, whether they have sites in multiple countries and by industrial segments (ie whether the customer operates in the food, dairy or beverage segment). This variation leads to differences in the way customers search for, and switch between, cleaning chemical suppliers and what factors they place most importance on.
- 7.29 There is wide variation in how much customers spend on cleaning chemicals and support services. The Parties' customer lists show some customers spending less than £1,000 annually and others spending over £1 million. With this range in spending we have seen differences in behaviour relating to the way customers make their purchasing decisions and in what they demand from suppliers.
- 7.30 We heard from a range of market participants (customers and suppliers) that larger customers typically follow more formal policies and procedures when it comes to procurement and in some cases have greater needs in relation to service. The Parties and responses from customers also indicated that larger customers will typically purchase chemicals on a contractual basis and will often carry out a benchmarking or tender exercise near the expiration of the contract, often every three to five years. Smaller customers in contrast appear to search more infrequently and often only when there is an issue with their current supplier.

- 7.31 Similarly, we find that there is wide variation between customers in the number of sites from which they operate, ranging from the many customers with one UK site to some with over 30 UK sites. However, the number of UK sites that a customer operates has not affected our analysis since the major suppliers are all capable of supplying throughout the UK.
- 7.32 Of more significance to our inquiry is the fact that some customers operate sites across multiple countries as well as having a site or sites in the UK. As discussed in the chapter on market definition above, some of these customers contract across multiple countries for their purchases of cleaning chemicals, and we refer to these as ‘international customers’.⁵⁴ The Parties submitted that we should distinguish between international customers and other customers who purchase on a UK-only basis. They submitted that Ecolab’s turnover is heavily concentrated on international customers, which they told us make up $\frac{2}{3}$ of its F&B revenue in the UK, whereas Holchem does not receive any revenue from international customers.⁵⁵ International customers are discussed in further detail below in paragraphs 7.75 to 7.82.
- 7.33 We also found that there are some key differences in needs amongst customers in industrial segments, between the food, beverage and dairy segments and even between different food customers. Some segments are much higher risk from a food hygiene perspective (eg food that is for immediate consumption, such as pre-made sandwiches) with more stringent standards imposed and higher service needs. More generally, we note how these variations between customers affect customer behaviour in our discussion below. We have taken differences in customer size and the industry segment in which they operate into account in our analysis.

Choice factors

- 7.34 F&B customers seek to purchase a range of chemicals which they use to clean their production or processing facilities. They are looking for a range of chemicals that meet their cleaning needs and are delivered in a timely and reliable manner. The Parties and major competitors we spoke to suggested that the range of chemicals they offer are broadly similar in functionality (and usually in chemical composition) and although they do seek to innovate it is difficult to differentiate their offer in terms of the chemicals themselves.
- 7.35 We have found in our inquiry that most customers, however, are looking for more than just the supply of chemicals - they want access to service and expertise as well. For example, the large cleaning chemicals suppliers can

⁵⁴ See paragraph 6.32.

⁵⁵ We disagree with the $\frac{2}{3}$ figure and consider that the correct percentage is $\frac{1}{3}$. See paragraph 7.81.

advise customers on the most efficient way to use the cleaning chemicals (which reduces water and energy usage) and ways to implement the cleaning process to minimise the disruption and turnaround times in production. Suppliers can also provide equipment on loan to apply the chemicals and tools to monitor the ongoing effectiveness of the cleaning process (which in turn helps them to advise customers on how to improve the cleaning process). Importantly, the large suppliers will offer training for the customer, not only at the point of starting the supply relationship but also when the customer employs new staff. For example, the Parties submitted that they provide:

- (a) Hazard management;
- (b) Cleaning advice;
- (c) Engineering support;
- (d) Validation, verification and monitoring;
- (e) Advice in setting up hygiene management systems;
- (f) Advice in optimising cleaning processes.

7.36 Suppliers will typically provide some combination of these and other services on a bundled basis, with increased service and equipment provided with increased chemical spend. Suppliers normally provide standard list prices for the chemicals with larger customers looking to negotiate discounts or rebates on the standard prices given.

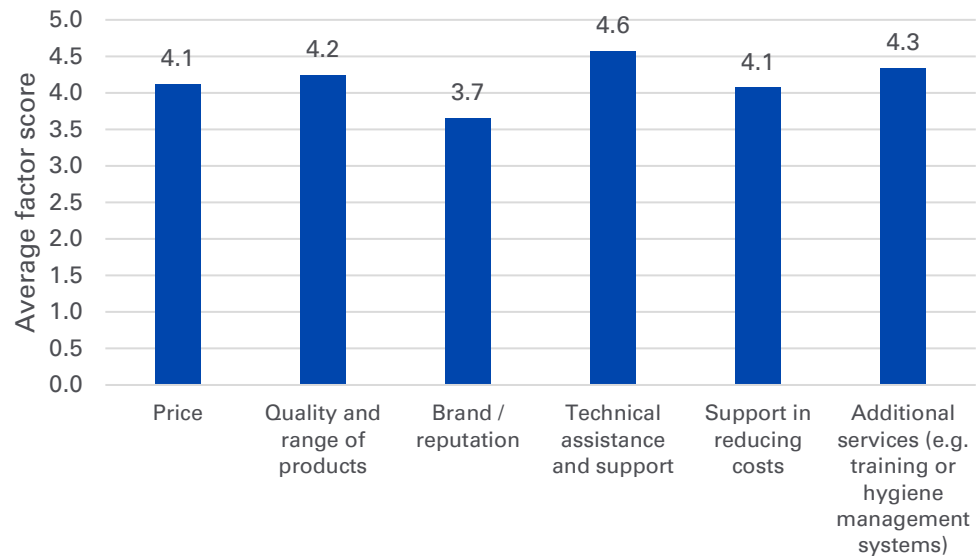
7.37 We heard consistently during our inquiry that reliability and an efficient and high quality clean is important to customers. This is because of the potentially very high cost of having production disrupted by something going wrong in the cleaning process (eg the taste of the product being affected, or the cleaning process taking too long) or 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 their cleaning chemical supplier(s).

7.38 We asked customers responding to our questionnaire to score factors for importance when choosing a supplier.⁵⁶ On average, they scored technical assistance, additional services and quality and range of products as being more important than price. Figure 1 below shows responses by larger

⁵⁶ See paragraph 7.141 below for details of our customer questionnaire.

customers, while smaller customers gave a similar ranking of factors.⁵⁷ However, all factors scored highly (apart from branding). This reflects comments by Holchem that customers want a complete package including both competitive pricing and thorough service.

Figure 1 – Average score for importance of factors when choosing a supplier.



Source: Large Customer Questionnaire results – 22 responses. 1 not important, 5 very important

- 7.39 The reasons given by Large customers for choosing their current supplier also showed a similar picture with more customers mentioning service, expertise, support or reliability than price, cost or value.⁵⁸
- 7.40 The extent to which these factors are important will vary between types of customers. One supplier explained that larger customers, in particular those who supply to supermarkets, typically have greater needs when it comes to the level of service, and that to service them suppliers must incur additional overheads, for example microbiologists, technologists, a training department, and personnel to prepare their cleaning instructions. Due to differences in customer needs with regard to services and expertise, not all suppliers will be able to service each customer at the same level.
- 7.41 We also found that there were differences between different industrial segments. For example, one supplier told us that customers in the brewing sector often do not require as many of the cleaning / hygiene management systems as those customers active in higher risk food processing, and

⁵⁷ See Appendix B Table 40.

⁵⁸ See Appendix B Table 7.

typically do not require a Marks & Spencer (M&S) approved disinfectant which is often a requirement of larger food customers.⁵⁹

- 7.42 The Parties and customers also highlighted differences within the food segment. They suggested that there are differences between high care environments required in the food processing businesses compared to abattoirs, which are lower risk and therefore require cleaning to a lower specification. The highest standards are required for sites producing food that is consumed directly from the package without any cooking or other treatment – for example, pre-made sandwiches.
- 7.43 Overall, we find that customers typically want a full-service package when purchasing cleaning chemicals and that due to differences in the specific services and expertise required for different customers, suppliers differentiate their propositions depending on the specific needs of the customer.

Contractual arrangements

- 7.44 The Parties submitted that most customers are not under contract and therefore are free to switch at any time.⁶⁰
- 7.45 We also found that most customers are not under contract and instead rely on standard terms and conditions. Larger customers (who account for a proportionately greater amount of the Parties' revenue), however, are much more likely to be under contract. Figure 2 shows that [over 50%] of Holchem customers' and [over 50%] of Ecolab customers' revenue comes from customers under contract.

Figure 2: Proportion of revenue from customers under contract



Source: Customer data provided by Holchem and Ecolab.

- 7.46 We heard from a range of customers that contracts are typically put in place for three to five years but will often contain a break clause.
- 7.47 The Parties submitted that only a small proportion of customers use tenders.⁶¹ The Parties' customer records indicate that most customers are not recorded as having been acquired by tender. However, as with contracts, larger customers are much more likely than smaller customers to carry out more formal procurement arrangements.

⁵⁹ Within the industry obtaining M&S approval is viewed as a recognised quality standard for high risk F&B manufacturers. [Parties' Initial Submission](#), paragraph 6.12.

⁶⁰ [Parties' Initial Submission](#), paragraph 8.38.

⁶¹ [Parties' Initial Submission](#), paragraph 7.9.

7.48 Figure 3 shows that a large proportion of sales to customers with over 5% of annual purchases are tendered whereas only a very small proportion of tenders are recorded for the smaller customers. Overall, 5% of Holchem's and 5% of Ecolab's revenues came from customers recorded as having tendered. The merging parties' records of tenders taking place was not complete, and so this analysis may underestimate the proportion of customers who use tenders.

Figure 3: Proportion of customers who tender, by customer spend⁶²



Source: Customer data provided by Holchem and Ecolab, data is based on Parties' records of whether customer has been acquired by tender

Switching

7.49 We saw from the data provided by the Parties that customers often stay with the same supplier for long periods of time. For Holchem, 5% of revenue comes from customers who have been with them for ten years or more (see Figure 4).⁶³ Ecolab's valuation model for its acquisition of Holchem was based on Holchem's customers having a 5% useful life period as a customer (see paragraph 3.6 above).

Figure 4: Holchem's proportion of customers and revenue by date acquired



Source: Customer data provided by Holchem.

- 7.50 This tallies with comments from both suppliers and customers suggesting that the risk of switching and the cost of changing chemical supplier can be high. For example, several customers emphasised the importance of validating a new supplier's chemicals due to food safety issues, in order to minimise any risks of a food hygiene incident (which has the potential to be very damaging for the customer). A customer also told us that switching will affect cleaning methodologies and the training process, and it would need a compelling case to do that. Some customers may therefore be risk-averse to changing chemical suppliers.
- 7.51 The Parties submitted that risks of hygiene incidents are the customer's responsibility, and that any health and safety risks relate to how the products are used rather than the products themselves.⁶⁴ While this may be the case,

⁶² These figures for the proportion of revenue tendered are likely to understate the importance of tenders to competition. Ecolab customer data indicated only whether a customer was originally acquired by a tender process, but there are Ecolab customers who have over £1 million revenue who we know have recently run tender processes even if they were not originally acquired by tender.

⁶³ Ecolab did not have corresponding data over the same time period.

⁶⁴ Parties' response to Provisional Findings, paragraphs 6.20-6.21.

customers also rely on their suppliers of cleaning chemicals for training and support to manage these risks – as ✂.

- 7.52 We asked customers in our questionnaire how long it would take them to switch provider. 15 out of 23 Large customer correspondents said that switching would take two months or longer with three of these suggesting it would take over a year, while 58 out of 118 Small customer correspondents said switching would take three months or longer with 17 of these saying it would take over six months.⁶⁵ This can involve a material amount of resource and cost for the customer; for example, costs of retraining staff and replacing cleaning manuals were commonly cited by customers.
- 7.53 We also heard from customers that they often trial new suppliers before making a full switch, a step that can take weeks or even months. One customer said ‘It takes time to build trust with a new supplier that is not one of the established ones. Suppliers often have to undergo trials which are lengthy (usually six months)’. During the trial period, a range of factors are tested – for example, how it affects the customer’s products; the amount of time, water and energy that will be devoted to cleaning; and how the cleaning chemicals react/interact with the customer’s equipment. Both customers and suppliers have impressed on us that trials are an important step in the switching process.
- 7.54 Other customers in the food processing segment highlighted even more significant costs. For example, some customers highlighted the need for allergen control and the need to undergo additional validation on each line of production.
- 7.55 It is also possible that customers could switch part of their supply. Our customer questionnaire found that around a third of Small customer respondents and half of Large customer respondents made purchases from a second provider. However, we heard from some other customers that they preferred sole supply due to purchasing synergies with reduced complexity and cost of dealing with multiple suppliers and deliveries.
- 7.56 The results from our Small customer questionnaire suggests that, where there is a second supplier, the proportion of the customer’s requirement accounted for by the secondary supplier was limited. On average, respondents indicated that Ecolab supplies [90-100%] of its customers’

⁶⁵ The questionnaire commissioned from Survation by the Parties (discussed further at paragraph 7.143 below) included a question on time taken to switch but this asked about the time required once a decision has been made to switch and therefore does not reflect the full duration required, which would include inviting and considering quotes or running a tender process.

requirements and Holchem supplies [80-90%] of its customers' requirements.⁶⁶ However, for Large customers that have dual supply, competitors often had a larger share with the proportion being supplied by the Parties averaging [50-60%].

- 7.57 Customers might purchase from more than one supplier for a range of reasons. For example, we saw responses suggesting that some customers were making some purchases of unformulated chemicals for specific purposes where this was feasible, and support was not required. In addition, we saw examples of customers purchasing from two suppliers because they had acquired a new site which already had a different supplier.
- 7.58 The Parties submitted that we have overstated the difficulty of switching, arguing that:
- (a) Customers are not locked in to their supplier;
 - (b) In a number of cases customers have switched within days or weeks, and most customers indicate switching would take 2-3 months;⁶⁷
 - (c) Trials are low effort and cost to the customer, and they help to lower barriers to switching;
 - (d) Risks related to supplier reliability and food hygiene incidents are mitigated through trials and are not a barrier to switching; and
 - (e) Switching costs are not material and would not deter switching.⁶⁸
- 7.59 We do not dispute that customers are not locked in to their suppliers, and that switching is possible, typically in a number of months, if customers choose to switch. However, it is clear from the Parties' customer records that customers do not switch frequently, and when asked about barriers to switching customers have raised a number of barriers and costs as discussed above.
- 7.60 The Parties agree that switching levels are currently low in this industry,⁶⁹ but submitted that this is not evidence of a lack of competition, instead arguing that longevity is due to customer satisfaction and customers' ability to engage in market testing and re-negotiate prices without the need to switch supplier.

⁶⁷ This is based on the response to a questionnaire carried out by Survation on behalf of the Parties. This questionnaire is discussed at paragraph 7.143 below.

⁶⁸ Parties' response to Provisional Findings, paragraphs 6.4-6.26.

⁶⁹ Parties' response to Provisional Findings, paragraph 6.4.

They submitted an econometric analysis which they submit shows that there is either no relationship or a negative relationship between how long a customer has been using Ecolab/Holchem and the price they pay.⁷⁰ However, we do not consider that low levels of switching are in themselves evidence of a lack of competition. We therefore do not consider that the Parties' econometric analysis is relevant to our assessment of whether the Merger is likely to result in an SLC.⁷¹

Market testing

- 7.61 The Parties submitted that even when they do not switch, customers in this industry are sophisticated purchasers who either engage in a tender exercise or market testing to ensure that their current supplier is offering competitive prices.
- 7.62 We have found that a significant proportion of the market by value is tendered each year. Looking across the tender data we received from the largest four suppliers we estimate that around 20-30% of the value of their total sales to F&B customers was tendered in 2018.⁷² This is not out of line with what we heard from a number of larger customers, who stated that they often carry out tender exercises every four or five years.
- 7.63 We also heard some evidence of informal price benchmarking from customers where they did not carry out tenders. One customer informed us that a less formal benchmarking exercise was completed to ensure value for money, with supply staying with the incumbent. Holchem also gave examples of ✂ of their customers in the last six months who had achieved discounts through this process.
- 7.64 However, as many respondents to our customer questionnaire did not list any alternative providers, it seems unlikely that a large proportion of customers are regularly carrying out benchmarking exercises, but it is a feature for some customers.⁷³
- 7.65 As we discuss in the section below on closeness of competition, across our analysis we see Ecolab and Holchem frequently as close competitors and

⁷⁰ [Parties' response to Provisional Findings](#), paragraphs 7.9-7.12.

⁷¹ In any case, our review of this econometric analysis found some issues with the data and methodology used which indicated that little weight should be placed on the results. In particular: the analysis does not control for any possible confounding factors beyond the customer's total sales, the data on customer longevity used was prone to significant measurement error as there were a significant number of cases in which the date of customer acquisition was only known to be before a certain year, and the data on pricing only relates to certain top products without any justification provided for this restriction.

⁷² The value for 2016 and 2017 was much lower and therefore this is likely an overestimation.

⁷³ 61 respondents did not list any alternative providers out of 167 responses.

this informal testing without switching should be captured in the Parties' record of opportunities lost and threats saved. But to the extent it is not, we think that it is reasonable to assume that as a result of the loss of competition between the Parties, the outcome of informal price benchmarking exercises after the Merger will yield less favourable outcomes to customers than would have been the case without the Merger.

- 7.66 The Parties submitted that it is unreasonable for the CMA to assume that market testing will not represent an effective competitive constraint post-Merger.⁷⁴ However, we consider that this question is not distinct from the assessment of whether the Parties will face sufficient constraints from competitors post-Merger, which we assess below. Market testing is not itself a competitive constraint beyond the constraint provided by competitors, although it may affect the way that suppliers compete.

Closeness of competition

- 7.67 The Parties told us that they focus on different customer segments and are therefore complementary rather than close competitors.⁷⁵
- 7.68 Whilst it is true to some degree that they each have a different customer focus – Ecolab earns slightly over half of its UK F&B revenue from international contracts whereas Holchem does not have any such contracts – we found that not only do the Parties compete but they are close competitors for many UK customers.
- 7.69 In this section we assess how closely Ecolab and Holchem compete with one another, relative to their closeness of competition with other suppliers in the market. We consider evidence from:
- (a) The different types of customers served by the Parties;
 - (b) The Parties' records on competition for customers they have gained and lost;
 - (c) Tender data;
 - (d) Internal documents;
 - (e) Views of the Parties' customers; and

⁷⁴ [Parties' response to Provisional Findings](#), paragraph 7.3.

⁷⁵ [Parties' Initial Submission](#), section 5.

(f) Views of the Parties' competitors.

7.70 The Parties submitted that the Merger is intended to be a 'reverse integration', with Ecolab's weaker UK F&B business intended to be absorbed into the stronger Holchem F&B business. They argued that we should therefore only consider the constraint of Ecolab on Holchem, not the other way around – and that this constraint is limited. We reject each of these arguments for the following reasons:

(a) First, the fact that the target has a stronger position in the market than the acquirer has no bearing on the extent to which competition will be reduced because of the Merger – all competition between the Parties will be eliminated, in both directions. The elimination of such competition could be expected to impact not only the Parties' existing customers, but also all future new F&B customers of the Parties in the UK.

(b) Second, as our analysis in this section goes on to show, Ecolab exercises a material constraint on Holchem even if the constraint exercised by Holchem on Ecolab is stronger.

7.71 We therefore focus our analysis in the following sections on the constraints coming from either Party on the other.

Comparison of customer bases

7.72 The customer bases of the Parties have provided us with evidence on the extent to which the Parties are supplying similar types of customers. This can highlight whether they are therefore likely to be competing for similar customers. In this section we look at:

(a) International/multinational customers,

(b) Size of UK customers, and

(c) Industry segments.

7.73 We found that both Ecolab and Holchem have customers in each UK size category and industry segment we examined, indicating they are likely to be competing for the same customers. However, they do appear to have different strengths; for example, Holchem is more concentrated in the food segment.

7.74 There is a more significant difference when it comes to international customers as the evidence suggests Holchem can only attract customers who contract UK business separately whereas Ecolab has a considerable

proportion of its revenue coming from customers who contract on an international basis.

International customers

- 7.75 As set out in paragraph 6.32, we refer to customers who contract for supply across multiple countries as ‘international customers’.⁷⁶ When an international customer contracts for supply within the UK, the applicable framework agreement may have been negotiated and agreed outside of the UK with little or no UK-specific terms.⁷⁷
- 7.76 The Parties submitted that Holchem does not compete with Ecolab for international customers.⁷⁸ Our investigation has confirmed this. Ecolab serves several customers who contract for the supply of cleaning chemicals and support services to be provided in multiple countries (a single Europe-wide supply contract, for example). It earns a significant proportion of its revenue from such customers. Holchem, on the other hand, only serves customers who contract on a UK-only (and occasionally including the Republic of Ireland) basis. We have also heard from some international customers who have informed us that they prefer having one supplier to service their sites in different countries and that affects which pool of suppliers they can choose from.
- 7.77 That is not to say, however, that all multinational customers have a single contract to cover supply in all the countries they serve – some will have a UK-only contract for their UK operations. The Parties’ customer lists show that both Ecolab and Holchem supply some multinational customers on a UK-only basis. Indeed, in terms of customer numbers, over ⅔ of both Parties’ customers are for supply only in the UK. However, larger customers are more likely to be multinational customers. Ecolab receives ⅔ of its UK F&B revenue from multinational customers,⁷⁹ and Holchem earns slightly more than ⅔ its revenue from multinational customers (Figure 5). This demonstrates that Holchem can attract some of these customers where they contract on a UK-only basis.

Figure 5: Proportion of revenue by national and multinational customers (2018)



⁷⁶ This does not include customers who are multinational businesses but contract separately for their UK supply of cleaning chemicals.

⁷⁷ [Parties’ Initial Submission](#), paragraph 4.9.

⁷⁸ [Parties’ Initial Submission](#), paragraph 5.4.

⁷⁹ Note this includes customers who are multinational but nevertheless contract on a UK-only basis. Once these customers are omitted, we consider that Ecolab receives ⅔ of its UK revenue from international customers (paragraph 7.81).

- 7.78 The Parties submitted that all of Holchem's customers with operations in multiple countries are owned by an international corporate group but procure on a UK (or UK and Republic of Ireland) basis. They told us that this is different from Ecolab's multinational customers, many of whom have centralized procurement outside of the UK.
- 7.79 We agree that this is an important distinction, as noted above. We contacted several international customers who operate a centralised procurement system. They told us that it would be unlikely that they would consider using a UK-only supplier. For example, we spoke to one customer who told us that it had rejected Holchem as a potential supplier on the basis that Holchem only covered the UK. Additionally, Coca-Cola European Partners (CCEP) highlighted that having suppliers who can supply multiple jurisdictions was something they would consider highly advantageous during a tender process. They also pointed out that reducing the number of CCEP's suppliers was a key goal.
- 7.80 We are aware that ~~☒~~.⁸⁰ We have not seen any evidence of customers switching in the other direction (ie from purchasing on an international basis to purchasing on a UK-only basis). ~~☒~~.
- 7.81 However, some multinational customers are prepared to procure services separately for the UK, for which Holchem would be able to compete. We note that Ecolab also has two large multinational customers who operate in several countries but for which it only services the UK. The larger of these customers (Moy Park, which has production facilities in the UK, France and the Netherlands) confirmed that it procures on a national basis, and that it invited Holchem to tender. We therefore consider these two customers, as well as all of Holchem's customers, to be customers requiring UK-only supply (and therefore potentially subject to competition from Holchem).⁸¹
- 7.82 In contrast, the evidence available to us indicates that while some suppliers to international customers also supply UK-only customers (indeed, Ecolab itself does so), suppliers who only supply on a UK-only basis are not viable for international customers. Therefore, it seems likely that Holchem is not (and will not be in the foreseeable future) a strong constraint in the supply to

⁸⁰ ~~☒~~ are two examples provided by the Parties of customers who have made such a switch.

⁸¹ These customers account for ~~☒~~ of Ecolab's UK F&B sales, and we therefore estimate that Ecolab's sales to customers who procure internationally account for ~~☒~~% rather than ~~☒~~% of its UK F&B sales (as Ecolab had suggested).

international customers. The remainder of our findings therefore focuses on UK-only supply.

- 7.83 We are conscious that some of our analyses contain data from international customers (we do not have the level of detail in all of the datasets to eliminate international customers from all of our analyses). We do not consider that this is material for our decision because the evidence indicates that the Parties are close competitors (as discussed in the following sections below) and so diluting the datasets with international customers (for whom there is little or no competition between the Parties) has not masked the competition that does take place between them.

Size of customers

- 7.84 We found that looking at the number of customers across different size categories (see Figure 6) indicates that Ecolab and Holchem have a similar profile with over 82% of their customers being low value. A much smaller proportion of customers purchase significant amounts of cleaning chemicals each year.

Figure 6: Proportion of customers by customer spend (2018)



Source: Customer data provided by Holchem and Ecolab - 2018.

- 7.85 Looking at the proportion of revenue generated by the different bands of customer spend (Figure 7) we found that the small number of high value customers generate most of the revenue for both Ecolab and Holchem despite making up less than 1% of their customer bases. Holchem has 1% customers and Ecolab has 1% customers who spend over £100,000 per year on cleaning chemicals but these generate approximately £10 million and £10 million to Holchem and Ecolab respectively.

Figure 7: Proportion of revenue by customer spend (2018)



Source: Customer data provided by Holchem and Ecolab - 2018

- 7.86 Ecolab earns a much higher proportion of its revenue from contracts over £100,000 in revenue than Holchem (1% vs 1%) but both have only 1% customers in this category and earn a similar absolute amount (of around

⁸² In absolute terms, around 1% Holchem customers and around 1% Ecolab customers spend less than £20,000 per year on cleaning chemicals.

£~~XX~~ million per year). Ecolab however earns proportionally less from its customers with lower sales volumes.

- 7.87 When distinguishing between Large and Small customers (which, as discussed above, is a distinction we have made for ease of evidence gathering)⁸³ Large customers account for the vast majority of each of the Parties' sales – ~~XX~~ for Holchem and ~~XX~~ for Ecolab.

Comparison across competitors for size and international segments

- 7.88 To understand the relative scale of the major suppliers in supplying to different customer segments, we have compared the revenues of the Parties, Diversey and Christeyns in these segments.⁸⁴

Figure 8: Revenue by customer segments (£ million, 2018)



Source: Customer sales data provided by Holchem, Ecolab, Diversey and Christeyns for 2018. These figures include sales of unformulated products for Holchem, Christeyns and Diversey, although these account for a small proportion of overall sales.

- 7.89 Figure 8 shows the revenue generated for three customer segments; Small national, Large national and international customers. We see that all suppliers receive a significant amount of turnover from Small and Large national customers, with Holchem being the largest of the main suppliers. While we have used the broad 'Large' and 'Small' customer categories based on a threshold of £50,000, as discussed at paragraph 6.31 above, we consider that there is a continuum of customers by size rather than a sharp distinction around this threshold.

Industry segment

- 7.90 We found that both Parties have customers across the three different industrial segments within F&B, ie food, dairy and beverage.

Figure 9: Proportion of revenue by industry segment (2018)



- 7.91 Figure 9 shows that Holchem earns a much greater proportion of its revenue in the food segment than in the dairy and beverage segments, whereas Ecolab's revenue is split more evenly between the three segments. This

⁸³ See paragraph 6.30.

⁸⁴ We have focused only on these suppliers because, as discussed in the section on market shares above, all other suppliers are much smaller with individual market shares of less than 5%.

indicates that the Parties both compete across each of the three segments, but that they have different focuses and areas of expertise.

- 7.92 Ecolab told us that Holchem has a greater level of expertise in food while Ecolab has more expertise in beverage and dairy; two segments in which it generates more revenue than Holchem. Notwithstanding this, ✂.
- 7.93 Having established that the Parties supply customers across the same range of sizes and industry segments and are therefore likely to be competing for these customers, we now turn to the direct evidence of competition between the Parties.

Accounts gained and lost

- 7.94 Analysis of the Parties' records on gained and lost accounts allowed us to see which competitors were competing for those accounts, how often they were competing against each other, and what was the value of accounts each competitor was competing for. This information signals how closely the Parties compete relative to other suppliers.
- 7.95 We were provided with data from Holchem which covered the period January 2016 to March 2019. Ecolab provided data from December 2016 onwards.⁸⁵ ✂. The data included the customer name, account type (gain, loss, trial, threat, etc.), who the 'primary competitor' was, and the value of the account. We used this information to form the analysis of how closely the Parties compete. The full set of results and details of the data and methodology used is included in Appendix D. The data includes international customers.
- 7.96 In this section we look at summary charts of our results across the following account types:
- (a) Gained accounts.
 - (b) Lost accounts.
 - (c) Threatened accounts (ie customers which the Parties perceived to be at risk of switching).
 - (d) Trialled accounts (ie customers that were trialling the Parties).
 - (e) Account opportunities (ie customers the Parties viewed as potential targets).

⁸⁵ ✂.

7.97 Our analysis shows that:

- (a) The Parties consistently compete against each other across all account types;
- (b) Competition for accounts is mostly concentrated between the four main suppliers: Ecolab, Diversey, Christeys, and Holchem;
- (c) The Parties compete slightly asymmetrically. Holchem has been a particularly strong competitor to Ecolab with most of Ecolab's lost accounts listing Holchem as the primary competitor. However, Ecolab has been less competitive in gaining accounts from Holchem; and
- (d) Other suppliers appear to offer some constraint at an aggregate level but the clear majority of these are local competitors with no significant named competitor emerging to match the main players.

7.98 The Parties submitted that our analysis of the gain and loss data understates the constraint from smaller suppliers, because we have excluded instances in which there was no competitor named in the Parties' records. They argue that these instances will disproportionately be cases in which the Parties were competing with smaller suppliers, because sales staff will prioritise record keeping for the most important rivals, and that we should therefore treat the majority of these cases as instances of competition with smaller suppliers.⁸⁶

7.99 We do not agree that our analysis understates the constraint from smaller suppliers, as:

- (a) We have not seen any evidence to support the Parties' argument that the 'unknown' category disproportionately represents smaller suppliers; in contrast, we have identified instances where no competitor was listed for a lost account, but tender data shows that the other Party won.⁸⁷
- (b) This category is likely to include instances where there was no relevant competitor – for example, in the case of Holchem's data account losses would have been shown because a factory has closed down or it had been consolidated with another group site. Holchem told us this would account for 'a lot' of the unknowns in its data. The Parties also submitted that unknowns in Holchem's data could also be as a result of suppliers whose identity was not known at the time of entry.

⁸⁶ Parties' response to Provisional Findings, paragraphs 4.13-4.17.

⁸⁷ A loss of Greene King accounted for 2% of Ecolab's lost accounts, with no competitor listed. 2%.

- (c) If the Parties' contention was correct, we would expect to see 'other suppliers' accounting for a relatively lower proportion of the value of accounts in categories in which there is a higher prevalence of accounts with no known competitor, as this would reflect smaller suppliers being more often recorded as 'unknown' in these categories. However, this is not the case, as can be seen in Figure 10 and Figure 11 below.

7.100 However, we consider that the prevalence of accounts in the data with no known competitor (accounting for between 10% and 50% of the total value depending on category) does create some uncertainty around the accuracy of the results. We have therefore considered the results of this analysis in the round with other analysis of closeness of competition.

Analysis of Ecolab's gain and loss data

7.101 Figure 10 shows the value and percentage for each of Ecolab's account types based on the identity of the 'primary competitor' for those accounts. For example, when looking at Ecolab's account opportunities, Holchem was the primary competitor for £~~20~~ million worth of those opportunities. This represents roughly [20-30%] of the total value of all Ecolab's UK F&B opportunities, and [30-40%] of those with a competitor recorded.

Figure 10 - Summary of Ecolab's gain/loss



Source: CMA analysis of Ecolab data. See Appendix D for full tables of results including none/unknown.

7.102 The results show that Ecolab was primarily competing against Diversey when it gained accounts. On the other hand, when Ecolab lost accounts, the clear majority were to Holchem where the competitor was known. This indicates that Holchem provides a significant constraint on Ecolab and that they are very close competitors. Diversey provides a somewhat weaker constraint on Ecolab considering the low proportion of accounts it has taken from Ecolab and the fact it has threatened less than ~~20~~ of Ecolab's accounts in value terms.

7.103 Christeyns appears to be a weaker constraint on Ecolab. It has not won any accounts from Ecolab and competes for a smaller proportion of value across all account types (although it is the second strongest competitor for threatened accounts). Overall, Christeyns is clearly a weaker constraint on Ecolab than Holchem and Diversey.

7.104 'Other suppliers' include any competitor which is named in the Parties' records but does not belong to the top three competitors already discussed

above. This includes competitors listed as 'local' and 'other'.⁸⁸ The results show that other suppliers are a weak constraint on Ecolab. They threaten less than 1% of the value of Ecolab's accounts and Ecolab has lost only 1% in account value to them.

- 7.105 In conclusion, Ecolab's gain and loss analysis shows that Holchem provides a substantial competitive constraint on Ecolab. This is evidenced by Holchem being Ecolab's closest competitor for lost and threatened accounts, as well as account opportunities. Moreover, across all four account types competition is heavily concentrated between the large competitors.

Analysis of Holchem's gain and loss data

- 7.106 Figure 11 shows the value and percentage for each of Holchem's account types based on the identity of the primary competitor for those accounts. There are four distinct account types in the Holchem data: gained accounts, lost accounts, trialled accounts, and threatened accounts.

Figure 11 – Summary of Holchem's gain/loss



Source: CMA analysis of Holchem data. See Appendix D for full tables of results including none/unknown.

- 7.107 The results show that Ecolab was the 'primary competitor' for a material proportion of value across all four account types. Diversey and Christeyns have a higher share of value for Holchem losses and threats than Ecolab, but nonetheless the data indicates that Ecolab has been a significant competitor to Holchem.
- 7.108 As with Ecolab's gains and losses data, the results for Holchem also show that most of the competition for accounts occurs between the top four competitors in the market. For instance, considering all Holchem's lost accounts across the period, in over 80% of cases where there was a known competitor, the primary competitor recorded was Ecolab, Diversey, or Christeyns.
- 7.109 Although the results suggest that other suppliers might provide a significant competitive constraint in aggregate (with roughly 1% of the value where the competitor was known across all four account types), we have found that 1%.⁸⁹ Thus, to the extent there is any competitive constraint from other suppliers, it is likely to be stronger at the lower end of the market but much

⁸⁸ Other suppliers are; 3M, A&B, Anios, Antigerm, Asiral, Brenntag, GEA, Hypred, QJS, Sopura, Steris, and Univar.

⁸⁹ See Appendix D, tables 6 and 7.

weaker for larger customers. In addition, of the other suppliers no single competitor appears more than 10 times. 10.

- 7.110 Our analysis of Holchem's gained and lost accounts shows that Ecolab is a close competitor in a material number of cases. Diversey and Christeyns appear in these results to be closer competitors to Holchem than Ecolab. Nonetheless, Holchem's data shows competition being heavily concentrated between the four large competitors. We found other suppliers to have a stronger presence than in the Ecolab data. Yet, out of all the other suppliers no individual competitor provides a significant constraint.
- 7.111 The Parties submitted that the analysis of Holchem's lost accounts, of which Ecolab won only 10 with a total value of 10, demonstrates that Ecolab is not a significant constraint on Holchem, particularly given how small this figure is in the context of a market size of over £100 million.⁹⁰ We do not consider this comparison to be meaningful, given that Holchem's total lost accounts over the period had a value of only 10, of which £10 were to known competitors. Contrary to the Parties' interpretation, we consider that this reflects Holchem's strong position and the low levels of switching in the market.
- 7.112 We consider that the analysis of losses, consistent with the analysis of gains, threats and trials, shows that Ecolab is one of Holchem's closest competitors alongside Christeyns and Diversey. As noted above, the analysis of this data indicates that Christeyns and Diversey are closer competitors than Ecolab. We consider this analysis in the round with other analysis of closeness of competition discussed below.

Tender analysis

- 7.113 Having looked at the Parties' gains and losses across all customer types and methods of procurement, we now turn to looking specifically at how closely the Parties compete in formal tenders.
- 7.114 By looking at which suppliers participated in tenders, and which suppliers lost and won those tenders, we can draw conclusions about closeness of competition.
- 7.115 We received and analysed data on tenders bid on by each of the Parties and their two largest competitors, Diversey and Christeyns. We analysed 10 bids from Ecolab, 10 from Holchem, 10 from Diversey and 10 from Christeyns. Our analysis of the tender data shows that:

⁹⁰ [Parties' response to Provisional Findings](#), paragraphs 4.18-4.19.

- (a) The Parties compete with one another for most of their tenders.
- (b) The large majority of tenders do not have all of the largest four competitors competing, with only two or three being more commonly being recorded.
- (c) The Parties each also compete with Diversey for most tenders, and with Christeyns less often. They do not compete with any other suppliers to a significant extent.
- (d) When Ecolab loses tenders, Holchem wins in the clear majority of cases by value, indicating that it is Ecolab's strongest competitor.
- (e) When Holchem loses tenders, Ecolab, Diversey and Christeyns win similar proportions of the value. This indicates that Ecolab is a significant constraint on Holchem.
- (f) Evidence from Diversey and Christeyns' lost tenders confirms that Holchem is a very strong competitor to these suppliers as well, and that Ecolab is also a meaningful constraint.

Approach to tender analysis

7.116 The data provided by the Parties, Diversey and Christeyns covered the period from January 2016 to May 2019. Each supplier's tender data included information on the other competitors who bid on the tender and the eventual winner of the tender, where known. The data includes international customers, and so the analysis may understate the closeness of competition between the Parties for UK-only customers.

7.117 Holchem told us that information on competitors and winners is not always accurate, as customers do not usually share this information with suppliers bidding on their tenders. We have attempted to improve the accuracy of this information for our analysis by cross-referencing the datasets of the Parties, Christeyns and Diversey.

7.118 The Parties argued that we should put limited weight on any analysis of tender data, because:

- (a) Only a small portion of F&B demand is bid for in formal tender processes, and there is no evidence that customers who do go out to tender are representative of the larger customer base;⁹¹

⁹¹ Parties' Initial Submission, paragraph 7.9.

- (b) The tender data is incomplete, as Diversey's data excludes Zenith Hygiene (acquired by Bain Capital, Diversey's owner, in 2018), and we have only collected data from the four major suppliers and therefore the analysis discounts bids from smaller suppliers,
- (c) Where the tender data is 'unknown' it is likely to be because that sale did not go through a tender process, and
- (d) The gain and loss data discussed in the previous section is available as an alternative and includes gains and losses due to tenders.

7.119 As discussed above, while it is true that the majority of the Parties' customers do not use tenders, those who do use tenders tend to be larger customers. Consequently, ☒ of Holchem's and ☒ of Ecolab's overall F&B revenues came from customers who use tenders. We do not consider this to be a 'small portion of demand'.

7.120 With regards to the incompleteness of the data, we acknowledge that this may result in some underestimation of the extent to which the Parties faced competition for tenders. However, we consider that this underestimation is likely to be limited, since:

- (a) Other large suppliers told us that smaller suppliers did not compete for larger customers;⁹²
- (b) Several smaller suppliers told us they do not participate in tenders, with one saying there was no point in smaller companies bidding and another similarly saying tenders were not worth the effort of bidding; and
- (c) Where the Parties' data lists a competitor from which we have not gathered data, including Zenith Hygiene, we have assumed the Parties identified that competitor correctly (whereas when we have data from competitors, we have checked the Parties' data against it).

7.121 Furthermore, the lack of data from smaller suppliers is not likely to significantly affect the analysis of which suppliers won when the Parties lost tenders, since for ☒ Holchem's lost tenders and ☒ of Ecolab's lost tenders by value, the winner can be identified from the data we have available.

7.122 We have analysed the tender data in addition to the gain and loss data because it contains more detail on some aspects of competition (eg we can analyse all competitors who bid on a tender, not just the primary competitor); it can be more readily combined with third party data; and there are some

⁹² These comments are discussed below at paragraphs 7.198 to 7.201.

exclusions from the gain and loss data that are covered by the tender data, such as Ecolab losses before 2018.

7.123 We therefore consider that analysing tender data provides valuable additional insight into competition for the Parties' largest customers, who account for a significant proportion of the Parties' overall demand. We also consider that while there are some limitations to the data, they are not likely to significantly impact the results.

7.124 We summarise the key results of our analysis for each of the suppliers' tender data below. Further details of the data and methodology are included in Appendix E.

Ecolab tender analysis

7.125 We have considered which suppliers Ecolab faced and in which combinations when competing for tenders, and which suppliers won when Ecolab lost tenders.

7.126 Table 3 below shows the competitors faced by Ecolab when bidding for tenders. Ecolab faced each of Holchem and Diversey for most of its tenders by value. Indeed, for over 80% of tender value Ecolab and Holchem competed. It also faced Christeys for a sizeable minority of tenders by value, and other suppliers in a small proportion of cases by value.

Table 3: Competitors faced by Ecolab on tenders

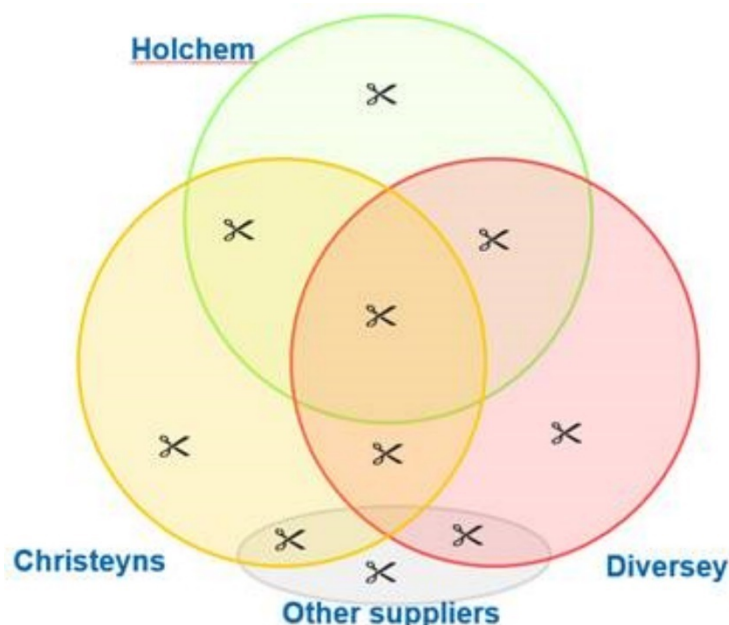
Supplier	Number of tenders	%	Value of tenders	%
Holchem	80	[40-50%]	80	[70-80%]
Diversey	80	[30-40%]	80	[60-70%]
Christeys	80	[10-20%]	80	[20-30%]
Other suppliers	80	[10-20%]	80	[10-20%]
Total	80	100%	80	100%

Note that percentages do not sum to 100%, as multiple competitors may bid on a tender. For 80 tenders, accounting for 80% of value, there were no known competitors. Other suppliers include Sopura, Veolia, Solenis, Brenntag, Tensio, WaterTec, 'Other Local', and 'Raw Materials' (ie unformulated).

Source: CMA analysis based on data provided by the Parties, Diversey and Christeys.

7.127 Figure 12 below shows how often Ecolab faced each combination of competitors when bidding for tenders. This shows that Ecolab usually competes with one or two of Holchem, Diversey and Christeys (over 80% by tender value), and only occasionally competes against all three for the same tender (8% by tender value).

Figure 12: Overlap between competitors for Ecolab's tenders



Percentages by value. The ✂ of tenders by value for which there were no known competitors are not included in this diagram. Source: CMA analysis based on data provided by the Parties, Diversey and Christeyns.

7.128 Table 4 below shows the competitors who won the tenders lost by Ecolab. Holchem won the vast majority of these tenders by value, with Diversey also winning a small proportion. Christeyns and one smaller supplier (WaterTec) won minimal amounts. This, and the discussion of Ecolab's tender data above, show that Holchem is a very strong competitive constraint on Ecolab when competing for tendered contracts.

Table 4: Winners of tenders lost by Ecolab

Supplier	Number of tenders	%	Value of tenders (£)	%
Holchem	✂	[40-50%]	✂	[70-80%]
Holchem / Diversey*	✂	[0-5%]	✂	[10-20%]
Diversey	✂	[10-20%]	✂	[5-10%]
Christeyns	✂	[5-10%]	✂	[0-5%]
Other suppliers	✂	[0-5%]	✂	[0-5%]
None/unknown	✂	[20-30%]	✂	[5-10%]
Total	✂	100%	✂	100%

Note, the difference between the total number of tenders in Table 3 (✂) and the total in Table 4 (✂) is that ✂.

Other suppliers include WaterTec only.

*The majority of the value of this tender was won by Diversey – Holchem retained sites with annual sales value of ✂.

Source: CMA analysis based on data provided by the Parties, Diversey and Christeyns.

7.129 The Parties submitted that it is 'unsurprising' that Holchem would appear prominently in Ecolab's tender data, as it is the largest supplier in the UK

F&B market.⁹³ However, the share of Ecolab's lost tenders by value won by Holchem at [70-80%] is significantly higher than would be commensurate with its market share of [20-30%].

Holchem tender analysis

7.130 Using Holchem's tender data, we considered which suppliers Holchem faced in which combinations when competing for tenders, and which suppliers won when Holchem lost tenders.

7.131 Table 5 below shows the competitors faced by Holchem when bidding for tenders. Holchem faced both Ecolab and Diversey for most of its tenders by value. It faced Christeyns for a sizeable minority of tenders, and 'Other suppliers' in a very small proportion of cases.

Table 5: Competitors faced by Holchem on tenders

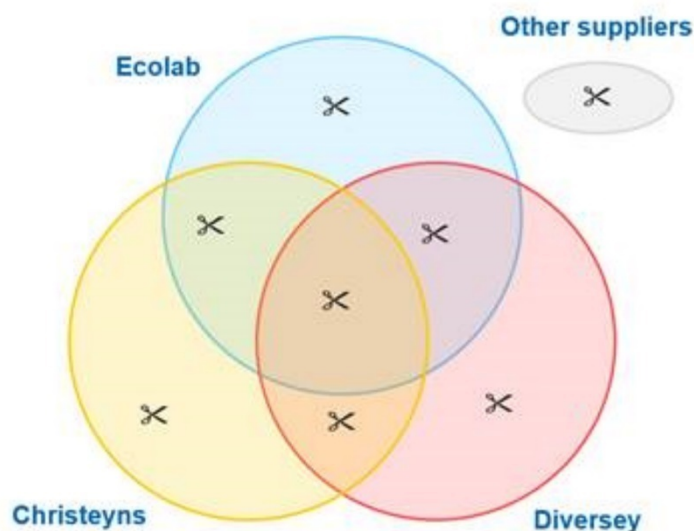
Supplier	Number of tenders	%	Value of tenders (£)	%
Ecolab	✂	[40-50%]	✂	[50-60%]
Diversey	✂	[40-50%]	✂	[60-70%]
Christeyns	✂	[20-30%]	✂	[30-40%]
Other Suppliers	✂	[5-10%]	✂	[0-5%]
Total	✂	100%	✂	100%

Note that percentages do not sum to 100%, as multiple competitors may bid on a tender. For ✂ tenders, accounting for ✂ of value, there were no known competitors. Other suppliers include Allied Hygiene, GIS, 'Local' and 'Commodity'. Source: CMA analysis based on data provided by the Parties, Diversey and Christeyns.

7.132 Figure 13 below shows how often Holchem faced each combination of competitors when bidding for tenders. This shows that, similarly to Ecolab, Holchem usually competes with one or two of the other three large suppliers (Ecolab, Christeyns and Diversey) accounting for over ✂% of tender values, but only occasionally competes with all three for the same tender (accounting for ✂% of tender value).

⁹³ Parties' response to Provisional Findings, paragraph 5.2.

Figure 13: Overlap between competitors for Holchem's tenders



Percentages by value. The X of tenders by value for which there were no known competitors are not included in this diagram. Source: CMA analysis based on data provided by the Parties, Diversey and Christeyns.

7.133 Table 6 below shows the competitors who won tenders lost by Holchem. Notably, X.⁹⁴ For the tenders Holchem did lose, similar proportions of value were won by Ecolab, Diversey and Christeyns. No other suppliers won any tenders lost by Holchem. Based on our analysis of Holchem's tender data we consider that Ecolab provides a substantial competitive constraint on Holchem when competing for tendered contracts.

Table 6: Winners of tenders lost by Holchem

Supplier	Number of tenders	%	Value of tenders (£)	%
Ecolab	X	[30-40%]	X	[30-40%]
Diversey	X	[40-50%]	X	[30-40%]
Christeyns	X	[20-30%]	X	[20-30%]
Total	X	100%	X	100%

Note, the difference between the total number of tenders in Table 5 (X) and the total in Table 6 (X) is that X.
Source: Source: CMA analysis based on data provided by the Parties, Diversey and Christeyns.

Analysis of third-party tender data

7.134 Using tender data provided by Diversey and Christeyns, we considered which suppliers won when these suppliers lost tenders.

⁹⁴ X.

7.135 Table 7 shows the competitors who won the tenders lost by Diversey. ✂. ⁹⁵

Table 7: Winners of tenders lost by Diversey

Supplier	Number of tenders	%	Value of tenders (£)	%
Ecolab	✂	[10-20%]	✂	[10-20%]
Holchem	✂	[40-50%]	✂	[50-60%]
Other suppliers	✂	[10-20%]	✂	[10-20%]
None/unknown	✂	[10-20%]	✂	[20-30%]
Total	✂	100%	✂	100%

⁹⁵ 'Other suppliers' includes ✂ only.

Source: CMA analysis of data provided by Diversey and Christeyns

7.136 Table 8 shows the competitors who won the tenders lost by Christeyns. ✂

Table 8: Winners of tenders lost by Christeyns

Supplier	Number of tenders	%	Value of tenders (£)	%
Ecolab	✂	[5-10%]	✂	[20-30%]
Holchem	✂	[30-40%]	✂	[40-50%]
Holchem / Diversey ⁹⁶	✂	[5-10%]	✂	[10-20%]
Diversey	✂	[20-30%]	✂	[10-20%]
None/unknown	✂	[10-20%]	✂	[10-20%]
Total	✂	100%	✂	100%

Source: CMA analysis of data provided by Diversey and Christeyns

7.137 In summary, our tender analysis shows that the Parties compete closely within the UK F&B market. Over ✂ of the value of tenders lost by Ecolab were won by Holchem indicating Holchem is a very strong competitive constraint on Ecolab. We also found Ecolab competed closely with the other large competitors for Holchem's lost tenders. Moreover, competition for tenders is focused predominantly amongst the big market players with very few smaller competitors having the ability to compete successfully. Thus, all the tender evidence points to the Parties being close competitors within a limited set of large suppliers.

7.138 The Parties have argued that in interpreting tender data, it should be recognised that the Parties have to anticipate and respond to bids from all suppliers, even if not all suppliers are invited to tender.⁹⁷ While we recognise that the Parties will not know the identity of all competitors on a specific

⁹⁵ Diversey told us that the tenders won by the unformulated chemical supplier were tenders in which Diversey was also competing to supply unformulated chemicals rather than formulated chemicals.

⁹⁶ Multiple winners mean that the customer is purchasing on a dual supply basis.

⁹⁷ [Parties' response to Provisional Findings](#) paragraph 4.12.

tender when making their bid, we do not consider it likely that they put significant weight on the prospect of bids from smaller suppliers who – as shown by the analysis in this section – are rarely invited to tenders and win tenders even less frequently.

Customer evidence

- 7.139 Overall, customer responses – through our questionnaires and calls – corroborated other evidence discussed in this chapter, which is that Ecolab and Holchem are close rivals in the supply of cleaning chemicals to F&B customers except for the supply of international customers.
- 7.140 The customer responses confirmed that Diversey and Christeyns are also competing, with Diversey being a particularly strong competitor. Responses indicated that there is a wide range of smaller competitors but that these are much less well known/used, particularly for larger customers.
- 7.141 We had calls with several customers. In addition, we sent two customer questionnaires – one to Small customers and another to Large customers. More than 150 Small customers provided us with information in response to our questionnaire,⁹⁸ a response rate of around 15%. Our Large customer questionnaire was sent to 152 customers and we received 23 responses – also a response rate of around 15%.
- 7.142 The Parties have suggested this response rate means that the remaining 85% of customers were not concerned enough about the Merger to respond. We do not agree with this suggestion. Non-responses could be for a range of reasons including the quality of contact details provided to us, other time pressures on potential respondents and the extent to which the customer participated in the CMA's phase 1 investigation. Indeed, we are aware of some customers who expressed concern about the Merger to the CMA in its phase 1 investigation who did not respond to our questionnaire.⁹⁹ Although it may be that customers who are concerned about the Merger respond in higher proportions than customers who are not, we do not have sufficient information to quantify this effect and we do not agree that non-responses should be interpreted as those customers are unconcerned about the Merger.

⁹⁸ We requested full customer lists and contact details from the Parties for the F&B segment and sought views from all these customers where contact details were provided. Full details in Annex B: Customer Questionnaires.

⁹⁹ See 'Evidence' on the [Ecolab/Holchem case page](#).

- 7.143 The Parties commissioned a questionnaire¹⁰⁰ of their Large UK-only customers, carried out by Survation, which received 30 responses. Some of the questions asked in this questionnaire replicated those in the CMA's customer questionnaire and the additional evidence obtained is included in the discussion below. The Parties also sought to probe further some of the results obtained through additional questions. However, we had concerns regarding the wording of a number of these questions which meant that we did not consider that the responses that were obtained to those questions represented reliable evidence.¹⁰¹ This evidence is also discussed below.
- 7.144 This section considers responses to the CMA and Survation questionnaires which provide evidence on closeness of competition, in particular the best alternative suppliers listed by customers and customer views on the Merger. We also considered responses on the previous suppliers of the customers although we note that in some cases respondents to the questionnaire will not have been in post for long enough to be aware of previous suppliers and were therefore not in a good position to comment on this.
- 7.145 We highlight responses separately for Large and Small customers for ease of reference as the Parties and other market participants have indicated differences between larger and smaller customers, and these customer groups received slightly different versions of our questionnaire.¹⁰²

Views on current best alternative

- 7.146 Although customers may not regularly look across the market, they may have an idea of who they would use instead of their current supplier. This can provide further evidence on the closeness of competition between merging parties. We asked customers directly who their best alternative supplier would be if they could not use their current provider. The same question was used in the Survation questionnaire.

Current best alternatives for Ecolab customers

- 7.147 As shown in Figure 14, in responses to the CMA questionnaire, Small Ecolab customers were most likely to name Holchem as their best alternative

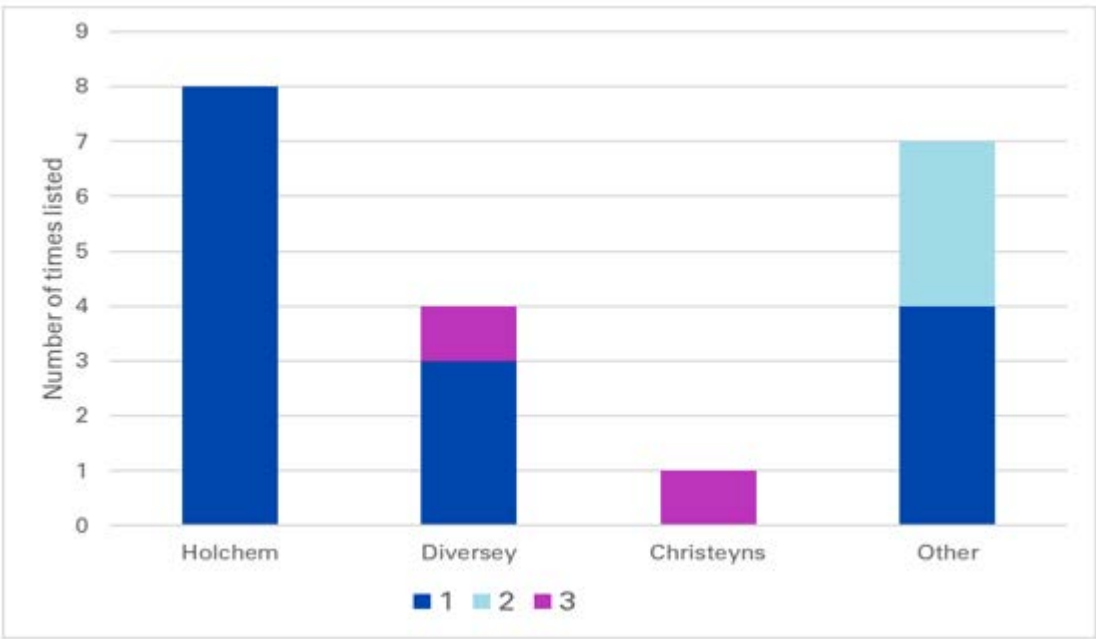
¹⁰⁰ While the Parties refer to this as a survey, we do not consider that this engagement with customers constitutes a statistical sample survey in the conventional sense. The interviews were not obtained either through a census approach (where attempts were made to interview all customers in scope) or by selecting a random sample. In addition, the responses are based on only 30 customers at most, and some questions are asked of or answered by far fewer than this. It is therefore not appropriate to treat the responses as representative of all the Parties large national customers.

¹⁰¹ These issues are noted below where we discuss the relevant questions.

¹⁰² See paragraph 7.87 for an explanation as to why we segment customers along these lines.

followed by Diversey. Several other alternative suppliers were listed as best alternative, but each was only recorded once. We only received four responses from Large Ecolab customers naming alternatives, and these each named a different best alternative: Diversey, Christeyns, Tristel and Univar – the last only as an alternative for unformulated products, with the customer naming Christeyns as its best alternative for formulated chemicals.¹⁰³

Figure 14: Ecolab customers (Small UK-only) – Alternative suppliers listed in CMA questionnaire responses

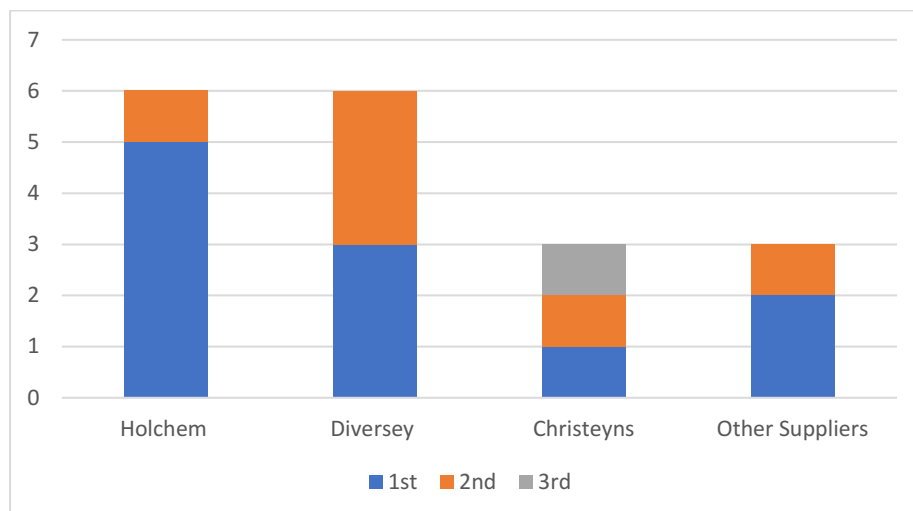


Source: Small customer questionnaire, (Best alternatives ranked 1-5 – no Ecolab customers listed more than 3 alternative suppliers). 24 customers total – figure excludes 9 customers who listed no alternatives
 Other is other suppliers listed once including Bival, Brenntag, DBM, Kilco, Biocell, Hydrus, WJ McNab

7.148 Survation received 14 responses from Ecolab’s Large UK-only customers. For these customers, both Holchem and Diversey were equally popular as alternative suppliers on aggregate with both being listed a total of six times (see Figure 15 below). Holchem was ranked as the first alternative more than any other supplier. Other suppliers mentioned by the customers included CTS, Atana, and Whiteman and Parish.

¹⁰³ One additional customer responded that ‘any’ was its best alternative and another declined to name its best alternatives, saying it would go through a formal tender to choose.

Figure 15- Ecolab customers (Large UK-only) – Alternative suppliers listed in Survation questionnaire responses

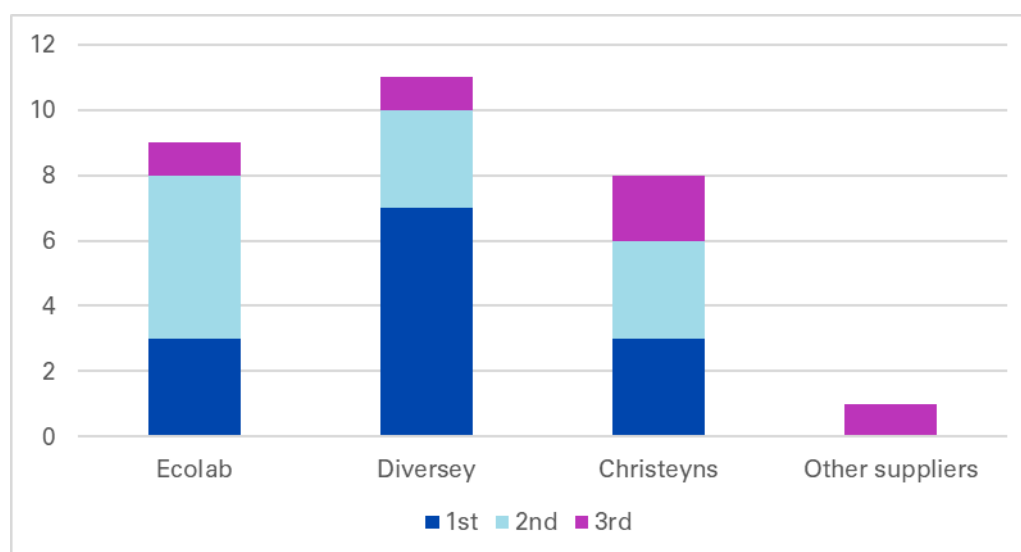


Source: CMA analysis of responses to question 14 of the Survation questionnaire. The graph excludes blank responses. Four customers could not name a single alternative supplier and no customer could name a fourth or fifth alternative supplier. One customer listed both Diversey and Christeyns as their first alternative and these have been counted as first for both.

Current best alternatives for Holchem customers

7.149 In response to the CMA's questionnaire, Holchem's Large customers all named one of Diversey, Ecolab or Christeyns as their best alternative, as shown by Figure 16 below. Diversey was named by seven customers as their best alternative, with Ecolab and Christeyns each being named by three customers. The only other supplier that was named among these customers' top five alternatives was Kilco, who was named once as a third best alternative.

Figure 16: Holchem customers (Large) - Alternative suppliers listed in CMA questionnaire responses

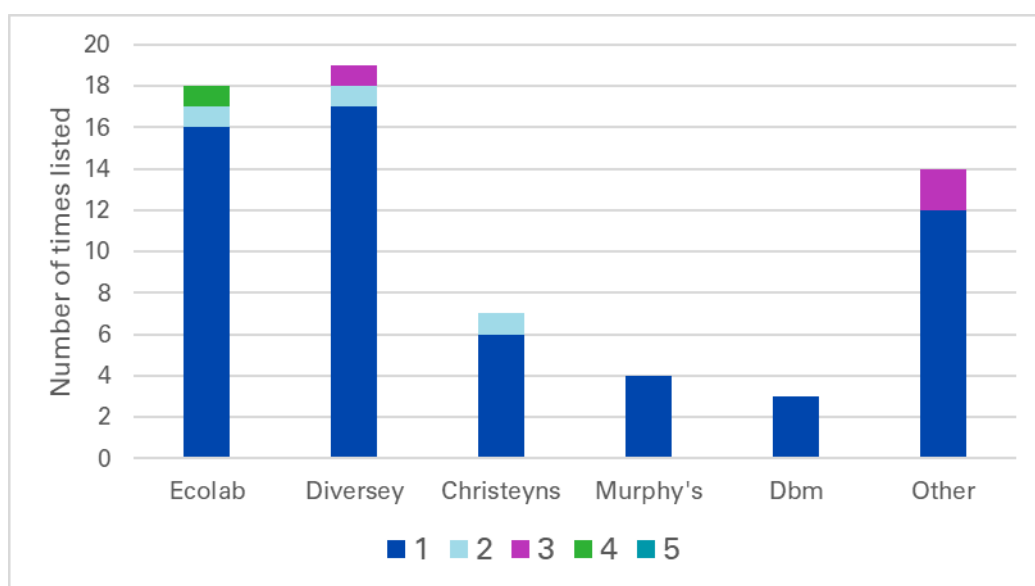


Source: Large customer questionnaire, (Best alternatives ranked 1-5 – no Holchem customers listed more than 3 alternative suppliers). 13 customers total - 2 customers excluded from figure who listed Holchem as their best alternative (one currently

primarily uses Diversey but uses Holchem for some sites, the other said no other suppliers compare to Holchem). 'Other suppliers' refers to single naming of Kilco.

7.150 Holchem's Small customers were also most likely to name Diversey as their best alternative with Ecolab not far behind and Christeyns also a common rival, as shown in Figure 17 below. Other alternatives were named but mostly only by one customer; these are grouped under Other. Of the small suppliers named more than once, Murphy's (a specialist provider to the brewing segment) was named the most, as it was listed by customers four times.

Figure 17- Holchem customers (Small) – Alternative suppliers listed in CMA questionnaire responses



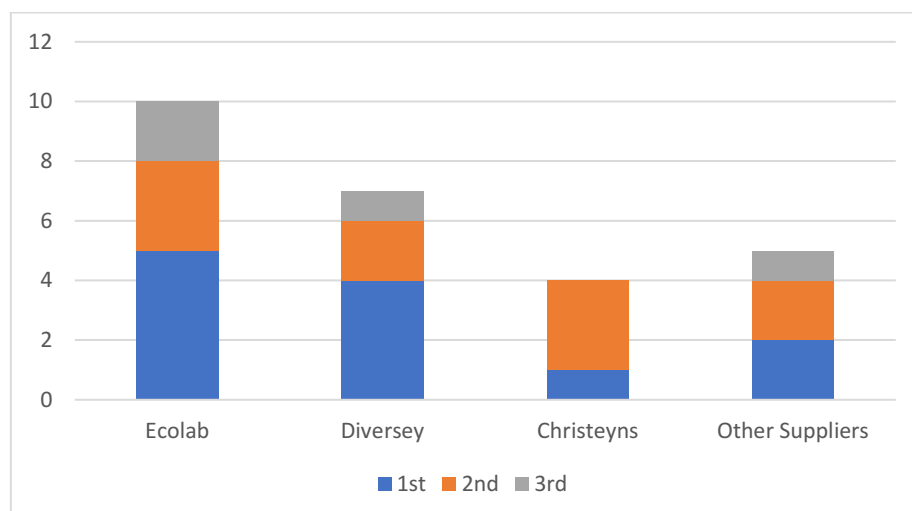
Source: Small customer questionnaire (Best alternatives ranked 1-5) – 109 customers total, figure excludes 49 who listed no alternatives and two who listed Holchem.

Providers listed only once grouped together in 'Other'. Includes: Cleenol, Eurochem, Seldon, Arrow, Alph Chem, Byrotel, Chemsafe, Wightmare, Reagent, Jenkinson, Freedom Hygiene, Brenntag, Basildon Chemicals, Pearce Seeds, Niche, Needlers, Monks and Crane, Local Independent, Evans Vanadine, Bunzl, Amb Hygiene, and Various x2.

7.151 Survation received 15 responses from Holchem customers.¹⁰⁴ For these customers, Ecolab was reported as an alternative supplier a total of ten times, more than any other supplier (see Figure 18 below). Ecolab was also listed as the best alternative supplier five times, more than any other supplier. Other suppliers listed by the customers included Arco, Bio-control, Greenhams, and Office Depot.

¹⁰⁴ Survation also obtained one response from a customer whose primary supplier is Diversey, but which also purchases from Holchem. This customer listed Ecolab as the number one alternative supplier with no other suppliers listed.

Figure 18- Holchem customers (Large) – Alternative suppliers listed in Survation questionnaire responses



Source: CMA analysis of responses to question 14 of the Survation questionnaire. The graph excludes blank responses. Three customers could not name a single alternative supplier and no customer could name a fourth or fifth alternative supplier.

Conclusion on current best alternatives

7.152 The responses to both the CMA questionnaire and the Survation questionnaire suggest that Ecolab and Holchem are close competitors. In particular, for the Ecolab respondents to the Survation questionnaire Holchem is listed as the first alternative more than any other supplier and is listed as an alternative as many times as Diversey, and for Holchem customers Ecolab is the most popular alternative supplier across both measures.

7.153 More customers listed a supplier outside of those three main players in response to the Survation questionnaire (eight instances) than did in response to the CMA questionnaire to Large customers (five instances). None of the 'Other Suppliers' cited were the same in the Survation questionnaire and CMA questionnaire responses. This is consistent with a market that is characterised by just four main players and a long tail of small players that are not effective competitors for the vast majority of customers.

Previous suppliers

7.154 Historical switching between suppliers is an indication of close competition between them. We asked respondents in our questionnaires to list any previous suppliers they had used in the last five years.

7.155 For Small Ecolab customers that responded to the CMA questionnaire, most (18) customers did not name any previous suppliers. The most commonly named previous supplier was Holchem (3 mentions) and Diversey and DBM

were also named. The small sample of Large Ecolab customers named only Sopura and Tristel as previous suppliers.

- 7.156 Most (62) of Holchem's Small customers that responded to the CMA questionnaire also did not name a previous supplier. Among the customers that did name a previous supplier, the most commonly named previous supplier is Diversey (13) followed by Ecolab (11) and Christeys (9). Some 16 other providers were also listed but each by only one customer.¹⁰⁵ This indicates smaller customers may have some additional options outside of the largest four suppliers but in the main they look to one of Holchem, Ecolab, Diversey and Christeys.
- 7.157 For Large Holchem customers that responded to the CMA questionnaire, only Ecolab and Diversey were named as previous suppliers (three and two times respectively) and ten respondents did not name a previous supplier.
- 7.158 Only six respondents to the Survation questionnaire named previous suppliers, with two further respondents noting that they had multi-sourced in the past without naming suppliers. Ecolab and Diversey were each mentioned twice, one other supplier (Greenham) was mentioned, and one respondent noted that they had previously used Brenntag for unformulated products such as Nitric acid.

Customer views on the Merger

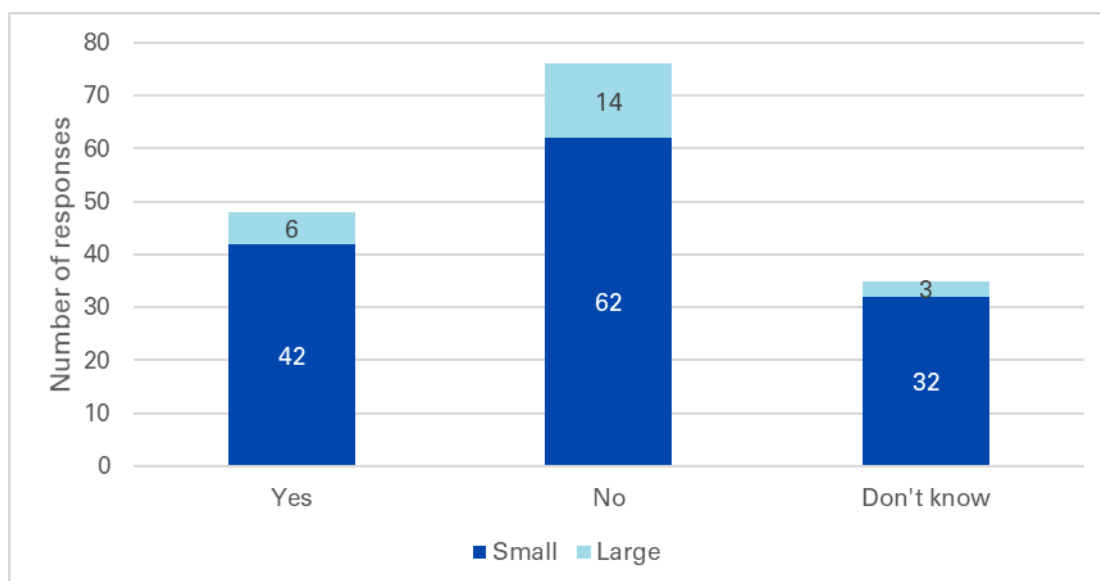
- 7.159 Customers' concerns on a merger can provide evidence that competition will be lessened after the merger. We asked customers directly whether they had any concerns about the Merger¹⁰⁶ and whilst most customers did not express concerns, as shown in Figure 19, a substantial number of respondents did raise concerns.¹⁰⁷ Although it is informative to gauge the number or proportion of customers who expressed concern, we also examined the reasons behind their concerns in order to understand the context (for example, whether the concern was specific to the Merger).

¹⁰⁵ The other suppliers all listed once were Murphy's, Infochem, Bactol, Freedom Hygiene, AOS Grimsby, Clover, Chemix, Chemisphere, Force Fresh, Foodsmart, Kitchenmaster, DBM, Hugh Crane, Arrow, Guthries and Cleenol.

¹⁰⁶ Survation asked a similar question: 'Do you have any concerns about the impact of the combination between Ecolab and Holchem on competition'. We have some concerns about the reference to 'combination' and 'competition concerns' and the placing of this question early in the questionnaire. However, we have considered the responses obtained.

¹⁰⁷ Nine respondents to the Survation questionnaire said they had concerns.

Figure 19 - Whether customers have concerns about the Merger



Source: Small and Large customer questionnaires. Excludes 8 Small customers who did not respond to the question.

7.160 Of the 167 customers that responded to the CMA questionnaires, 48 said that they had concerns about the Merger. Six of these were respondents to the Large customer questionnaire with the remainder respondents to the Small customer questionnaire.¹⁰⁸ A range of reasons for this were given. The common reasons are summarised below:¹⁰⁹

- (a) Many customers had concerns about potential reductions in choice and service as well as higher prices. Some suggested that previous experience of such mergers led to a reduction in choice and higher prices. Some smaller customers were also worried they would be too small to continue getting good service without paying more.
- (b) Several customers were concerned about the lack of alternative suppliers in the market with some suggesting there would only be three suppliers for them to choose between. Other customers went further; one suggested that currently there are only three suppliers that are approved by some of their customers in the food industry and this would become two after the Merger, and another suggested the Merger would create a monopoly.

¹⁰⁸ In addition to our phase 2 customer questionnaires, an additional 10 customers raised concerns about the Merger in the phase 1 investigation and six customers did not raise concerns.

¹⁰⁹ Similar concerns were also expressed by respondents to the Survation questionnaire. Comments included 'Price increases. They would be such a large company that they would try to dictate pricing to us' and 'Reduces competition in the marketplace. Concerned about monopoly power'.

- (c) Some had concerns about whether other suppliers had the ability to compete effectively to replace the loss of competition.
- (d) Others were worried because they had a bad experience of using one of the Parties before.

7.161 Of the 167 customers that responded to the CMA questionnaires, 76 said that they did not have concerns about the Merger. Fourteen of these were respondents to the Large customer questionnaire with the remainder respondents to the Small customer questionnaire. There were a range of reasons given for not having concerns, for example:

- (a) Many of the customers who were unconcerned said it was because they thought they had enough other options to choose from.
- (b) Several thought their current supply would not be affected. Some suggested they had a strong relationship with one of the Parties and this was unlikely to be affected by the Merger.
- (c) Some suggested one of the Parties was not currently a viable option for them.
- (d) Some customers were not worried because they had not seen prices go up since the Merger was announced.
- (e) Some suggested the Merger would be good because the two companies were complementary with strengths in different segments of food industry.
- (f) Some respondents indicated that both providers were reputable.

7.162 The Parties submitted that:

- (a) Significantly more customers responding to the CMA's questionnaire were unconcerned about the Merger than concerned, and the Survation questionnaire finds a similar result with 9 customers reporting concerns and 21 reporting no concerns;¹¹⁰
- (b) The Survation questionnaire also found that the majority of customers did not consider that the Merger was likely to result in a decrease in levels of

¹¹⁰ The Parties also submitted that of the 9 customers with concerns, only one customer indicated that there was no alternative suppliers to the Parties which would be fully effective at meeting the customer's needs, a majority indicated that there would be either no change or an improvement in service, a majority indicated that threatening to switch is an effective method to ensure good prices, and a majority would not see switching costs as a barrier to switching in response to a price increase. We do not consider that these other responses invalidate the concerns of these customers.

service, the availability of Ecolab's international expertise on the market, or innovation; and

- (c) To find an SLC when most customers are unconcerned about the Merger, the CMA would need to consider that it knows the market better than customers.¹¹¹

7.163 In relation to the additional questions in the Survation questionnaire, we noted that most respondents either did not expect any change in the service offered to customers (13 responses) or expected it to improve (11 responses) and only a few (6 responses) expected a reduction. Regarding the other questions, we placed limited weight on this evidence as the questions were prompted rather than spontaneous responses and we were concerned that the wording of the question may have influenced the responses given.¹¹²

7.164 Clearly, the views from customers are mixed and some of the views expressed, both from some concerned and some unconcerned customers, were underpinned by credible reasoning. While customer views on the Merger are informative, they do not in themselves determine our findings on whether the Merger is likely to result in an SLC. We have considered a wide range of evidence, from the Parties and third parties, in our assessment of the likely effects of the Merger. Nonetheless we consider that the number of customers expressing concerns is material.

Internal documents

7.165 The Parties' internal documents which discuss competition in the UK F&B market are limited, but there is some discussion of competition in some of the documents provided by Ecolab, which confirms that Holchem is a strong competitor to Ecolab. Holchem told us that it produces relatively few internal documents.

7.166 In Ecolab's 2019 business plan for F&B in the UK and the Republic of Ireland, one slide describes competition driving down prices in the market and gives examples of five customers that Ecolab lost or failed to win (either through a tender or market testing process), 3 of which had sales values of

¹¹¹ [Parties' response to Provisional Findings](#), paragraphs 7.13-7.16.

¹¹² Questions 23 and 24 asked respondents which of the following statements is closest to your view, where the statements were, respectively 'The combination will likely increase/decrease the availability on the market of Ecolab's international expertise' and 'The combination is likely to increase/decrease the availability on the market of Ecolab's innovations' (and if asked about innovations, respondents were told 'innovations such as Ecolab's digital monitoring and dosing technologies'). We consider that this wording is likely to prompt respondents to take as given that such expertise and innovations exist and assume that they would be made available to Holchem customers. As noted above, we also consider that it would be more appropriate to refer to the 'merger' rather than the 'combination'.

over US\$1 million. Ecolab's tender data shows that four of these were won by Holchem – the other is not included in the tender data ✂. This demonstrates the significant competitive constraint exerted on Ecolab by Holchem.

- 7.167 In the same document, however, there is also some indication of ✂ and the presence of other competitive threats; a slide on Ecolab's strengths, weaknesses, opportunities and threats indicates that:
- (a) ✂; and
 - (b) It views Christeyns growing stronger in food and dairy and Kersia entering the market as key competitive threats in the UK.
- 7.168 An Ecolab EU F&B Strategic Business Review from 2017 contains an overview of Ecolab's 'competitor landscape' at the European level. It lists Diversey as a global competitor, a number of other competitors with a European footprint, and Holchem. 'Competitive pricing' and 'food safety' are listed as strengths of Holchem, although 'Innovation' is listed as a weakness. Holchem being included in Ecolab's top European competitors, despite its presence being limited to the UK and the Republic of Ireland, suggests that it is viewed as a particularly strong competitor in the UK.
- 7.169 Another Ecolab internal document discusses the business case for the Merger and says that the Merger would allow Ecolab to 'avoid price concessions in the UK market' with a '0.5% price increase leverage'. When we asked Ecolab about this, it told us that the Merger would result in some customers not re-tendering. Ecolab told us that because re-tendering can lead to a reduction in price, avoiding some re-tenders means avoiding further price concessions (paragraph 3.5). We consider this is the same as a price increase when compared with the pre-Merger situation.
- 7.170 Overall the evidence from internal documents is consistent with other evidence discussed in this section on closeness of competition indicating 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.

Conclusions on closeness of competition

- 7.171 The evidence we have considered from the Parties' customer data, gain and loss and tender data, views of customers and Ecolab's internal documents consistently shows that the Parties are close competitors.

- 7.172 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.
- 7.173 The elimination of such competition could be expected to impact not only the Parties' existing customers, but also all future new F&B customers of the Parties in the UK.

Remaining competitive constraints

- 7.174 In this section we consider the strength of the remaining competitive constraints on the Parties. We first consider the constraint from other suppliers within the market, before considering the constraint from suppliers of unformulated products.

Competition from other F&B cleaning chemical suppliers

Constraint from Diversey

- 7.175 Diversey is a global manufacturer and supplier of cleaning and hygiene chemicals serving a wide range of customers, including in the F&B market. Diversey is owned by Bain Capital, which also acquired Zenith Hygiene in 2018. Zenith Hygiene is a UK manufacturer and supplier of cleaning chemicals, which also supplies other cleaning/hygiene-related products manufactured by third parties. Zenith Hygiene entered the F&B market in 2016 by acquiring CCL Pentasol.
- 7.176 The Parties submitted that:
- (a) Diversey is a stronger competitor to Holchem than Ecolab, based on bidding analysis included in the CMA's phase 1 decision which showed Diversey competing for a higher share of Holchem's food tenders than Ecolab; and
 - (b) Diversey is a stronger competitor to Ecolab than Holchem, on the basis that it can bid for contracts with international customers which Holchem cannot.¹¹³
- 7.177 By market share, Diversey is the second largest supplier in the UK F&B market with a share of [10-20%]. It is particularly strong in the beverage segment where it is the largest supplier with a share of [20-30%], but it is one

¹¹³ [Parties' Initial Submission](#), paragraph 9.5.

of the four largest suppliers and has a share above 10% across all of the F&B segments.

- 7.178 Slightly less than half of Diversey's sales in the UK F&B market are to international customers. This is similar to Ecolab, which made slightly more than half of its sales to international customers (Figure 8 above).
- 7.179 From our analysis of the Parties' gain/loss records and the tender data provided by the Parties, Diversey and Christeyns, we found that:
- (a) Both Parties competed with Diversey for a large proportion of their gained customers – this indicates that Diversey is competing for similar customers to the Parties;
 - (b) Both Parties faced Diversey as a competitor for the majority of tenders by value;
 - (c) Diversey was the primary competitor for around a quarter of Holchem's lost customers by value (where the competitor was known), and won a third of the tenders Holchem lost; and
 - (d) Ecolab lost less than a fifth of customers and tenders by value to Diversey, but in both cases this was a significantly higher proportion than to any other supplier except Holchem, which won substantially more. This indicates that for UK-only supply Diversey is not a stronger competitor to Ecolab than Holchem.
- 7.180 Holchem's customers listed Diversey as their best alternative supplier more often than any other. Ecolab's customers named Holchem as their best alternative more often than Diversey. When the Parties' customers list is combined, eight of 17 Large customers and 23 of 73 Small customers listed Diversey as their best alternative.¹¹⁴
- 7.181 Christeyns told us Diversey was its second strongest competitor, after Ecolab, but that Ecolab, Holchem, Diversey and Christeyns were all similar. All the smaller suppliers from which we received responses indicated that Diversey was one of their three strongest competitors. Several mentioned Diversey's size and competitive pricing as strengths, and customer service as a weakness.
- 7.182 The evidence discussed above indicates consistently that Diversey is one of the strongest competitors faced by the Parties. We therefore conclude that

¹¹⁴ Totals exclude customers who did not name any supplier as their best alternative, and Holchem customers who named Holchem as their best alternative.

Diversey exerts a significant constraint on the Parties and would continue to do so on the merged entity after the Merger.

Constraint from Christeyns

7.183 Christeyns is a European supplier of cleaning chemicals. Christeyns had historically primarily focused on the commercial laundry market but has been growing into the F&B market since 2010. In the UK, Christeyns entered the market by purchasing Klenzan Direct Limited (Klenzan), a UK-based supplier of cleaning chemicals to the F&B segment. Christeyns acquired a 50% stake in Klenzan in 2012 and acquired the remainder of the shares in 2017.

7.184 The Parties submitted that Christeyns is a strong competitor, on the basis that:

- (a) Christeyns has carried out extensive business development activities aimed at developing its reputation in the UK F&B segment;
- (b) Christeyns is an M&S accredited supplier of disinfectants, and is therefore a high-quality supplier; and
- (c) Christeyns can compete with Ecolab for international customers.¹¹⁵

7.185 Christeyns is among the largest suppliers in the F&B market with a share of [10-20%]. It is primarily strong in the dairy segment, where it has a share of [30-40%], whereas its share is only [5-10%] in the food segment and not more than 5% in the beverage segment.

7.186 However, Christeyns told us that it hopes to reduce its reliance on dairy, and its business plans show high levels of growth in the food segment in particular. In addition, the Parties submitted that Christeyns has been competing aggressively for Holchem's (primarily food) customers. This is supported by Holchem's records on lost and threatened customers, which show Christeyns is the primary competitor for the highest proportion of these accounts.

7.187 From our analysis of the Parties' gain/loss records and the tender data provided by the Parties, Diversey and Christeyns, we found that:

- (a) Christeyns competed closely with Holchem across Holchem's gained and lost customers as well as trials and threats, and Holchem lost significantly

¹¹⁵ [Parties' Initial Submission](#), paragraphs 8.13 and 9.6-9.10.

more customers in competition with Christeyns than with any other supplier;

- (b) In contrast, Christeyns was the primary competitor for a small share of Ecolab's gains, opportunities and threats, and for none of the customers lost by Ecolab;
- (c) The Parties both faced Christeyns when bidding for tenders far less often than they faced Diversey or one another, although still substantially more than they faced suppliers outside the top four; and
- (d) Holchem lost a similar proportion of tenders by value to Christeyns as it did to Ecolab or Diversey, but Ecolab lost almost no tenders to Christeyns.

7.188 Responses to our questionnaires suggest that Christeyns is not viewed by the Parties' customers as being as strong an alternative as Diversey or the other Party. Small customers named Christeyns significantly less often while Large customers named Christeyns slightly less often. Four of 17 Large customers listed Christeyns as their best alternative, as did six of 73 Small customers.¹¹⁶

7.189 Diversey told us that it views Christeyns as a weaker competitor than Holchem or Ecolab, and Christeyns mainly competes with Diversey for dairy customers. Diversey also said Christeyns is more focused on price relative to service, in comparison to the other larger suppliers. Only three of the smaller suppliers active in the F&B market who responded to us included Christeyns among their closest competitors.

7.190 On balance, the evidence discussed above indicates that Christeyns is one of the strongest competitors faced by the Parties, although several pieces of evidence suggest that it is a weaker competitor to the Parties (and particularly to Ecolab) than one another or Diversey. We conclude that Christeyns is nonetheless a significant constraint on the Parties and would continue to be a significant constraint on the merged entity after the Merger.

Constraint from smaller F&B cleaning chemical suppliers

7.191 Several smaller suppliers (ie suppliers other than Ecolab, Holchem, Diversey and Christeyns) are also active in the supply of cleaning chemicals to F&B customers. According to our market share estimates, these suppliers

¹¹⁶ Totals exclude customers who did not name any supplier as their best alternative, and Holchem customers who named Holchem as their best alternative.

collectively account for [30-40%] of the market – although we note that the large part of this share is made up of the ‘remainder’ left over in the estimated total market size after accounting for the suppliers for which we have sales data. Given that there is some uncertainty surrounding these market size estimates (paragraph 7.8) the actual share of the market accounted for by smaller suppliers could be smaller or larger.

7.192 The Parties submitted that, contrary to the CMA’s phase 1 decision, smaller suppliers were able to compete for all F&B customers, including large customers. They argued that:

- (a) Small suppliers have won some large customers; and
- (b) It is possible to scale up production of F&B cleaning chemicals rapidly, so small suppliers could do so in the event of a post-Merger price increase.¹¹⁷

7.193 The Parties provided a list of 42 smaller suppliers which they submitted were their competitors in the UK F&B market. We contacted these suppliers to request information on their activities in the market. 26 suppliers either responded or had previously provided information to the CMA’s phase 1 investigation. Of these suppliers:

- (a) 15 told us that they do not compete – either because they do not supply cleaning chemicals to F&B customers or because they are not active in the UK (or both);
- (b) Two are suppliers of unformulated chemicals or alternative cleaning solutions – the constraint from this category of suppliers is discussed in the next section; and
- (c) Only nine confirmed that they are suppliers of cleaning chemicals to the F&B market in the UK.

7.194 These smaller suppliers include the following:

- (a) Sopura Limited (Sopura), an international supplier with sales in the UK F&B market of £~~2~~, primarily focused on brewery customers including some large international customers. Sopura told us that competing in the food segment is very difficult due to low pricing.
- (b) Niche Solutions, a supplier to breweries with £~~2~~ of sales in the UK F&B market. ~~2~~ of Niche Solutions’ sales are to Large customers. Niche

¹¹⁷ [Parties’ Initial Submission](#), paragraphs 9.19-9.29.

Solutions told us that larger suppliers of cleaning chemicals have secured the market with contracts and low pricing.

- (c) SC Johnson, a specialist supplier of skin care products with £200m of sales in the UK F&B market. It sells through distributors, but some of its end users are Large customers. SC Johnson told us it is difficult for it to win business on skin care only when competing with suppliers who price on a bundle.
- (d) Selden Research, a UK supplier of cleaning chemicals, primarily selling to institutional customers. It told the CMA in its phase 1 investigation that it had £200m of sales to the UK F&B market.
- (e) Kersia, a European supplier of F&B cleaning chemicals. It acquired Kilco, a UK supplier of cleaning chemicals to agricultural customers, in 2018. As a consequence, Ecolab submitted that it considers that Kersia is a constraint because of its manufacturing presence in the UK and its expertise in F&B outside of the UK. Moreover, the Parties submitted that Kersia has recently hired 'well-known' sales representatives. Kersia told us that it has only recently (March 2019) established its F&B unit in the UK and has been focused on preparing this project rather than actively competing for customers. However, it has prepared offers for a small number of customers on request, has approached a small number of Small customer prospects, and gained one customer with annual sales of £30,000.¹¹⁸ Kersia does not appear at all in the tender or gain/loss results (which were based on data that went up to May 2019). Moy Park, which ran a tender in 2019 that both Parties bid for, told us that it also invited Kilco to the tender, but found that Kilco was not able to supply the full range of products required to meet the customer's needs in its food business and so it did not consider Kilco further. Overall, the evidence considered above indicates that Kersia currently provides no constraint on the Parties. We discuss Kersia's potential expansion below in the section on entry and expansion in chapter 8 (Countervailing Factors).
- (f) Five significantly smaller suppliers, with sales of between £25,000 and £450,000 in the UK F&B market.

7.195 The Parties submitted that smaller suppliers who specialise in a particular segment, such as Sopura or Niche Solutions, are still a significant constraint

¹¹⁸ Kersia also told us that Kilco used to categorise some of its sales as F&B, but that these were sales of its F&B product range to agricultural customers rather than to actual F&B customers. These sales amounted to £200m in 2018.

in those segments, and that the Parties face a range of suppliers across all segments.¹¹⁹ However, these suppliers are focused on the beverage segment in which Holchem in particular makes a limited proportion of its sales, and therefore they are not close competitors to Holchem. This is also reflected in the fact that only two of 30 respondents to the Survation questionnaire had heard of Niche Solutions, and only one had heard of Sopura. We have not seen any evidence that there are specialist suppliers in the food segment, which accounts for the largest proportion of both Parties' sales.

7.196 Our analysis of the Parties' gain/loss and tender data provided by the Parties, Diversey, and Christeyns, indicates that smaller suppliers compete for smaller customers, but:

- (a) Smaller suppliers on aggregate accounted for a moderate share of Holchem's gains and losses, but with a lower average value than other competitors;
- (b) Smaller suppliers account for a small proportion of the accounts Ecolab gained, and a negligible proportion of the accounts Ecolab lost; and
- (c) Smaller suppliers compete for a minimal proportion of both Parties' tenders and virtually never win against the Parties.

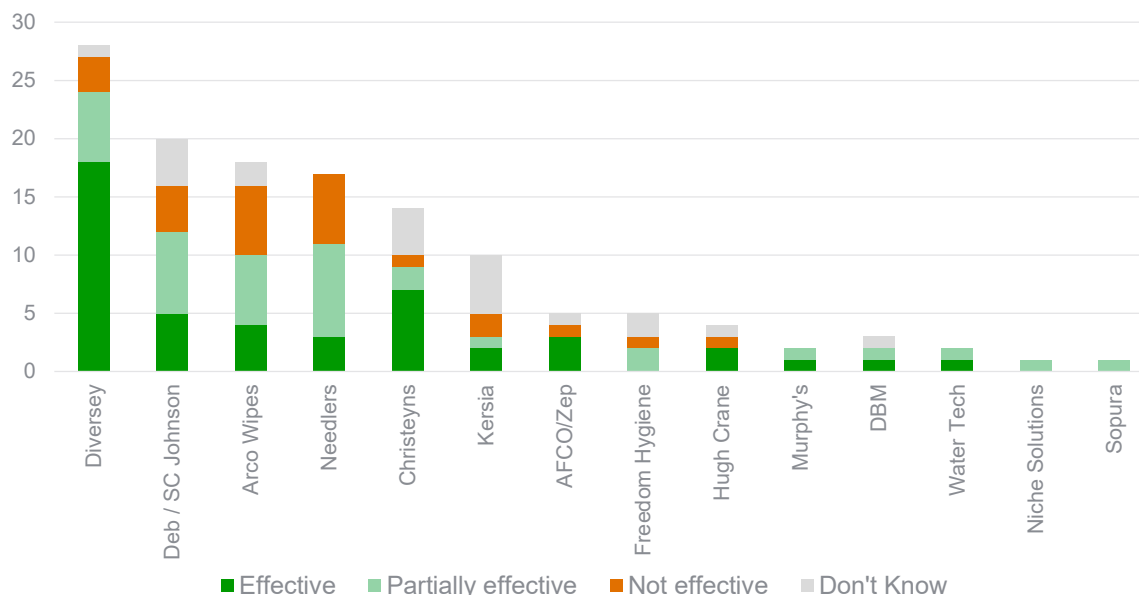
7.197 The results from our customer questionnaire also suggest that smaller suppliers may be a constraint to some extent only for smaller customers. Some Small customers did appear to view smaller suppliers as a viable alternative. However, of the Small customers who did identify an alternative, the majority named one of the Parties, Diversey or Christeyns. Large customers did not view smaller suppliers as viable – only one customer of 17 named a smaller supplier as their closest alternative, and few named one as their second or third closest alternative.¹²⁰ Similarly, in response to the Survation questionnaire, 18 customers named the other Party, Diversey or Christeyns as their best alternative, seven customers did not know, and four customers named a smaller supplier. Moreover, two of the customers who named a smaller supplier were Ecolab customers who named a water treatment company, which suggests they may have been thinking about alternatives for supplying water treatment services they purchase from Ecolab – a different market.

¹¹⁹ [Parties' response to Provisional Findings](#), paragraphs 4.24-4.26.

¹²⁰ Total excludes customers who did not name any supplier as their best alternative, and Holchem customers who named Holchem as their best alternative.

7.198 The Survation questionnaire also asked respondents whether they had heard of a number of specific smaller suppliers, and if so, whether those suppliers would be effective, partially effective, or not effective in meeting the respondent's cleaning needs. The results are shown in Figure 20 below.

Figure 20: Survation responses on competitor effectiveness



Source: Parties' response to provisional findings, Figure 7. Responses for 'Christeyns' likely to understate customer awareness, as question did not refer to Klenzan, as Christeyns was known in the UK until 2018.

7.199 The Parties submit that these responses support the argument that smaller suppliers, in aggregate, are a significant competitive force in the market. We do not agree with this conclusion, as:

- (a) As discussed above, Large customers very infrequently named small suppliers as their best alternatives;
- (b) The smaller suppliers named most often (SC Johnson, Arco Wipes, and Needlers) all specialise in a limited range of products (hand-care for SC Johnson and disinfectant wipes for Arco Wipes and Needlers); and
- (c) Recognising the name of a supplier when prompted and giving a view in the abstract that it would be effective does not demonstrate that the supplier would be able to provide a competitive quote and demonstrate the quality of its products in trials, and thereby act as an actual constraint on the Parties.¹²¹

¹²¹ We also had concerns that the combination of the wording of question 15 of the Survation questionnaire being quite vague (ie. 'heard of'), the suppliers being prompted and the response scale for question 16 being unbalanced (effective, partially effective, or not effective) with the top two responses being counted, is likely to have caused some suppliers to be counted as effective alternatives without robust evidence of this. There are also very low base numbers for many of the suppliers, especially for question 16.

7.200 The other large suppliers told us that smaller suppliers were not competitive for larger customers. Diversey told us that smaller suppliers were not able to compete for larger customers, and they did not lose any customers to such suppliers. This is because smaller suppliers cannot match the service delivered by larger suppliers.

7.201 Christeyns similarly told us that:

- (a) larger customers require a higher level of technical support, and so to serve these customers a supplier needs to have an extensive overhead structure including a range of staff with relevant expertise to provide that support;
- (b) smaller suppliers do not have this overhead structure, and so cannot compete effectively for larger customers; and
- (c) conversely, smaller suppliers are better able to compete for smaller customers than large suppliers like Christeyns, because they have a leaner overhead structure and can therefore offer better prices, as well as being able to offer more frequent deliveries if they are focused on serving local customers.

7.202 The evidence discussed above consistently indicates that smaller suppliers compete for smaller customers but provide only a minimal constraint when competing for larger customers. Given that larger customers account for the clear majority of both Parties' sales, as discussed at paragraph 7.87 above, we consider that smaller suppliers therefore exert a minimal constraint on the Parties overall.

7.203 The Parties submitted that these findings show that there is no basis for an SLC finding 'in respect of small customers', as we have found that smaller suppliers can compete for these customers.¹²² However, we have not segmented the market by customer size, and our assessment seeks to establish whether an SLC is likely to arise within the market for cleaning chemicals supplied to F&B customers as a whole. Within this market, we have found that smaller suppliers do not significantly constrain the Parties, as they are not effective competitors for the larger customers who account for the vast majority of the Parties' sales. Moreover, while Small customers responding to our questionnaire did view smaller suppliers as good alternatives more often than Large customers, the majority nonetheless named the large suppliers as their best alternatives.

¹²² [Parties' response to Provisional Findings](#), paragraph 1.6.

Constraint from other specialist suppliers

7.204 The Parties submitted that post-Merger they would face some constraint from the possibility that customers could switch to using other specialist suppliers for certain products, for example cleaning wipes (wipes) or hand sanitiser. In particular, they submitted that Large customers already frequently use such suppliers as secondary suppliers. In these cases, the Parties argued, the secondary supplier is in a position to develop a relationship with the customer and compete to be the primary supplier; and moreover, even where customers can only partially switch, this can account for a significant proportion of demand.¹²³

7.205 We consider that that this will, at most, provide a very limited constraint and only for some customers. This is because we have not seen evidence that the Parties are close competitors with these suppliers. Suppliers of wipes and other specialist products feature infrequently in our gains and loss and tender analyses, if mentioned at all, and are typically of low value.

7.206 Likely reasons for this include:

- (a) The products cannot be used for all cleaning applications. For example, wipes could not be used for cleaning closed systems.
- (b) Customers value the full-service package and expertise covering all their cleaning needs, which they lose for each product they tender separately. One of the specialist hand sanitiser suppliers who responded to our questionnaire outlined they have difficulty competing with the bundled suppliers.

7.207 Where customers already use a specialist supplier as a secondary supplier, we do not consider that this implies that supplier will constrain the primary supplier to a significant extent. That specialist supplier would still be unable to compete to supply the customer's requirements for the remainder of the customer's cleaning applications.

Competition from unformulated products

7.208 Unformulated products are an alternative to using formulated cleaning chemicals that can be used by F&B customers to clean their manufacturing plants. We do not consider these alternatives to be part of the relevant market, as discussed in chapter 6 above. However, in this section we

¹²³ [Parties' response to Provisional Findings](#), paragraphs 6.11-6.12.

consider the extent to which these alternatives nevertheless provide a degree of competitive constraint to the Parties.

7.209 The Parties submitted that these unformulated products are primarily used for CIP (cleaning in place) and COP (cleaning out-of-place) applications which make up most of the Parties' F&B turnover. The Parties argued that these are substitutable with formulated products for several reasons:

- (a) Customers can switch between formulated and unformulated products;
- (b) Suppliers of unformulated products compete with suppliers of formulated products;
- (c) Many F&B customers have pre-existing customer relationships with unformulated product suppliers meaning the expertise and knowledge of those suppliers regarding customer needs is already established; and
- (d) The chemicals are identical, meaning the same storage, piping, dosage pumps etc. can be used regardless of whether the product is formulated or unformulated.

7.210 The Parties told us that customers could easily switch between formulated and unformulated products to meet their cleaning needs and therefore unformulated products provide a significant competitive constraint on the Parties.

7.211 In the remainder of this section we examine this argument by looking at examples of when customers have switched between unformulated and formulated products, what views the Parties' competitors have on the use of unformulated products, and whether the Parties' customers see unformulated products as a viable alternative to formulated products.

Examples of switching

7.212 The Parties provided us with eight examples where customers have switched or considered switching between formulated and unformulated products.¹²⁴

7.213 ☒:

- (a) ☒.

¹²⁴ There is limited reference to these companies in the gain/loss and tender data. ☒ appears in Holchem's threats data for a value of ☒ and the competitor listed as Ozo Innovations. ☒ appears in Holchem's threatened account data for a value of ☒. The competitors are listed as Diversey/Christeyns so it is unclear whether this was concerning unformulated products.

- (b) ☒ switched from formulated to unformulated for a ☒. Holchem explained to us that this switch occurred when ☒ added an additional step to its cleaning process. This meant that unformulated sodium hypochlorite could be used instead of a formulated product. The sodium hypochlorite was purchased from Holchem¹²⁵ and ☒ continued to use formulated products for the other steps in the cleaning process.
- (c) ☒ switched to the use of unformulated products while being serviced by Holchem. This cost Holchem ☒ of the total contract value per year. In this case, the customer switched to an alternative raw materials supplier for the unformulated products.
- (d) ☒ also switched to the use of unformulated products for part of its cleaning process. This resulted in a loss of ☒ of the total contract value per year to Holchem. They source the raw chemical from an alternative provider.
- (e) ☒ switched from a formulated defoamer provided by Holchem, to trialling product and equipment supplied by 'activated water' (an alternative cleaning solution supplier). This resulted in a loss of ☒% of the total contract value per year to Holchem. ☒.

7.214 Three examples were of customers switching or considering switching from unformulated to formulated:

- (a) ☒.
- (b) ☒.
- (c) Additionally, the Parties referred to ☒, a large European based food manufacturer which they submitted has historically always used unformulated products. The Parties submitted that ☒ has considered switching to formulated products in a recent Request For Proposal process. However, the Parties are aware that ☒ decided to keep using unformulated products.

7.215 Overall, the Parties were able to provide a limited set of examples where customers had switched between formulated and unformulated products. Moreover, these examples indicate that when customers do switch to an unformulated supplier they typically do so for only a small proportion of their overall cleaning spend.

¹²⁵ Holchem submitted the customer could have purchased from a raw material supplier if they had wanted to.

7.216 The Parties submitted that the CMA should not rely on little evidence of actual switching by customers from formulated to unformulated chemicals as evidence of a lack of constraint, as the prices of raw materials have been increasing in recent years and therefore switching has primarily been in the other direction. Further, they submit that if this price trend reversed, so could the direction of switching.¹²⁶ However, the Parties have provided no evidence that it is likely for these price trends to reverse. Moreover, if, as the Parties submit, prices of formulated chemicals have not followed a similar pricing trend to that of unformulated chemicals, that in itself is suggestive of these products not being significantly substitutable.

Competitor views

7.217 Diversey told us that switching to the use of unformulated products instead of purchasing formulated products is 'not easy'. It gave several reasons for this view which include:

- (a) Reduced service element;
- (b) Technical reasons and validation;
- (c) Health and safety implications;
- (d) Equipment and capital expenditure cost; and
- (e) Customers prefer formulated products.

7.218 Diversey also told us that whilst unformulated products were used by some customers, particularly in the dairy and brewing segments, they were always used alongside formulated products. Moreover, it viewed unformulated suppliers as lacking the additional services and formulated product range which customers need. Hence, it did not consider unformulated suppliers as direct competitors.

7.219 Additionally, Diversey voiced concerns around the viability of ozonated and electrolyzed water as a replacement for formulated products. These concerns were partially based on its view that these cleaning solutions may cause corrosion of pipes and metals.

7.220 Christeyns confirmed that using unformulated products was possible in the dairy and brewing segments and that customers did use these methods. This is because of the large amount of CIP cleaning needed. However, it told us

¹²⁶ [Parties' response to Provisional Findings](#), paragraph 6.33.

that unformulated products were becoming less popular due to environmental costs and the higher chemical concentrations needed.

- 7.221 Christeyns also told us that using unformulated products was not possible where manual cleaning was required for complicated machinery and equipment which is often the case in the food industry - here complex formulations are needed to produce effective foam. Therefore, in the food industry, where Holchem generates most of its revenue, the substitutability between unformulated and formulated products is likely to be lower.
- 7.222 Christeyns also highlighted the differences in business models between suppliers of formulated and unformulated cleaning chemicals. Christeyns told us that it was unable to compete with unformulated product suppliers on price, because these suppliers offer no technical support and so have much lower overheads. But equally, it told us that technical support is highly valued by customers because it enables them to reduce their total cost of cleaning, of which the cost of chemicals will be a very small proportion. The service element provided is therefore a critical point of difference between formulated and unformulated suppliers.
- 7.223 We also spoke to two suppliers of unformulated chemicals and an alternative cleaning solution provider.
- 7.224 One unformulated supplier told us they usually do not supply directly to the customer but instead sell their products through a service provider such as Ecolab. We also asked them who they believed their top five competitors were in the UK F&B market. They listed five unformulated chemical suppliers with no mention of any formulated chemical suppliers.¹²⁷
- 7.225 Another unformulated supplier told us that they view the Parties as customers not competitors, and they do not and would not supply unformulated chemicals directly to F&B customers.
- 7.226 The alternative cleaning solutions provider we spoke to specialises in supplying technology that allows companies to produce chemicals on site at ready to use concentrations. It told us that they consider Holchem, Ecolab, and Diversey as their top three competitors. However, it highlighted that ✂.

¹²⁷ These five suppliers were: Univar, Industrial Chemicals Limited, Inovyn, IMCD, and Azelis.

7.227 In addition, the gain/loss and tender analyses contain very little evidence of unformulated chemical suppliers being competitive constraints on the Parties.¹²⁸

Customer views

7.228 As part of our customer questionnaire analysis we asked both Small and Large customers whether they purchase unformulated products and whether they would be able to use these methods to meet some or all of their cleaning needs. Additionally, we asked Large customers whether they have ever considered using unformulated products for some or all of their needs and whether they would switch to unformulated products given a 10% price increase in formulated products.

7.229 Only a minority (26/144) of Small customers told us that they currently purchase unformulated products as well as formulated products. This is compared to the significant majority (109/144) which told us they did not use any unformulated products and a small number (7/144) which did not know. Of those who currently purchase unformulated products, other responses by these customers indicate that the bulk of these came from suppliers who also supply formulated products.¹²⁹

7.230 When asked whether they would be able to use unformulated products to meet some or all their cleaning needs a very small proportion (3/142) said they could use these products for all their cleaning needs. A sizable minority (30/142) said that they could use some unformulated chemicals with more (44/142) telling us they could not use any unformulated chemicals. A substantial proportion (65/142) did not know whether they could use unformulated products, which suggests many smaller customers are either unaware of unformulated products or have spent little time evaluating them as a viable alternative to formulated products.

7.231 We also received a range of responses as to why unformulated chemicals could or could not be used as an alternative to formulated products. In summary, customers that told us they could use unformulated products generally pointed to the fact they could be used for specific applications. On the other hand, customers who told us they could not use unformulated products cited reasons such as 'increased risk' and 'cost implications'.

¹²⁸ Brenntag, WaterTec, and Tan International are three unformulated suppliers that appear in the tender analysis, but they compete for a very small percentage of tenders.

¹²⁹ See Tables 3 – 5 in Appendix B.

- 7.232 Several Large customers told us that they currently purchase some unformulated products (8/22). The same proportion (8/22) told us they could use unformulated to meet all or some of their needs. Just less than half (10/22) said they could not use unformulated products. When asked if they had ever considered using unformulated products to meet some or all of their needs, a greater proportion (12/22) told us they had never considered it.
- 7.233 Respondents to the Survation questionnaire rejected the possibility of switching to unformulated chemicals more strongly. While a minority (11/30) did currently use unformulated chemicals for some applications, all 19 of the customers who did not currently use these products (or in one case did not know if they currently use these products) said they would not be able to use unformulated chemicals to replace formulated chemicals for any of their cleaning needs.
- 7.234 Some customers told us that unformulated products introduced a risk of inconsistency in the product. One of these customers also said that unformulated chemicals might be harsher on their production equipment or use more water in the cleaning process. Another customer told us that cleaning chemicals need to be carefully calibrated in each plant to take account of differences in water quality / minerality between areas. Formulated chemicals can do this more reliably than unformulated chemicals.
- 7.235 Respondents to the Survation questionnaire submitted a range of concerns which would prevent them from using unformulated products in their cleaning processes. These centred around having a lack of expertise with chemicals which would compromise the efficiency and safety of the clean. In particular, respondents said that unformulated products would need to be mixed on site which would create health and safety risks and potentially fall below industry standards. One customer said that using a specialist chemical company is a selling point for them as it improves confidence and emphasises their care in their products. Two other respondents referred to the need to comply with industry standards and another referred to supplier approval.
- 7.236 When asked how they would respond to a 10% price increase in formulated products, a substantial proportion of the respondents to our questionnaires (10/22) gave equivocal answers about whether they would switch to unformulated products, with most indicating further assessment or other specific circumstances would be required. The remaining customers reported that they would not switch, or they did not know. No customers gave a clear indication that they would switch in response to a price increase. However, one respondent to the Survation questionnaire, ✂, said when asked what other strategies it would use in response to a price rise, that it would go back

to buying ‘base chemicals’, ie that it would substitute to unformulated products.

- 7.237 Overall, a minority of customers appear to be able to use unformulated products for at least some of their cleaning needs. However, most customers would not be able to replace formulated products with unformulated products entirely. Only a very small number of customers expressed a view that this was possible.

Our assessment of unformulated products

- 7.238 Assessing the evidence received from the Parties, other suppliers, and the Parties’ customers, it appears that unformulated products do offer some level of constraint on the Parties. However, given that few customers would be able to switch to unformulated, and that they would only be able to use unformulated products for a small proportion of their cleaning needs in most cases, it is our view that the competitive constraint from unformulated products is very limited.
- 7.239 When purchasing unformulated products, customers lose all the additional ancillary services they receive from the Parties and other formulated product suppliers. These additional services are highly valued by customers, as discussed in the section on customer behaviour above.¹³⁰ We have seen some evidence from the examples above and from speaking to suppliers of unformulated products that even when some customers purchase unformulated products they purchase them from their supplier of formulated cleaning chemicals (and continue receiving ancillary services).
- 7.240 The Parties submitted that we had failed to explain why unformulated products needed to be a substitute for the entirety of customer’s formulated products in order to be an effective constraint, and that these products are suitable for a significant enough proportion of applications to act as a competitive constraint. They referred to an example of a large well-reputed F&B producer active in France (✂) which primarily uses unformulated products in particular for its dairy CIP cleaning processes.¹³¹
- 7.241 We do not consider that unformulated products need to be a substitute for all of a customer’s demand in order to be an effective constraint on the Parties. However, the evidence discussed above indicates that for the majority of customers, unformulated products would either be entirely unsuitable or suitable only to replace a small proportion of demand. In addition, the Parties

¹³⁰ See paragraphs 7.39 and 7.49.

¹³¹ [Parties’ response to Provisional Findings](#), paragraph 6.28.

have not addressed the fact that unformulated suppliers do not supply the services that are vital to customers. Customers who choose to use unformulated products exclusively need to replace these services with in-house expertise, which is a significantly different model than used by the Parties' customers and not a change that is likely to be made in response to a small price increase.

7.242 We therefore do not consider that unformulated products will act as a sufficient constraint to prevent an SLC from arising.

Conclusions on remaining constraints

7.243 We have found that after the Merger, the Parties will face:

- (a) A strong constraint from Diversey;
- (b) A slightly weaker constraint from Christeyns;
- (c) Limited constraints from all other suppliers of formulated cleaning chemicals; and
- (d) A limited constraint from unformulated products.

7.244 The Parties argued that the competition they face from Diversey and Christeyns would in itself be sufficient to prevent an SLC.¹³² They suggested that an SLC would only be plausible if we found that Diversey was the only remaining constraint. The Parties also submitted that having two or three competitors in the market was enough for customers to attain competitive pricing through tenders, on the basis that our tender analysis as well as the Survation questionnaire show that Large UK customers tend to seek quotes from only two to three suppliers.¹³³

7.245 We disagree. Diversey and Christeyns are not on their own sufficient to prevent competition concerns from arising in this market (which is already concentrated and would become materially more concentrated as a result of the Merger), in which suppliers are differentiated, and in which the Parties compete closely. This is not changed by the fact that customers seek quotes from a limited number of suppliers who may be suitable for servicing their particular requirements. The Parties do not necessarily know the identity of the competitors they are facing for an individual tender and so they must consider the constraint from all the suppliers they frequently compete with in tenders, not just those suppliers who are actually invited to quote. A reduction

¹³² Parties' Initial Submission, paragraph 1.2.

¹³³ Parties' response to Provisional Findings, paragraphs 5.9-5.15.

in the already small number of effective competitors will therefore substantially reduce the constraint on the Parties, even if not all of these competitors are currently invited to every tender.

Conclusion on the competitive effects in the supply of cleaning chemicals for F&B customers

7.246 For the reasons given above 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. We now consider countervailing factors.

8. Countervailing factors

8.1 This chapter considers whether there are countervailing factors which may prevent an SLC from arising. Specifically, we consider the effect of entry or expansion, buyer power and efficiencies.

Entry and expansion

8.2 An analysis of a possible SLC includes consideration of the responses of rivals to the parties, including whether any rivals will enter or expand to compete against the parties after the merger.¹³⁴

8.3 In this section we discuss whether entry or expansion might prevent an SLC from arising in this case. We discuss the types of barriers to entry and expansion that might exist and whether we can expect entry and/or expansion to be timely, likely and sufficient.

8.4 There are four broad categories of barriers to entry and expansion:¹³⁵

- (a) Absolute advantages for current market players (eg legal advantages or technical advantages),
- (b) Intrinsic structural advantages enjoyed by current market players, such as initial set up costs to establish an effective presence in the market, which might include research and development and advertising. These are more likely to deter entry where a significant proportion of these costs are sunk,
- (c) Economies of scale which may prevent small scale entry acting as an effective competitive constraint, and

¹³⁴ [Merger Assessment Guidelines](#) paragraph 5.8.1.

¹³⁵ [Merger Assessment Guidelines](#) paragraph 5.8.5.

- (d) Strategic barriers which give incumbent firms a competitive edge over entrants (eg first mover advantage) which can lead to barriers associated with the loyalty and reputation the incumbent has built up over time.

8.5 For each of these in turn, we present the evidence received from Parties and third parties. We then look at the history of entry and expansion, and then analyse the recent entry of Kersia. Finally, we assess the barriers to entry and expansion in this market.

Absolute advantages

8.6 The Parties submitted that:

- (a) Barriers to entry between adjacent geographic markets are negligible for existing F&B suppliers. Manufacturers in the European Economic Area (EEA) need to comply with various EEA-wide regulations.¹³⁶ A cleaning chemical product sold in one part of the EEA can be sold across the whole EEA (without changes required to adhere to local standards).¹³⁷ Therefore, suppliers in other EEA countries would be able to enter into the UK.¹³⁸ The Parties told us that absolute barriers to entry, such as regulatory and know-how barriers, are a one-time barrier to entering F&B in the EEA as a whole. As such, there is a very large number of potential entrants into the UK F&B market,
- (b) The chemistry involved in the manufacture of cleaning chemicals is relatively simple and widely understood, such that product formulation represents no barrier to entry or expansion,¹³⁹ and
- (c) Expertise and servicing can be flown in from other EEA countries and at least one competitor is known by the Parties to operate in the UK using this model. Indeed, Holchem also began supplying cleaning chemicals to the Republic of Ireland using this model.¹⁴⁰

8.7 The Parties also submitted that we should consider ease of supply-side substitution when considering barriers to entry.¹⁴¹

¹³⁶ Parties' Initial Submission, paragraph 8.5.

¹³⁷ Parties' Initial Submission, paragraph 8.7.

¹³⁸ Parties' Initial Submission, paragraph 2.1(a).

¹³⁹ Parties' Initial Submission, paragraph 8.4.

¹⁴⁰ Parties' Initial Submission, paragraph 3.17. We understand that this model of supply was not successful for Holchem.

¹⁴¹ Parties' Initial Submission, paragraph 3.12.

- (a) There is significant overlap in the cleaning products provided to F&B customers and other cleaning chemical customers (ie including life sciences, agriculture and institutional customers).
 - (b) The manufacturing process, packaging and delivery methods for cleaning products are very similar across the entire industrial segment and are like those in the institutional segment.
 - (c) Many chemicals' formulations are almost identical to cleaning products used by other industrial and institutional customers as functionality, levels of concentration and health and safety standards are almost identical.
 - (d) Many applications are used across the industrial segment. Hand and skin treatment products and environmental hygiene products used in F&B are identical to those used in the wider industrial and institutional segments.
 - (e) The Parties' list prices are the same for identical products across different segments and sub-segments.
- 8.8 To support their arguments, the Parties submitted a report by Freedonia Group, Inc¹⁴² which said that 'manufacturing requirements for I&I [industrial and institutional] cleaning chemicals do not pose a significant barrier to entry'.¹⁴³
- 8.9 The Parties submitted that barriers to entry or expansion are therefore low for existing UK manufacturers in adjacent cleaning product markets and for suppliers already active in F&B in another EEA country.
- 8.10 We have not seen examples of effective competition from imports. We have heard from third parties that transport costs for the chemicals is likely to make this uneconomic and that customers highly value a local presence for technical support. For example, according to one third party supplier, although chemicals could be shipped across national borders, in practice, transport costs would put the supplier at a disadvantage against domestic manufacturers. Another supplier listed a number of other disadvantages a supplier based in a different country would face, including lead times, lack of technical staff on hand, and different local industry and retailer standards.

¹⁴² [Freedonia Group Inc.](#) is an industry research company.

¹⁴³ [World Industrial and Institutional \(I&I\) Cleaning Chemicals](#), Industry Study, November 2014.

Intrinsic advantages

- 8.11 The Parties submitted that the cleaning chemicals are the same within the EEA so there is no need for an existing F&B manufacturer operating in the EEA to carry out additional research and development specifically for the UK market.¹⁴⁴
- 8.12 Moreover, the Parties said that manufacturing capacity is readily available (whether through a supplier's own factory or via toll manufacturing agreements with a third party) and so an entrant does not need to invest in manufacturing facilities.
- 8.13 The Parties also submitted that the main intrinsic advantages enjoyed by incumbents relates to sales and marketing and the staff that must be recruited to service customers. In both cases a presence in an EEA F&B market outside the UK largely obviates the advantages held by a UK-based competitor.¹⁴⁵ They told us that total sales staff costs are in the region of ₤ per year per person. The Parties do not believe that there are staff shortages or difficulties in recruiting. They also said that the F&B market is a 'professional market' (ie sales are to industrial corporates, not to individual consumers) so there is no need for a widespread advertising campaign to 'build the brand'.¹⁴⁶ Instead, suppliers concentrate on showing potential customers their expertise via:
- (a) Internet presence to showcase activities in F&B;
 - (b) Developing and marketing new products to the market;
 - (c) Having representatives join trade associations and industry panels;
 - (d) Having representatives attend and speak at trade conferences; and/or
 - (e) Providing customers with free resources such as training.
- 8.14 The Parties submitted that the main sunk cost in expanding F&B in a new market is staff related. The Parties argued that: the number of dedicated staff required was minimal; it was relatively easy and quick to train up new staff and that this could be done 'on the job'; and there was a wide recruitment pool.¹⁴⁷

¹⁴⁴ Parties' Initial Submission, paragraph 8.9.

¹⁴⁵ Parties' Initial Submission, paragraph 8.10.

¹⁴⁶ Parties' Initial Submission, paragraph 8.11.

¹⁴⁷ Parties' Initial Submission, paragraphs 8.14-8.22.

- 8.15 Finally, the Parties submitted that barriers to expansion for the dozens of existing F&B suppliers in the UK market with small market shares are very low.¹⁴⁸
- 8.16 A smaller supplier told us that the scale of the investment needed (relative to the expected return required) to really challenge Diversey, Ecolab or Holchem for market share is beyond its capabilities. Another third party said that regulatory compliance was a barrier although it must be noted that it did not elaborate further on this.

Economies of scale

- 8.17 The Parties submitted that toll manufacturing is available in the event that additional capacity (and presumably economies of scale) is required.¹⁴⁹ Therefore, according to the Parties, there is no difference in the economies of scale for the production of the products themselves enjoyed by two equally sized cleaning chemical suppliers, one of whom has a large presence in F&B and the other which has a small presence in F&B but is also present in other customer segments, because the latter can take advantage of the toll manufacturer's scale.
- 8.18 They told us that the manufacturing process for cleaning chemicals is entirely substitutable between the various products, irrespective of the industry into which they end up being sold, and irrespective of whether the products end up being sold to customers in different F&B sub-segments, agriculture or institutional. The Parties submitted that there is regular switching of F&B products on production lines and switching times are measured in minutes not hours.¹⁵⁰
- 8.19 Regarding other factors relevant to economies of scale, the Parties submitted:
- (a) Relatively small numbers of additional staff are required to service large increases in customer demand.
 - (b) Where additional capacity has been needed to be added by a competitor, customers have been willing to phase in entry in order to allow this to happen. Given the relatively low cost of the necessary manufacturing plant (mainly mixing vessels and storage tanks), the cost to expand capacity is insignificant. Holchem invested in ⌘ and recruited ⌘ staff as

¹⁴⁸ Parties' Initial Submission, paragraph 2.1(f).

¹⁴⁹ Parties' Initial Submission, paragraph 8.26. The Parties said that in 2018, Ecolab spent €⌘ on toll manufacturing in European F&B (⌘ of Ecolab's total F&B production of ⌘ by volume).

¹⁵⁰ Parties' Initial Submission, paragraph 8.23.

a result of it being awarded a contract with ☒. Furthermore, the availability of toll manufacture as either a temporary or permanent option means smaller rivals can benefit from economies of scale and expand rapidly without capital investment.

- (c) Further evidence for economies of scale not being a barrier is the number of small players in the market.

8.20 Some third parties told us that suppliers need scale to compete, whether that it is delivery logistics for the chemicals or in the provision of support services. One said that it is difficult for small players to grow market share, because the market requires a good price and good services and the scale of the other parties is so big that it is difficult to compete.

Strategic advantages

8.21 The Parties submitted that:¹⁵¹

- (a) Reputation does not form a barrier to entry and can be leveraged from an affiliate in a foreign market or via a recognisable customer abroad that can act as a reference and/or brought in through the hiring of senior people with a good reputation in the sector;
- (b) Quality recognition can also be established through respected third-party acceptance, such as being on the M&S approved list of suppliers for its high risk 'ready to go' food. They also said that anyone with M&S accreditation can be said to have a good reputation in the food industry since M&S accreditation goes beyond that of applicable regulatory standard. There are currently 12 competitors listed in M&S guidelines as approved for disinfectants for high care/high risk manufacturers. This includes three manufacturers not based in the UK (☒); and
- (c) It is the customer's responsibility to ensure that they carry out regular testing to ensure that their manufacturing processes meet the required standards in their hygiene protocols.

8.22 Regarding customer loyalty, the Parties said that:¹⁵²

- (a) The majority of their customers are not on exclusive or minimum purchase contracts. Therefore, the price needs to be competitive to prevent from switching.

¹⁵¹ Parties' Initial Submission, paragraphs 8.31-8.37.

¹⁵² Parties' Initial Submission, paragraphs 8.38-8.43.

- (b) Customers do not have a strong attachment to their incumbent chemical cleaning supplier.
 - (c) The main barrier to switching is cleaning protocols. Although there is not a strict requirement to update these when changing supplier, Ecolab (and presumably other suppliers), using one of its hygiene technologists (an entry level role), would assist the customer in doing that if the customer were to switch to it.
 - (d) Very small customers do not get training or other support bundled in with cleaning chemicals and must purchase them separately. As such, small customers do not have the opportunity cost from switching of losing these services since there are independent training companies.
- 8.23 Competitors who we have spoken to agree with the Parties that barriers to entry and expansion are low for the manufacture and supply of the cleaning chemicals. However, among the larger suppliers in the UK, all highlighted the importance of reputation, security of supply, reliability and high-quality technical support. One supplier told us that these are especially important for larger customers. One third party told us that in order to build a good reputation, a new supplier could start supplying smaller customers and over time can leverage its reputation to larger and larger customers.
- 8.24 One third party told us that a supplier receiving M&S accreditation might be able to use that as a signal to potential customers that it can supply high quality products.
- 8.25 Two suppliers said that having a smaller range of products and services might inhibit growth opportunities, even if they are competitive on the products and services that they do provide. One told us that an inability to bundle products / services was a barrier to its growth. Another supplier said that if it is supplying a proportion of the customer's requirements with a large supplier supplying the remainder, the large supplier can withdraw its supply altogether unless the customer agrees to taking all of its requirements from the large supplier.
- 8.26 One competitor said that purchasing conservatism was a barrier. It told us that large food companies typically 'take the safe option' of playing the large, established suppliers off against each other.
- 8.27 Third parties (both competitors and customers) also highlighted to us the importance of trials when a customer is considering switching (paragraph 7.53).

Recent entry and expansion

- 8.28 We have not seen any significant examples of recent entry and organic expansion in the industry. In response to our customer questionnaires, very few customers (five out of 144) were aware of any new entry in the past five years. A large supplier told us that there have not been any new entrants into the F&B sector in the UK in recent years.
- 8.29 Instead, suppliers (particularly the larger suppliers) have relied on acquisitions in order to get a foothold in the marketplace. This is consistent with barriers to expansion being significant. We note in particular the following recent acquisitions:
- (a) Ecolab acquired RP Adam Limited and Arpal Gulf in 2017,
 - (b) Kersia purchased Kilco in June 2018,
 - (c) Diversey purchased Zenith Hygiene in April 2018¹⁵³,
 - (d) Zenith Hygiene acquired CCL Pentasol and Cater-Lyne (both in 2016), as well as some other companies active in adjacent markets (eg supplying cleaning chemicals to the institutional customers),
 - (e) Christeyns purchased Clover Chemicals (2018), T.J. & S. Jenkinson (2014) and Klenzan (2017), and
 - (f) Zep's purchased AFCO in 2017.

Entry and expansion of Kersia

- 8.30 The Parties drew our attention to Kersia, a global business supplying cleaning chemicals to the F&B market but which only recently started expanding into the F&B market in the UK (see paragraph 7.194). Ecolab told us that it will face 'aggressive' competition from existing players, including expansion by UK subsidiaries of large multinationals such as Kersia. The Parties submitted that the stated intention of Kersia, through its acquisition of Kilco, was to expand in the UK F&B market.¹⁵⁴
- 8.31 Ecolab told us that, as well as Kersia already having a UK manufacturing presence in cleaning chemicals in the UK (through its acquisition of Kilco) and in F&B outside of the UK, Kersia's hiring of 'well-known' and experienced sales representatives would be 'economically irrational' if Kersia did not

¹⁵³ Diversey itself was acquired by Bain Capital from Sealed Air in 2017, see [Bain Capital Private Equity makes offer for Zenith Hygiene Group plc to expand Diversey in Europe](#), 9 October 2019.

¹⁵⁴ [Kersia announces the acquisition of Kilco](#), 27 December 2018.

expect that there was a ‘reasonable likelihood and expectation to achieve significant traction and growth’.

- 8.32 The Parties submitted that since Holchem does not compete for international customers, we should consider particularly Kersia’s intended expansion only in the context of supplying UK-only customers. Ecolab told us that the relevant Ecolab turnover regarding these customers was approximately £ in 2018. The Parties submitted that any benchmark in considering the expansion of Kersia in the UK would at the most need to be based on a competitor achieving a level of sales equal to Ecolab’s sales to UK-only customers. However, we note that our analysis suggests that Ecolab had sales of £ to these customers.¹⁵⁵ Given we consider that Holchem does not offer a strong constraint on the supply to international customers (see paragraph 7.82) we have used this figure of £ as a guide when considering the likely scale of Kersia’s expansion. However, in doing so we note that Kersia told us that it might participate in tenders for customers with whom it has a relationship outside the UK and who would look for a single supplier in as many countries as possible, including the UK. Therefore, Kersia’s own targets might include international customers.
- 8.33 Kersia told us why it acquired Kilco and provided a Board document discussing the rationale. Kersia said that it wanted to focus on a ‘farm to fork’ strategy. Given the risk of contamination all through the food supply chain, Kersia plans to market itself as supplier who can be involved in every step of the process – from farming to slaughtering to processing. Moreover, Kersia told us £.
- 8.34 According to Kersia, Kilco has expertise and a good product portfolio within the pig and poultry sector. Kersia’s Board documentation discussed the rationale for its acquisition of Kilco which corroborated that a large part of the deal rationale was for Kersia to strengthen its farm hygiene offering in the UK, especially in dairy and pig and poultry. However, the rationale also noted that the deal offered ‘UK food hygiene market potential’. £ Kersia told us that with respect to F&B customers, ultimately it wanted to use its UK presence as a means to be able to bid in international tenders.
- 8.35 Even though Kersia has considerable scale in F&B cleaning chemicals elsewhere in the world, in the UK its expansion is starting from a low base. For example, Kersia submitted to us that it does not have, as of today, the full product range, extensive commercial and technical coverage or large

¹⁵⁵ The difference is caused by our classification of two Ecolab international customers who only purchased from Ecolab in the UK as national customers – see paragraph 7.81 above.

incremental industrial capacity to supply international customers or Large domestic customers (those with sales above £50,000 per year)¹⁵⁶ in the UK and that it would also require additional local manufacturing capabilities in addition to the existing Lockerbie site. It currently has no sales to such customers. To place in context the scale of what Kersia would need to achieve in order for us to be satisfied that its expansion could prevent an SLC from arising, Ecolab currently earns 3% of its UK revenue (amounting to around 3)¹⁵⁷ from customers with more than £50,000 of sales and Holchem currently earns 3% of its UK revenue (amounting to around 3) from these customers.

8.36 3¹⁵⁸ 3.

8.37 Kersia has provided us with UK F&B sales targets for the UK business 3.

8.38 The UK F&B turnover of Holchem is approximately £3, Ecolab's is approximately £3 (of which £3 is to UK-only customers), Diversey's is approximately £3 million (of which a significant proportion, 3 is to UK-only customers) and Christeyns' is approximately £3 million (all of which is to UK-only customers).

8.39 The sales targets of Kersia are modest in comparison and we do not consider that such low levels of projected sales indicate that Kersia will provide sufficient competition to prevent an SLC in the near future. 3¹⁵⁹ Even assuming that the merged entity would experience no growth at all over the next few years, any Kersia expansion at this level would be insufficient, in aggregation with the other remaining competitive constraints, to address the SLC and any resulting adverse effect.

8.40 Moreover, we note that the sales targets provided to us by Kersia are overall F&B sales and are not separated by customer size. We consider it is reasonable to assume that 3.

8.41 Kersia told us that that it has only 3 sales and technical staff, plus 3 area manager who spends less than half 3 time on developing the F&B business in the UK (Diversey and Christeyns each have around 15-20 people). It does

¹⁵⁶ 3.

¹⁵⁷ This figure includes international customers. Even if international customers were excluded we would expect the figure to be at least 3.

¹⁵⁸ 3.

¹⁵⁹ We have calculated Ecolab's turnover for UK F&B customers supplied on a UK-only basis as being 3. Ecolab submitted that it is 3. Even using Ecolab's preferred figure of 3 and even if we assumed no growth at all in Ecolab's sales, Kersia's expected sales target by 2022 would be around 3 of Ecolab's current sales which we consider would be insufficient to prevent an SLC from arising.

not yet have M&S accreditation (although this is expected in 2019)¹⁶⁰ and its electronic hygiene management system is still being developed (although again this is expected to be finalised in 2019).¹⁶¹

- 8.42 We further consider there to be significant barriers in the industry that would constrain Kersia's ability to become a sufficient constraint against the merged entity in a timely manner. For example, in response to both our customer questionnaires and the Survation questionnaire, no Large customers listed Kersia (or Kilco) as a viable alternative supplier.¹⁶² Only four (out of 23) Large customers had heard of Kersia. A slightly higher proportion of respondents to the Survation questionnaire (10 out of 30) had heard of Kersia. Of these, two said they would be effective, one said they would be partially effective and two said they would not be effective, with the remaining five saying that they did not know. This supports the proposition that Kersia is not yet considered by large F&B customers as a viable supplier and it needs more time to develop awareness and its reputation. A majority of respondents to the Survation questionnaire (23/30) did say they would give Kersia the opportunity to conduct a survey and provide a quote, but we do not consider that this implies that these customers would currently view Kersia as a viable alternative, as receiving a quote from a supplier is an early step in the process of selecting a supplier and requires little commitment on the part of the customer.¹⁶³ Our inquiry has found that success in this industry is linked to a supplier's reputation for reliability. This coupled with high levels of customer inertia, in our view, is likely to make expansion to the levels that would address the SLC and any resulting adverse effect (and indeed slow).
- 8.43 The Parties have submitted that we have not defined 'sufficiency' in how we have considered expansion. In our view, whether or not entry and expansion is sufficient as a competitive constraint, such that it is likely to mitigate the effect of the Merger on competition and prevent an SLC, is a matter of judgement based on an assessment of all the relevant evidence in the round. We therefore do not consider that there is a particular 'threshold' for sufficiency that can be set out in the abstract, and the extent to which entry and expansion is a sufficient competitive constraint in any given merger is a

¹⁶⁰ Kersia told us that one of Hypred's products is listed on the M&S approved list of products. However, Kersia submitted that this product is now longer used by most UK F&B customers and is expected to disappear progressively as it contains a specific active substance which is now in practice banned by almost all F&B customers active in the UK.

¹⁶¹ Kersia told us that having a hygiene management system is essential to effectively compete for F&B customers.

¹⁶² One respondent to our Large customer questionnaire listed Kersia as its third-best alternative, but it also said that Kersia was not currently a viable supplier for its needs.

¹⁶³ We also considered that the phrasing of the question in the Survation questionnaire, and its positioning after earlier more general questions about consideration of a growing supplier, is likely to have led to respondents viewing Kersia in a more positive light.

question to be weighed on a case-by-case basis against the scale of any finding of an SLC arising from the reduction in rivalry between the Parties involved.

- 8.44 In this case we do not consider the expansion of Kersia in F&B in the UK to be timely, likely and sufficient. ✂. We consider that there is considerable uncertainty about how effective Kersia will be in competing for these customers. We consider that it will take time for Kersia to develop the requirements needed to compete for these customers in terms of sales and technical staff with customer relationships, the range of products and support services and crucially in terms of reputation in servicing these types of customers. This is consistent with Ecolab's own internal documents regarding its acquisition of Holchem. From what Kersia have told us of their intentions, which we have corroborated through internal documents, Kersia's own sales targets are modest relative to the Parties' turnover figures and we consider that ambition on this scale 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. Since our provisional findings we further tested the evidence provided by Kersia and the further evidence we obtained was consistent with our provisional findings. We therefore consider that any expansion by Kersia will not provide a timely, likely and sufficient constraint on the merged entity to prevent an SLC from arising.

Our assessment of entry and expansion

- 8.45 Based on our review of the evidence, we consider that there are some strategic barriers to entry. These are strengthened by some intrinsic and economies of scale advantages.
- 8.46 It is clear from third parties that customer relationships, a high level of customer support and, crucially, a strong reputation for reliability are needed to be successful in building scale in this market.¹⁶⁴ Although the cleaning chemicals and services are a small proportion of a customer's overall operating costs, the cleaning process or an incorrect formulation of the products has the potential to delay production/operations (and harm the customer's reputation with its own customers). In addition, a food hygiene issue could be severely damaging for both the customer and the cleaning chemicals supplier. Therefore, the indirect cost of making a poor selection of cleaning chemicals provider could be considerable.

¹⁶⁴ See paragraphs 7.34-7.43 above.

- 8.47 We have found that customers are aware of the risks in switching, as discussed at paragraph 7.50 above. Some customers have told us that they would be reluctant to switch to untested suppliers because the technical support services may not be as good as they currently get from Holchem or Ecolab. Another customer told us that switching is time consuming and potentially costly (particularly with testing and trialling involved) and that it would need a compelling case in order to switch. Overall, we have seen that switching rates are low¹⁶⁵ and when customers do go to market (whether via a tender or a more informal route) they tend to mostly view established suppliers – the Parties, Diversey and Christeyns – as the pool of viable suppliers.¹⁶⁶ Very few other suppliers were mentioned by respondents to our questionnaire or appeared in our analysis of tenders. We understand that even large, established suppliers are invited to take part in trials before the customer decides whether that supplier is a low risk option.
- 8.48 We consider that it would take an entrant or an existing smaller supplier time to build its reputation and record for reliability. We also consider that there may be some economies of scale advantages and some intrinsic advantages involving sunk, set up costs. Some third parties have told us that larger suppliers are better able to compete on price. We are also aware that larger suppliers who are able to supply the largest customers need to be able to provide technical support services which allow the customer to meet stringent quality requirements of the downstream customers (eg a supermarket). In our view, it is reasonable to expect that it would take time and investment for a smaller supplier who currently does not serve such customers to be able to effectively compete for these customers
- 8.49 Given the above, we consider that even if entry or expansion were to occur in the event that prices go up or services degrade after the Merger, it is unlikely to be sufficient to provide a credible alternative for a significant proportion of customers.
- 8.50 Ecolab's internal documents support this view. When considering the Holchem transaction, Ecolab commented on Holchem's strong network with customers' hygiene managers and that Holchem offered Ecolab size, scale and technical expertise in F&B which would help the Ecolab business to evolve to profitable growth. Ecolab's documents discussing the acquisition of Holchem say that the Merger would accelerate sales growth in F&B relative to what it would be without a merger. Ecolab confirmed to us in the main party hearing that to grow without acquisition would be slow. When we put to

¹⁶⁵ See paragraph 7.49 above.

¹⁶⁶ See analysis of gain and loss data and tender data at paragraphs 7.94-7.138 above, and customer views on alternatives at paragraphs 7.146-7.153 above.

Ecolab that Holchem's customer relationships and expertise was important for its rationale for the Merger in order to allow Ecolab to grow in the UK F&B segment, it told us:

I think first there the consideration was of course to stabilise our organisation, to leverage the food expertise in the rest of Europe, but, of course, as well, within this national customer database, we are becoming suddenly a much more meaningful player [because of the Merger]. I would like to say we could do it, but it would take a very, very, very long period of time. A longer period of time.

- 8.51 We consider that this statement is consistent with the evidence that we have seen. That is, customers are risk-averse, have low switching rates and place value on reputation, reliability and a proven track record. In our view, it is reasonable to consider that an entrant would find growth of the scale required to prevent the SLC slow and uncertain.
- 8.52 We therefore consider that entry or expansion would not be timely, likely and sufficient to prevent an SLC from arising in this case.

Buyer power

- 8.53 The Parties submitted that some customers have countervailing buyer power.¹⁶⁷ ✂:

(a) ✂

(b) ✂

(c) ✂

(d) ✂

(e) ✂

(f) ✂

(g) ✂

(h) ✂.

- 8.54 The Parties also submitted evidence from the Survation questionnaire, in which the vast majority of respondents said they were likely or very likely to

¹⁶⁷ See [Merger Assessment Guidelines](#), section 5.9.

threaten to go to tender (29/30) or use an alternative quote to drive down price (24/30) in response to a 10% price increase by the merged entity.¹⁶⁸ We place limited weight on this evidence, as we consider that the framing of this question is leading – it referred to a price increase that occurs with no explanation other than ‘because we can’, depicting an extreme version of the effect of an SLC which is unlikely to reflect a reality in which the merged entity could increase prices more gradually, provide a form of justification, or reduce service levels. Moreover, as discussed below, these types of response depend on customers having a number of sufficient alternatives.

- 8.55 In considering the Parties’ submissions on countervailing buyer power, we have had regard to our guidance, that says if all customers of a merged firm possess countervailing buyer power post-merger, then an SLC is unlikely to arise. However, often only some, not all, customers of the merged firm possess countervailing buyer power. In such cases, the CMA assesses the extent to which the countervailing buyer power of these customers may be relied upon to protect all customers.¹⁶⁹
- 8.56 Our guidance also says that typically the ability to switch away from a supplier will be stronger if there are several alternative suppliers to which the customer can credibly switch.¹⁷⁰ Moreover, for countervailing buyer power to prevent an SLC, it is not sufficient that it merely existed before the merger, it must also remain effective following the merger.¹⁷¹
- 8.57 In our inquiry we have heard from the Parties and from third parties that, absent a more formal tender process, ongoing supply is typically based on bilateral negotiations. Therefore, even if some customers have strong negotiating positions, we have not seen any evidence indicating that any ability they may have to keep prices down would protect other customers. Further, we have shown in our analysis above that the Merger substantially reduces choice for some customers which would restrict their ability to exercise any countervailing buyer power, even if it did exist before the Merger.
- 8.58 From the evidence above, we conclude that buyer power is unlikely to prevent the SLC which has been identified.

¹⁶⁸ [Parties’ response to Provisional Findings](#), paragraph 7.5.

¹⁶⁹ [Merger Assessment Guidelines](#) paragraph 5.9.1.

¹⁷⁰ [Merger Assessment Guidelines](#) paragraph 5.9.3.

¹⁷¹ [Merger Assessment Guidelines](#) paragraph 5.9.8.

Efficiencies

- 8.59 The Parties submitted that the Merger will result in purchasing synergies, particularly in relation to the purchase of raw materials. Ecolab estimated a 3% cost saving on raw materials as a result of the Merger. In the hearing Ecolab told us that it 3. Ecolab said that it would be able to offer customers greater flexibility in deliveries after the Merger, since it would have greater control over deliveries by integrating into Holchem's logistics and warehousing. Moreover, Ecolab told us that by combining the salesforces and account managers (generalists under the Ecolab model) and focusing them on geographic areas and industry segments (the sales model successfully adopted by Holchem) they could give customers a better, more flexible and responsive service.
- 8.60 The Parties have not submitted evidence on whether these purported efficiencies will be timely, likely and sufficient to prevent an SLC from arising in this case.¹⁷² Nor have we seen any evidence that the purported efficiency savings will be passed on to customers,¹⁷³ or that they are Merger-specific.¹⁷⁴
- 8.61 Therefore, we have not taken the purported efficiencies into account in our findings.

9. Findings on SLC

- 9.1 As a result of our assessment, we find that the Merger has resulted in the creation of a relevant merger situation.
- 9.2 We also find that the creation of that relevant merger situation has resulted, or may be expected to result, in an SLC in relation to the supply of formulated cleaning chemicals and ancillary services to F&B customers in the UK.

10. Remedies

Introduction

- 10.1 Where the CMA concludes that a relevant merger situation has resulted, or may be expected to result, in an SLC, it is required to decide whether action should be taken to remedy, mitigate or prevent the SLC or any resulting

¹⁷² [Merger Assessment Guidelines](#) paragraph 5.7.4.

¹⁷³ [Merger Assessment Guidelines](#) paragraph 5.7.9.

¹⁷⁴ [Merger Assessment Guidelines](#) paragraph 5.7.4.

adverse effect. The CMA is also required to decide whether such action should be taken by the CMA itself or recommended to others. In either case, the CMA must state in its final report the action to be taken and what it is designed to address.¹⁷⁵

10.2 The Act requires that the CMA, when considering possible remedial actions, shall ‘in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it.’¹⁷⁶

10.3 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects. The effectiveness of a remedy is assessed by reference to its:

- (a) impact on the SLC and the resulting adverse effects;
- (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;
- (c) practicality in terms of implementation and any subsequent monitoring; and
- (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effect.¹⁷⁷

10.4 The CMA will then select the least costly and intrusive remedy that it considers to be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act,¹⁷⁸ to the effect of any remedial action on any RCBs arising from the merger.

10.5 In reaching our final decision on the appropriate remedy in this case, we have considered responses to our public consultation on our notice of possible remedies (Remedies Notice),¹⁷⁹ the evidence from our response hearing with the Parties, the Parties’ response to our remedies working paper (Remedies Working Paper), and oral and written evidence from various third parties.¹⁸⁰

¹⁷⁵ Section 35(3) of the Act.

¹⁷⁶ Section 35(4) of the Act.

¹⁷⁷ [Merger remedies guidance CMA87](#), paragraph 3.5.

¹⁷⁸ Section 35(5) of the Act.

¹⁷⁹ [Remedies Notice](#), 6 August 2019.

¹⁸⁰ We received no responses to the Remedies Notice from third parties. We separately spoke to five competitors (Christeyns, Diversey, Kersia, AFCO and Niche Solutions), and arranged calls with, or received written

Overview of remedy options

- 10.6 In the Remedies Notice¹⁸¹, we set out our initial view that there was one potential structural remedy that was likely to be effective:
- Requiring the divestiture of the whole of Holchem, which is, in effect, a prohibition of the Merger.
- 10.7 However, we also stated that we would consider any other practicable remedies proposed by the Parties or third parties that could be effective in addressing the SLC and its adverse effects.¹⁸²
- 10.8 In response to the Remedies Notice, the Parties put forward a potential divestiture remedy entailing the transfer of ☒ large F&B customers to a suitable purchaser along with some transitional support.¹⁸³ Subsequently, in response to the CMA's Remedies Working Paper, the Parties provided a revised remedy proposal (Alternative Divestiture Proposal) that built on the Parties' original proposal.¹⁸⁴
- 10.9 Subsequent to the publication of the Remedies Notice, we identified another potentially effective structural remedy:
- Divestiture of Holchem Laboratories.¹⁸⁵
- 10.10 We considered in detail the divestiture of Holchem, the divestiture of Holchem Laboratories, and the Parties' Alternative Divestiture Proposal.
- 10.11 We did not consider any behavioural remedies because neither the Parties nor any third parties proposed such remedies and the very limited circumstances in which behavioural remedies might be appropriate did not apply to this case.¹⁸⁶

submissions from, seven customers of Ecolab (Nestlé, Moy Park, ☒, ☒, ☒, Cook Kitchen, ☒) and three customers of Holchem (Cranswick, Tulip and ProPak).

¹⁸¹ Remedies Notice.

¹⁸² Remedies Notice, paragraph 15.

¹⁸³ Ecolab response to the Remedies Notice, 16 August 2019.

¹⁸⁴ The Alternative Divestiture Proposal analysed by the CMA is the Parties' original proposal as subsequently revised by the Parties. It is summarised in Ecolab's response to the Remedies Working Paper, 17 September 2019, Annex 1.

¹⁸⁵ I.e. the Holchem subsidiary active in F&B. This remedy excludes Merlin and Imperial, both of which provide limited products and services inside the scope of this inquiry.

¹⁸⁶ Merger remedies guidance CMA87, paragraph 3.48.

General approach to assessing remedy effectiveness

10.12 Our guidance states that assessing remedy effectiveness involves several distinct dimensions, which can be summarised as follows:

- (a) **Impact on the SLC and its resulting adverse effects:** the CMA will normally seek to restore competitive rivalry through remedies that re-establish the structure of the market expected to have prevailed in the absence of the merger because such remedies address the adverse effects of the SLC at source.¹⁸⁷ In any event, an effective remedy must address effectively the SLC and any resulting adverse effects identified by the CMA.¹⁸⁸
- (b) **Appropriate duration and timing:** the CMA will prefer a remedy that quickly addresses the competition concerns, with the effect of the remedy sustained for the likely duration of the SLC, rather than a remedy that is expected to have an effect only in the long-term or where the timing of its effect is uncertain.¹⁸⁹
- (c) **Practicality:** a practical remedy should be capable of effective implementation, monitoring and enforcement.¹⁹⁰
- (d) **Acceptable risk profile:** the CMA will seek remedies that have a high degree of certainty of achieving their intended effect. Customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects.¹⁹¹

10.13 These considerations have shaped our assessment of the effectiveness of the potential remedies in the current case.

10.14 We next turn to our consideration of different remedy options, starting with the full or partial divestiture of Holchem, before we consider the Parties' Alternative Divestiture Proposal.

Full or partial divestiture of Holchem

10.15 In this section we assess the effectiveness of a full or partial divestiture of Holchem.

¹⁸⁷ [Merger remedies guidance CMA87](#), paragraph 3.5(a).

¹⁸⁸ [Merger remedies guidance CMA87](#), paragraph 4.57.

¹⁸⁹ [Merger remedies guidance CMA87](#), paragraph 3.5(b).

¹⁹⁰ [Merger remedies guidance CMA87](#), paragraph 3.5(c).

¹⁹¹ [Merger remedies guidance CMA87](#), paragraph 3.5(d).

Description of remedy

- 10.16 A full divestiture remedy would involve the Parties unwinding the completed Merger. Ecolab would be required to divest the entirety of its shareholding in Holchem (or equivalent sale structure) to a suitable purchaser. We consider that such unwinding would be equivalent to a prohibition of the Merger, as if it had not completed.
- 10.17 The Holchem corporate group consists of a holding company, Holchem, and three subsidiaries - Holchem Laboratories (active in F&B), Merlin and Imperial. Merlin and Imperial comprise about ⅓ of the revenue of Holchem.¹⁹² A partial divestiture would involve a sale of Holchem Laboratories.
- 10.18 Merlin ⅓ and Imperial ⅓ make limited volumes of ⅓. There are some shared services between the three subsidiaries, for example support staff (Finance, HR and supply chain functions).
- 10.19 The turnover of Holchem in 2018 was ⅓, and Holchem submitted that 90% of this was in the UK. It generated limited revenues from outside the UK (the majority of which were to customers in the Republic of Ireland).

Views of the Parties and third parties on full divestiture

- 10.20 Below we summarise the views of the Parties and, separately, the views of third parties.

The Parties' views

- 10.21 Ecolab told us that unwinding the Merger would be disproportionate and far wider in scope than the identified SLC. They said that there is no plausible concern with respect to either international customers (which are managed centrally, typically outside of the UK) or small customers (which ⅓ defined as those with annual purchases of less than ⅓),¹⁹³ no concern with respect to institutional customers, and no concern (or CMA jurisdiction) with respect to customers in the Republic of Ireland. Ecolab told us that the implication is that any remedy, should one be required, need only be sufficient to address a concern relating to 'Large UK Customers'.¹⁹⁴

¹⁹² Merlin and Imperial were acquired by Holchem on 14 August 2014.

¹⁹³ While we have ⅓ used the threshold of £50,000 for ease of evidence-gathering and analysis, we do not consider that there is a sharp distinction between customers spending over and under £50,000.

¹⁹⁴ [Ecolab response to the Remedies Notice](#), paragraph 2.3 ⅓.

10.22 The Parties also said that the CMA's suggested remedy in the Remedies Notice – the divestiture of the whole of Holchem – goes beyond that necessary to address a concern relating to 'Large UK Customers'. Not only would the CMA's proposed remedy include sales to other customer segments outside the identified area of concern, but even just the ✂. In the Parties' view the CMA would be requiring a remedy that substantially exceeds, and is disproportionate to, the overlap,¹⁹⁵ especially where, in Ecolab's view, there is an alternative proportionate remedy.

10.23 ✂.

10.24 Ecolab told us that implementing a divestiture of Holchem would be challenging because it is a big company, including a lot of assets and sizeable revenues outside the food and beverage sector ✂. The Parties also consider that finding somebody to purchase Holchem who is interested and suitable would be difficult. The Parties added that further prolonged uncertainty for Holchem personnel will weaken Holchem.

Third party views

10.25 No third parties raised concerns that a sale of Holchem would not be effective at addressing the SLC and any adverse effects which have resulted from, or may be expected to result from, the SLC.

10.26 [Competitor] stated that the remedy published in the Remedies Notice would be effective to address the CMA's concerns regarding the completed acquisition of Holchem by Ecolab.

10.27 ✂.

10.28 [Holchem customer] said that the CMA's remedies proposal was appropriate to address any competition concerns.

10.29 [Competitor] said that full divestiture of Holchem would be an effective remedy. It told us that there is nothing that would prevent Holchem from being an effective competitor once sold, as it was an effective competitor beforehand.

10.30 [Ecolab customer] stated that the CMA's remedies proposal is appropriate to address any competition concerns. The customer also said that it is likely the only option as there are only a few players left in the UK F&B market for cleaning chemicals as the market has been consolidating over recent years.

¹⁹⁵ [Ecolab response to the Remedies Notice](#), paragraph 2.4.

- 10.31 [Holchem customer] stated that the CMA's remedies proposal is appropriate to address any competition concerns.
- 10.32 [Holchem customer] said a full divestiture of Holchem to a party that is not an existing chemicals supplier in the UK would be an effective remedy.

Remedy design issues – full or partial divestiture of Holchem

- 10.33 A successful remedy should effectively address the SLC and any resulting adverse effects the CMA has identified.¹⁹⁶
- 10.34 In considering a divestiture of Holchem we take into consideration the same categories of risk and design issues as we do for the Alternative Divestiture Proposal (see paragraphs 10.104 to 10.237).
- 10.35 There are three main categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, purchaser risk and asset risk:¹⁹⁷
- (a) composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
 - (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser, or if a suitable purchaser is not available; and
 - (c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture, for example through the loss of customers or key members of staff.

Scope of divestiture package

- 10.36 In this section, we explore whether there are any issues relating to the scope of the package to be divested. In considering the appropriate scope for a divestiture package, we should ensure that it:
- (a) is sufficiently broad in scope to address all aspects of the SLC and resulting adverse effects;
 - (b) would enable the purchaser to operate the divested business as an effective competitor; and

¹⁹⁶ [Merger remedies guidance CMA87](#), paragraph 4.57.

¹⁹⁷ [Merger remedies guidance CMA87](#), paragraph 5.3.

(c) is sufficiently attractive to potential purchasers.

- 10.37 The CMA takes divestiture of all or part of the acquired business as its starting point because ‘restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy’¹⁹⁸ and can be expected to effectively address the SLC and any resulting adverse effects the CMA has identified.
- 10.38 Ecolab acquired the entire share capital of Holchem on 30 November 2018. Holchem is the parent company of Holchem Laboratories, Merlin and Imperial.
- 10.39 On 24 December 2018, the CMA served an initial enforcement order (IEO) under section 72(2) of the Act on Ecolab, Ecolab U.S. 2 Inc. and Ecolab (U.K.) Holdings Limited, in relation to the Merger. The Parties have been required to maintain their independence since this date and we understand there were no material changes to Holchem prior to this date. Since the imposition of the IEO, Ecolab and Holchem have been required to be held separate and compete independently.
- 10.40 As a result of the two businesses’ current independence and lack of integration pre-IEO, a full divestiture of Holchem would unwind the entire transaction and would be broadly equivalent to a prohibition if this were an anticipated merger. The CMA’s general view on prohibition of an anticipated merger is that it is an effective remedy, as it maintains the competitive structure of a market that would have otherwise been changed by the merger.¹⁹⁹
- 10.41 Holchem is a stand-alone business that includes all the relevant operations pertinent to the area of competitive overlap. Prior to the Merger, Holchem was a profitable business and the largest provider of cleaning chemicals to F&B customers in the UK. Our view is that it would be able to compete successfully on an ongoing basis.
- 10.42 In defining the scope of a divestiture package that will satisfactorily address an SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis that includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired.²⁰⁰ We have therefore sought to identify whether there is a partial divestiture of Holchem that would be a stand-alone business that can

¹⁹⁸ [Merger remedies guidance CMA87](#), paragraph 5.6.

¹⁹⁹ [Merger remedies guidance CMA87](#), paragraph 3.35.

²⁰⁰ [Merger remedies guidance CMA87](#), paragraph 5.7.

compete sufficiently effectively to address the SLC and the adverse effects that we have found to arise from the Merger.

Partial divestiture

- *The Parties' views on partial divestiture*

10.43 The Parties told us that aside from transferring customer contracts as per Ecolab's remedy proposal, they cannot see other ways to carve out a stand-alone business. However, ✂.²⁰¹

- *Third party views on partial divestiture*

10.44 On the whole, third parties were unsure whether there was a divestiture of part of Holchem that would address our concerns, with some third parties acknowledging that it might be possible. With regard to Merlin and Imperial, no third parties thought these subsidiaries were essential parts of any divestiture package.

10.45 [Competitor] said that a partial divestiture of Holchem, removing areas where the CMA has no concern, could be effective at addressing our concerns. In its view, this may be practically challenging, but it may make the divestiture easier to sell as an acquirer would only get what they wanted. [Competitor] said that 'the devil is in the detail' with regard to whether the resulting business would be profitable and viable.

10.46 ✂.

10.47 ✂ said it struggled to see how it would be possible to have a partial divestiture focusing on particular sub-segments, eg beverage. It told us that from the supplier's point of view, the segments are basically seamless as they use the same assets and largely the same staff – it is just the selling focus that is different.

10.48 [Holchem customer], told us that it did not consider that Merlin and Imperial were necessary for a successful remedy. From [Holchem customer]'s understanding both of those businesses are separate and not core to Holchem's supply of cleaning chemicals to F&B customers.

10.49 [Ecolab customer] told us there might be a divestiture of less than the whole of Holchem that could address the CMA's concerns but that [Ecolab

²⁰¹ ✂.

customer] was not in a position to comment on how viable the business would be if it is not sold in its entirety.

10.50 [Competitor] said that there would be no problem with Ecolab divesting the F&B business of Holchem and retaining the non-F&B parts of the business.

- *Assessment of partial divestiture*

10.51 We understand that the majority, approximately 80% by revenue, of Holchem is accounted for by Holchem Laboratories. The other two operating companies in the group are Merlin and Imperial.

10.52 Merlin and Imperial have remained separate legal entities since they were acquired in 2014. Merlin 80 and Imperial 80 make limited volumes of 80. There are some shared services between the three subsidiaries, for example support staff (Finance, HR and supply chain functions).

10.53 We do not consider that Merlin or Imperial are pertinent to supply of cleaning chemicals to UK F&B customers by Holchem Laboratories. We consider that both companies provide limited products and services inside the scope of this inquiry. In addition, we consider their operations are largely distinct from Holchem Laboratories, and our view is that excluding them from a divestiture package would not give rise to any composition or execution risk.

10.54 Based on the evidence, Merlin and Imperial would not appear pertinent to the effectiveness of a sale of the part of Holchem that is predominantly active in the supply of formulated cleaning chemicals (and ancillary services) to F&B customers.

10.55 The only other operating company within Holchem's corporate group is Holchem Laboratories. The majority of Holchem Laboratories' turnover, £80 million out of £80 million, relates to the supply of cleaning chemicals to UK F&B customers. Our understanding is that Holchem's F&B business is predominantly conducted out of Holchem Laboratories and intragroup trading between the three subsidiaries, whilst there is some, is limited. The sale of Holchem Laboratories would therefore appear critical to the success of any remedy as it is a separate, stand-alone business with all the necessary operations pertinent to the overlap and the divestment package need not include Merlin and Imperial.

10.56 A partial divestiture of Holchem must be sufficient to effectively remedy, mitigate or prevent the SLC and its resulting adverse effects. Although a divestiture of Holchem Laboratories would include a limited number of non-UK F&B customers, we do not consider it feasible to exclude these

customers (for example by transferring them to Ecolab before divestiture) without significantly increasing the execution risk relating to the divestiture. The significant execution risks associated with the transfer of customers are outlined in the assessment of the Parties' Alternative Divestiture Package in paragraphs 10.104 to 10.236. We note that if these customers wished to be serviced by Ecolab they would be able to switch in the normal course of business. Finally, we note that the Parties have not submitted that a divestiture that excluded these customers would comprise an effective remedy.

- 10.57 We therefore consider that reducing the scope of the Holchem divestiture package to anything less than the entirety of Holchem Laboratories, which includes a limited number of customers in the Republic of Ireland, would be impractical and could potentially harm the overall business and customers.
- 10.58 Taking into account all of the above, we consider that the smallest viable, stand-alone business that can compete successfully on an ongoing basis, and that includes all the relevant operations pertinent to the area of competitive overlap, is Holchem Laboratories.
- 10.59 For the avoidance of doubt, a divestiture of Holchem Laboratories would include all of the assets, contracts, staff, shared services and any intellectual property, including any brands, pertinent to the operations of Holchem Laboratories, even if currently provided by other companies in the Holchem corporate group.
- 10.60 ✂.²⁰² Whilst this does not impact the effectiveness of a divestiture of Holchem Laboratories, the Parties may wish to include Merlin and Imperial in any divestiture to avoid such costs.
- 10.61 We now consider the other elements of divestiture design and process applicable to both a divestiture of Holchem and a divestiture of Holchem Laboratories.

Specific issues

- *The Holchem management team*

10.62 ✂.

- 10.63 We note that the Holchem management team, of which the Directors are a part, is still in place many months after being acquired by Ecolab.

²⁰² ✂.²⁰³ [Remedies Notice](#), paragraph 23.

Nevertheless, if such a risk did materialise we would need to be satisfied that a suitable purchaser had, or could acquire, the requisite management capabilities. If a purchaser did not have those capabilities itself (for example, if it was not a trade buyer), it would be incentivised to retain the services of the current management or bring in a new management team. Accordingly, we do not consider potential departures of Directors, upon divestment, to constitute a significant risk to the viability of a divestiture of either Holchem as a whole or of Holchem Laboratories on its own.

Identification and availability of suitable purchasers

10.64 In our Remedies Notice, we invited views on whether there were any specific factors to which we should pay particular regard in assessing purchaser suitability, and whether there were risks that a suitable purchaser was not available.²⁰³

10.65 In accordance with our guidance, we will wish to satisfy ourselves that a prospective purchaser:

(a) is independent of the Merger Parties;

(b) has the necessary capability to compete;

(c) is committed to competing in the relevant market;

and that divestiture to the purchaser will not create further competition concerns.²⁰⁴

10.66 We have also considered whether in this instance there are further criteria that should be taken into consideration for a potential purchaser of Holchem or Holchem Laboratories. However, since all three subsidiaries of Holchem are currently being run as independent companies we do not consider that any additional suitability criteria are required.

10.67 [Competitor] told us that a private equity buyer would be suitable, as this would maintain Holchem as an independent competitor. According to [Competitor], the private equity model is effective in this industry. Further, [Competitor] considered that there are also a number of players in the industry who could potentially purchase Holchem and that no potential purchaser other than ✂ would create competition concerns.

²⁰³ Remedies Notice, paragraph 23.

²⁰⁴ Merger remedies guidance CMA87, paragraph 5.21.

- 10.68 [Competitor] said that a private equity or venture capital buyer would be preferable to one of the larger F&B companies buying Holchem, as it would be an independent purchaser and Holchem would remain independent. Buying Holchem would be [Competitor], as it ✂.
- 10.69 [Competitor] mentioned that potential buyers for the Holchem business include other UK cleaning chemicals suppliers (excluding the ‘big players’ on the UK market) and venture capital/private equity businesses.
- 10.70 [Competitor] thought there would be enough interest if Holchem were to be sold off. The UK is one of the top three markets in Europe. ✂.
- 10.71 [Ecolab Customer] said that viable purchasers could include smaller cleaning chemicals businesses.
- 10.72 [Holchem customer] said that viable purchasers would include other cleaning chemicals businesses, such as ✂. However, if ✂ were chosen the customer expected that the CMA would have competition concerns. [Holchem customer] further said that private equity businesses could be potential purchasers of Holchem and that such a deal would not raise any competition concerns because it would simply result in a change in management.

Likely availability of suitable purchasers

- 10.73 ✂.
- 10.74 We have not been approached by or had contact from any other interested parties but the former CEO and owner of Holchem told us that ✂
- 10.75 Holchem and Holchem Laboratories are currently operating as a stand-alone businesses to Ecolab and are profitable. Holchem is the largest provider of cleaning chemicals to F&B customers in the UK. It is our view that a business such as this is likely to attract and be suitable for a wide range of interested buyers, with or without Merlin and Imperial.

Conclusions on identification and availability of suitable purchasers

- 10.76 Based on the information currently available, we consider it likely that a suitable purchaser would be found for either divestiture package. We further consider that there are likely to be buyers that could satisfy our suitability criteria set in paragraph 10.65 above.

Ensuring an effective divestiture process

- 10.77 An effective divestiture process will safeguard the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale, as well as allowing prospective purchasers to make an appropriately informed acquisition decision.²⁰⁵
- 10.78 The incentives of merger parties may serve to increase the risks of divestiture. Although merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves.²⁰⁶
- 10.79 The circumstances of this case raise the following issues for consideration in relation to the divestiture process:
- (a) the appropriate timescale for divestiture to take place;
 - (b) whether, and under what circumstances, there is a need to appoint an external and independent trustee to complete a divestiture (Divestiture Trustee) to mitigate the risk that the divestiture does not complete within the timescales specified;
 - (c) whether the role of the monitoring trustee should could change during the process; and
 - (d) more broadly, the role of interim measures during the divestiture process.
- 10.80 We consider these in turn below.

Timescale allowed for divestiture

- 10.81 We considered what would be an appropriate timescale to allow Ecolab to implement the required divestiture (the Initial Divestiture Period). The Initial Divestiture Period would normally run from the acceptance of final undertakings or the making of a final order (for which the Act provides a period of up to 12 weeks after the final report)²⁰⁷ until legal completion of an effective divestiture (ie a sale to a purchaser approved by the CMA).
- 10.82 In considering an appropriate Initial Divestiture Period, our guidance states that we 'will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that

²⁰⁵ [Merger remedies guidance CMA87](#), paragraph 5.33.

²⁰⁶ [Merger remedies guidance CMA87](#), paragraph 5.4.

²⁰⁷ Section 41A of the Act.

favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence'. Our guidance also states that the Initial Divestiture Period will normally not exceed six months.²⁰⁸

- 10.83 The Parties suggested that a sale of ☒ would be achievable within ☒, though noted that this would still be difficult and ☒.
- 10.84 Based on the evidence provided we consider that a period of ☒ post the signing of final undertakings or the making of a final order would be sufficient to enable the Parties to achieve a successful sale of Holchem or Holchem Laboratories.
- 10.85 We envisage the divestment would be carried out either by a sale of shares in Holchem or a sale of shares in Holchem Laboratories.

Provision for appointment of a divestiture trustee

- 10.86 It is the CMA's standard practice to provide for the appointment of a Divestiture Trustee to dispose of the divestiture package if the relevant party fails to achieve an effective disposal within the Initial Divestiture Period, or if the CMA has reason to be concerned that it will not achieve an effective disposal within the Initial Divestiture Period. The CMA is minded to follow its standard practice in this case. This would help ensure that Ecolab has a sufficient incentive to implement the divestiture promptly and effectively.
- 10.87 To ensure a timely completion of this remedy, we conclude that the CMA should reserve its right to appoint a Divestiture Trustee if:
- (a) Ecolab fails to complete the divestiture process within the Initial Divestiture Period;
 - (b) The CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;
 - (c) Ecolab is not engaging constructively with the divestiture process; and/or
 - (d) There is a material deterioration in the business to be divested during the divestiture process

²⁰⁸ [Merger remedies guidance CMA87](#), paragraph 5.41.

- 10.88 In line with the CMA's normal practice,²⁰⁹ if appointed, a Divestiture Trustee should be tasked with completing the divestiture to a potential purchaser approved by the CMA and at no minimum price.

The role of interim measures during the divestiture process

- 10.89 An IEO was put in place to govern the conduct of Ecolab and Holchem during the investigation. It will expire upon final determination (ie when the CMA accepts final undertakings or makes a final order).
- 10.90 The CMA issued written directions on 10 May 2019 under paragraph 10 of the IEO, for the purposes of securing compliance with the IEO, requiring Ecolab to appoint a monitoring trustee. ✂ (the Monitoring Trustee) was appointed on 17 May 2019.
- 10.91 In the Remedies Notice, we invited views on whether these interim measures should be continued, or enhanced, during the divestiture process.²¹⁰ At the response hearing the Parties told us that if the remedy was the sale of all or part of Holchem, there would be a role for the Monitoring Trustee.
- 10.92 We consider that the existing provisions need to continue until an effective disposal has taken place. The role of the Monitoring Trustee will therefore need to be incorporated into a final order or final undertakings.
- 10.93 We consider that the Monitoring Trustee should have additional responsibility to help the CMA monitor the divestiture process, as well as compliance with the provisions requiring the Parties to hold separate.
- 10.94 We do not consider there to be a need for any additional interim measures to be put in place. We also do not consider there to be a need to increase the frequency of reporting by the Monitoring Trustee who currently reports every four weeks.

Conclusions on divestiture process

- 10.95 Based on the above, we consider that an effective divestiture process would:
- (a) Provide for the Parties to have ✂ from the acceptance of final undertakings or imposition of a final order to complete the divestiture.

²⁰⁹ [Merger remedies guidance CMA87](#), paragraph 5.43.

²¹⁰ [Remedies Notice](#), paragraphs 25-26.

- (b) Give the CMA the right to appoint a Divestiture Trustee to complete the divestiture to a potential purchaser approved by the CMA and at no minimum price if certain conditions are met.
- (c) Incorporate the current interim measures into the final undertakings or final order with the Monitoring Trustee gaining additional responsibilities to monitor the divestiture process on behalf of the CMA.

Assessment of the effectiveness of full/partial divestiture of Holchem

10.96 Below we set out our assessment of the effectiveness of a structural divestiture that includes all the relevant operations pertinent to the area of competitive overlap.

10.97 Divestitures may be subject to a variety of risks that may limit their effectiveness in addressing an SLC. There are three main categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, purchaser risk and asset risk:²¹¹

- (a) composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
- (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser, or if a suitable purchaser is not available; and
- (c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture, for example through the loss of customers or key members of staff.

10.98 To judge a divestiture remedy as effective, we must have confidence that these risks can be properly addressed in its design. We considered the following design issues in relation to the full or partial divestiture of Holchem:

- (a) the appropriate scope of the divestiture package;
- (b) the identification and availability of suitable purchasers; and
- (c) ensuring an effective divestiture process.

²¹¹ [Merger remedies guidance CMA87](#), paragraph 5.3.

Our assessment

- 10.99 Based on the evidence set out above, in particular the profitability and stand-alone nature of the Holchem business, we consider a full divestiture, ie unwinding the Merger, would be effective in addressing the SLC and the resulting adverse effects outlined in the findings.
- 10.100 We also consider that a partial divestiture that excluded Merlin and Imperial would be effective, as we consider that neither is pertinent to the supply of cleaning chemicals (and ancillary services) to UK F&B customers and Ecolab retaining both businesses would not impact the effectiveness of a divestiture of the rest of Holchem.
- 10.101 We consider that there would be suitable purchasers for the business and do not consider there to be any material risks to ensuring an effective divestiture process.
- 10.102 We therefore consider that either a sale of Holchem in its entirety or a sale of Holchem Laboratories would represent a comprehensive solution to address all aspects of the SLCs we have identified (and consequently any resulting adverse effects).
- 10.103 We consider any risks in the effectiveness of either remedy to be low. The scope of the divestiture would comprehensively address the SLC we have identified, a number of suitable purchasers are present, and the divestiture would involve minimal disruption to Holchem's customers. Before looking at proportionality and relevant customer benefits we first look at the effectiveness of Ecolab's Alternative Divestiture Proposal.

Ecolab's Alternative Divestiture Proposal – customer portfolio divestiture

- 10.104 In this section we discuss the Alternative Divestiture Proposal put forward by Ecolab. We start with a description of the remedy, then set out the views of the Parties and third parties on the effectiveness of a divestiture of a portfolio of customers (as proposed by the remedy). Finally, we assess whether the proposed design of the remedy gives us sufficient confidence that the remedy would be effective.

Description of remedy

10.105 Ecolab has proposed²¹² a divestiture that comprises [a portfolio of customers]. Ecolab told us that [these customers] could be divested to an existing competitor who already has its own F&B product range and who would, during a reasonable transition period, convert these customers to its own cleaning products.²¹³

10.106 The Alternative Divestiture Proposal contains the following elements, which Ecolab terms the ‘Divestment Business’:²¹⁴

- (a) [A portfolio of customers] (referred to by Ecolab as the Divestment Customers) including contracts with such customers where applicable. The large ☒ have contracts with durations from ☒²¹⁵ do not typically have contracts.²¹⁶
- (b) ☒ database records concerning the Divestment Customers (including previous order histories, which would include not only their purchasing volumes but also the specific types of products they have used, any protocols prepared for them and any other customer specific information);
- (c) Equipment at the sites of the Divestment Customers belonging to ☒²¹⁷;
- (d) Sufficient ☒ staff to provide services to the Divestment Customers (subject to employment law restrictions), and reasonable training assistance and expert support services for the purchaser’s staff if necessary would continue to be provided to those customers for an agreed transitional period to help ensure smooth transition of the customer relationships included in the Alternative Divestiture Proposal. ☒ identified [certain staff] that it would offer to transfer to the purchaser but would be willing to offer to transfer [certain staff]. ☒ would provide financial incentives to each transferring employee payable on condition that they remain employed by the purchaser for a reasonable period from the date of the purchase agreement.

²¹² In response to the CMA’s [Remedies Notice](#) and the Remedies Working Paper. Here we detail Ecolab’s final proposal as set out in the response to the Remedies Working Paper.

²¹³ [Ecolab response to the Remedies Notice](#), paragraph 3.3 and Ecolab’s response to the Remedies Working Paper, Annex 1.

²¹⁴ [Ecolab response to the Remedies Notice](#), paragraph 3.5.

²¹⁵ Ecolab defines ‘Small Customers’ as those with less than £☒ purchases of cleaning chemicals per year and not contracting on an international basis.

²¹⁶ Ecolab defines ‘Large UK Customers’ as those who make F&B cleaning chemical purchases of over £☒ per year in the UK and excluding international customers.

²¹⁷ Ecolab told us that while most customers will have their own material equipment (eg chemical storage tanks), some customers may have some dosage or other more minor equipment on loan from their cleaning products supplier. Where customers switch mid-contract, it is not unusual for the new supplier to re-use the previous supplier’s equipment of that nature for the new supplier’s products.

- (e) The ☒ cleaning chemicals manufacturing facilities at ☒, which is currently used to manufacture cleaning chemicals that are supplied to non-F&B customers, should a purchaser want it.
- (f) A commitment that the agreement with the purchaser includes financial incentives so there would be no cost of switching for the customers, and ☒ would work with the purchaser to ensure customers are comfortable with the proposed remedy;
- (g) A transitional services agreement to support the purchaser and the Divestment Customers during the period until the purchaser can convert them onto the purchaser's own products. Additionally, at the option of the purchaser, ☒ would:
 - (i) allow the purchaser to subcontract and use ☒ for the duration of the transitional services agreement and thereafter, if needed, on commercial arm's length terms.
 - (ii) procure and sub-contract for the purchaser ☒ for the duration of the transitional services agreement on reasonable commercial terms.
 - (iii) commit to provide whatever additional technical assistance the purchaser might reasonably require during the period of the transitional services agreement.
 - (iv) be willing to limit the agreement to one year, with any extension being subject to CMA consent.
- (e) Uninterrupted supply for the Divestment Customers with the full range of cleaning chemical products (and any necessary ancillary equipment or parts) they currently purchase during the transitional period, until the purchaser can convert them onto the purchaser's own products, in the form of one or more of:
 - (i) A supply agreement for cleaning chemicals and any ancillary equipment for resale for an agreed duration negotiated on arm's length commercial terms²¹⁸; and/or
 - (ii) Assistance with converting customers to the purchaser's own products, whether produced at the purchaser's own manufacturing

²¹⁸ ☒ told us that any supply agreement would be confined to the time period up to the latest expiry date of the contracts in the divestiture package or the earlier expiration of any agreed transitional period to convert the customers to the purchaser's own products. Delivery would be either directly shipped to the customers or to the purchaser's centralised warehouse.

site or under a toll manufacturing agreement or contract manufacturing agreement²¹⁹ to be entered into between the purchaser and a third party toll manufacturer for the additional divestment product volumes.²²⁰

10.107 The Parties submitted that implementation of the Alternative Divestiture Proposal would be facilitated through the transitional services agreement and supply agreement. Under the assistance provided by those agreements any purchaser would, within an agreed transition period, be expected to convert the customers to equivalent products offered by the purchaser. The Parties submitted that production of additional chemicals should not be a problem for a purchaser given supply-side substitutability, spare capacity, minimal costs of purchasing additional manufacturing assets, and the possibility of entering into toll agreements.²²¹

10.108 Ecolab has not proposed to licence ☒ brand or formulas, other than on a transitional basis as part of the supply arrangements to the extent and duration necessary to enable uninterrupted supply and resale to the Divestment Customers of products they are currently purchasing. Ecolab submitted that this would allow the purchaser with an existing F&B portfolio and related supply chain to convert the customers to its own products and brands and that the transitional services and supply agreement would be of sufficient duration to allow the full transition of products in an orderly manner. Ecolab further submitted that the transferred ☒ sales personnel would be able to assist in this process.²²²

10.109 In addition, ☒ would undertake, and procure, that its affiliates would comply with its undertaking:

- (a) Not to re-acquire the Divestment Business for a period of 10 years from closing of the divestiture without the prior written consent of the CMA;
- (b) Not to actively solicit, subject to 'customary limitations' and for an agreed period, any of the ☒ personnel transferring as part of the Divestment Business²²³; and
- (c) Not to supply ☒ F&B products to any Divestment Customer in the UK that ☒ has supplied in the previous year for a period of ☒ years from the

²¹⁹ Ecolab explained that Ecolab itself engages in toll manufacturing for a significant proportion of its production volumes outside of the UK (see paragraph 8.13 of the [Parties' Response to Issues Statement](#)).

²²⁰ Ecolab told us that, as shown in paragraph 8.15 of the [Parties' Response to Issues Statement](#), toll manufacturing for cleaning chemicals suppliers by UK-based toll manufacturers does take place.

²²¹ [Ecolab response to the Remedies Notice](#), paragraph 3.6.2.

²²² [Ecolab response to the Remedies Notice](#), paragraph 3.6.3.

²²³ [Ecolab response to the Remedies Notice](#), paragraph 3.9.

date of the purchase agreement, with the exception of customers that made any product purchases from X in the previous year.

10.110 X.

10.111 We note that the list of customer contracts that Ecolab proposes to include in the Alternative Divestiture Proposal has changed on several occasions since its response to the Remedies Notice:

- (a) At the response hearing Ecolab told us that the Large UK Customers X was proposing to include in the Alternative Divestiture Proposal represented X customers at X sites and that the revenue generated by these customers is approximately £Xmillion per annum in 2018 (X). X submitted that these customers would be serviced by approximately X.
- (b) Subsequent to the response hearing we requested details of the relevant customers. In providing these, Ecolab told us that X customers, X, should be considered X (and outside its proposed remedy scope). X.
- (c) After further review the Parties told us that it considered there were X customers, including X, that would form its Large Customer portfolio. These customers produced sales of £Xmillion in 2018).
- (d) The term sheet sent by Ecolab to prospective purchasers indicated that the portfolio proposed to be transferred included approximately X, with sales of approximately £Xmillion in 2018. X
- (e) Based on X customer list, we understand that it has approximately X smaller customers, which accounted for sales of approximately X.

10.112 We have taken into account the uncertainty over the scope of the remedy package, together with the uncertainty of what Ecolab proposes to transfer (given a lack of customer contracts particularly for Small UK Customers), in assessing the effectiveness of the remedy proposal to comprehensively address the SLC and resulting adverse effects.





10.113 In terms of potential profitability for a prospective purchaser, at the response hearing X told us that it would expect that for any purchaser the marginal profit would be 'between X per cent operating income or profit'. The estimate is based on X.

Views of the Parties and third parties

10.114 Below we summarise the views of the Parties on the Alternative Divestiture Proposal and, separately, the views of third parties.



The Parties' views








10.115 .²²⁴

10.116 Ecolab told us that a divestiture of one or other Party's F&B business with UK F&B customers should be sufficient to remedy any SLC.²²⁵ In this regard, the Parties considered that it was not necessary for the Alternative Divestiture Proposal to include any aspect of  F&B business to  customers (), on the basis that the provisional findings recognised that  did not compete for such customers, and so could not contribute to any SLC.

10.117 The Parties told us that whilst large UK customers tend to have expectations that cause them to gravitate toward a more limited number of larger suppliers, small UK customers have greater freedom to select from others among the 'long tail' of other UK local suppliers. The Parties submitted that a remedy, should one be required, therefore only need be sufficient to address the overlap of Ecolab's and Holchem's large UK customers. .²²⁶

10.118 Ecolab proposed to divest the Divestment Customers to an existing competitor who already has its own F&B product range and who would, during a reasonable transition period, convert these customers to its own cleaning products. In Ecolab's view, this divestiture would be fully effective in remedying the concerns articulated by the CMA.²²⁷

10.119 At the response hearing, Ecolab told us that its Alternative Divestiture Proposal was relatively straightforward and could be carried out relatively quickly, especially with the  potential purchasers that they were talking to (see paragraph 10.201). .


10.120 Ecolab told us that  potential purchasers, , expressed an interest in acquiring the Divestment Business (and considered there would be interest from others). . Ecolab considered that  have existing F&B products, expertise and production capacity  capable of manufacturing sufficient F&B cleaning chemicals to supply all Divestment Customers.  could therefore compete effectively with the merged entity and other large UK F&B suppliers for customers  large and small, immediately after acquiring the Divestment Business. Ecolab submitted that the transaction would allow the purchaser to become a successful fourth supplier in the UK that would be considerably larger than those suppliers in the 'long tail'.


²²⁴ [Ecolab response to the Remedies Notice](#), paragraphs 3.2.

²²⁵ [Ecolab response to the Remedies Notice](#), paragraphs 3.1.

²²⁶ [Ecolab response to the Remedies Notice](#), paragraph 3.3.

²²⁷ [Ecolab response to the Remedies Notice](#), paragraph 3.3.

10.121 Ecolab told us that it has confidence that the Divestment Customers will transfer across and that it does not matter whether or not customers have contracts or have the benefit of a change of control clause. Ecolab considers that what is most important is that Ecolab and the purchaser retain the trust of customers, enable a smooth transition, and make the transfer attractive to the customer, rather than relying on any legal framework to force a customer to transition. Ecolab considers that the remedy poses significantly less switching risk for customers than an ordinary change of supplier post-tender given the Transitional Services Agreement and transfer of  account managers and provision of customer information.

10.122 Ecolab told us that it considered that  would be suitable buyers, but that in any event Ecolab considered that it is well-established in respect of an upfront buyer remedy that the specific circumstances of the buyer should be taken into account in assessing the effectiveness of the remedy, which can be determined at any time up to approval of the buyer (ie after the final report is published).

10.123 Ecolab cited two recent merger remedies that it considered to be comparable to the Alternative Divestiture Proposal. These were remedies in the CMA's phase 2 inquiry into the completed acquisition of Cannon Hygiene Limited (Cannon) by Rentokil Initial plc (Rentokil) and the phase 1 investigation into the completed acquisition of MPCL Limited (formerly Mitie Pest Control Limited) (MPCL) by Rentokil.

Third parties' views

10.124 We spoke to a range of third parties to seek views on potential remedies to the SLC identified in the provisional findings. Specifically, we sought views on:

- (a) whether a sale of Holchem would address our concerns, and if there was anything we would need to take into consideration with a sale of Holchem;
- (b) whether there were any alternative remedies that would address our concerns including, but not limited to, a partial sale of either Party's business or a sale of a portfolio of customers to a new provider.

10.125 With regard to the effectiveness of transferring customer contracts as a remedy, the response from three²²⁸ of four competitors was consistent. They said that this would not be welcomed by those customers, who would be likely to object because switching risks are high. The fourth competitor told us

²²⁸ .

that it could take on a small portfolio of customers from the Parties, though it noted that it does not enter into formal contracts with its customers and ✂.

- 10.126 All the customers that we spoke to told us that transferring their supply to another provider would be costly and some said it would be time consuming. Three of Ecolab's and one Holchem customer told us they would not support any remedy that involved the transfer of their supply to another provider. One larger Ecolab customer told us that provided the service and product quality did not change it would be 'OK', but it noted that it would come at significant cost to them. One customer told us that switching supplier is not a big risk, whilst nine others said there were risks to overcome that could have significant negative impacts on their business, such as service disruption. Competitor and customer views are set out in more detail below.

Competitors

- 10.127 [Competitor] said that it was highly unlikely that the transfer of particular customers would be an effective remedy. It said it would expect customers to object to restrictions on which supplier they can contract with. [Competitor] told us that customers choose the larger suppliers because of their resources, expertise, products and services, and so customers would push back against being transferred to a smaller supplier. Any supplier would need to match these capabilities. Furthermore, [Competitor] stated that for 50-60% of its customers no contracts are in place, thus customers cannot be transferred on a contractual basis.
- 10.128 [Competitor] suggested it was challenging for a purchaser to successfully acquire and retain a portfolio of customers – the risks of doing that would be high because the customer may just leave soon after the transfer and forcing them to transfer against their wishes would be a sure way to lose a customer. [Competitor] stated that this was because the risks for customers are high, that the customers themselves want to make freely the decision on which supplier to use, and that such decisions are often based on long term relationships.
- 10.129 [Competitor] said it did not believe it would be possible to effectively transfer a portfolio of customers to another supplier. It said that customers have a free choice of supplier and would resist being transferred. Most would likely tender their business, even if some might accept a direct transfer. [Competitor] said that nobody would ever buy a customer portfolio on its own because there is no value in it and a large amount of risk.
- 10.130 [Competitor] said that there are no barriers to customers switching suppliers in terms of the products, as the products are like-for-like between different

suppliers. Regarding customer contracts, [Competitor] said that it does not have contracts with any of its customers. [Competitor] said it could take on a portfolio of customers from Ecolab and Holchem, but ✂.

Customers

- 10.131 [Ecolab customer] told us that it would refuse to be a part of a portfolio of transferred customers and would not be willing to move supplier to an alternative one at the request of the CMA or otherwise. [Ecolab customer] told us that its ✂, based on service and performance. [Ecolab customer] has trialled and used multiple other suppliers who have simply not met its standards. [Ecolab customer] told us that the industry sector is a very stringent one for cleaning efficiency. It is imperative for [Ecolab customer] that chemicals perform first time, every time and complete the required removal of all bacteria and proteins. [Ecolab customer] is more than happy with its current supply. It said that trialling and transition is expensive and time consuming.
- 10.132 [Ecolab customer] told us that it would not be happy if it were included in a portfolio of customers to be transferred to another supplier. If the scenario arose and it were asked to move, [Ecolab customer] told us that it would re-assess its options and go with a supplier which fitted its needs.
- 10.133 [Ecolab customer] told us that it did not think a transfer of F&B customers of the kind proposed in the Alternative Divestiture Proposal would work since it takes a long time to build up a relationship with a supplier. Safety is its top priority which it believes could be compromised by moving to a supplier which it does not have experience with. In the scenario of a transfer, [Ecolab customer] told us that it would seek legal advice. It told us that the food segment of its business requires a specific Ecolab product which is not available from any other supplier and that by being forced to move this could result in its food division being put out of operation.
- 10.134 [Ecolab customer] told us that if it were included in a portfolio of customers transferred to a third party there should be no issue for it provided the chemicals supplied remained unchanged and the new supplier offered the same service levels and customer support that it received pretransfer. [Ecolab customer] also told us that changing to another supplier and different hygiene chemicals (be that Holchem or another supplier) would require significant testing, trials and cost to approve an alternative supplier's chemicals.
- 10.135 However, [Holchem customer] stated that there is not a big risk in switching to another supplier. It said that in doing so, it would need to ensure that the

cleaning standards remained the same and that contaminations were avoided. [Holchem customer] told us that the trials required to assess the quality of new cleaning products would take at least ✂ during which trials would be run and approval would be given if there was a clean swab and all results from the laboratory were satisfactory.

10.136 [Holchem customer] also stated that the biggest barrier to switching would be that it has ✂ each with their own unique issues. This would mean that new cleaning instruction cards would need to be created and staff would need to be retrained. This is a costly process for the business, particularly with regard to the time it would take.

10.137 ✂.

10.138 [Holchem customer] stated that it would not support any solution that involved transferring its supply arrangement to another supplier as it would involve a large amount of extra work. With regard to switching supplier more generally, [Holchem customer] said that it is very risky and time-consuming. It stated that any incident could be very costly and could lead to considerable reputational damage. Therefore, when switching a supplier, [Holchem customer] would always look at three factors: quality, service and price. Only if quality and service are similar would price be the decisive factor for switching supplier.

10.139 [Holchem customer] did not consider that a disposal of F&B customers would work. It said that many customers will have switched to Holchem because of its higher service quality. [Holchem customer] confirmed that it would be 'upset' if it was included in such a remedy package and such a move would lead it to re-consider its purchasing options. It noted, however, that a customer's reaction would depend on the identity of each customer and the identity of the purchaser.

Our assessment

10.140 We assessed the effectiveness of the Alternative Divestiture Proposal in accordance with our guidance and having regard to the risks set out in paragraphs 10.97 to 10.98. A successful remedy will effectively address the SLC and any resulting adverse effects identified by the CMA.²²⁹

²²⁹ [Merger remedies guidance CMA87](#), paragraph 4.57.

Scope of divestiture package

10.141 We considered issues relating to the scope of the package to be divested. In considering the appropriate scope for a divestiture package, we need to ensure that it:

- (a) is sufficiently broad in scope to comprehensively address all aspects of the SLC and resulting adverse effects;
- (b) would enable the purchaser to operate the divested business as an effective competitor; and
- (c) is sufficiently attractive to potential purchasers.

Sufficiency of scope

10.142 We assessed whether the Alternative Divestiture Proposal would comprehensively address the SLC and any resulting adverse effects. In defining the scope of a divestiture package that will satisfactorily address an SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired²³⁰ but the CMA will consider a divestiture drawn from the acquiring business if this is not subject to greater risk in addressing the SLC.²³¹

10.143 The Alternative Divestiture Proposal is not a proposal to divest a subsidiary or a division of either Ecolab or Holchem. It does not concern a stand-alone business that includes all the relevant operations, staff and management pertinent to the area of competitive overlap. In our view, this leads to a substantial risk that a purchaser would not be able to operate as an effective competitor, both during the period of transition and over the longer term.

10.144 The Parties told us that if the Alternative Divestiture Proposal is successful, it would effectively replicate an effective competitor in the marketplace. The Parties also said that even if smaller customers were not included in the Alternative Divestiture Proposal, smaller customers would in any event benefit from this competition through a knock-on effect.

10.145 As a result of the Merger, Ecolab, a large international and established supplier that serves a wide range of customers, and Holchem, the largest

²³⁰ [Merger remedies guidance CMA87](#), paragraph 5.7.

²³¹ [Merger remedies guidance CMA87](#), paragraph 5.6.

supplier in the UK for F&B customers, have ceased to be distinct. A comprehensive remedy should therefore create a competitor with the ability to compete sufficiently effectively to address the SLC and the adverse effects that we have found to arise from the Merger.²³²

10.146 The Alternative Divestiture Proposal does not create a new UK F&B supplier that is close to the scale of either Ecolab or Holchem (see also paragraph 10.213).

10.147 We understand that the customers comprising the Alternative Divestiture Proposal purchase approximately £~~20~~million²³³ of supplies each year. ~~20~~ total annual turnover in the relevant market to which the SLC applies is ~~20~~.

10.148 At the response hearing, the Parties told us that scale is important:

- (a) Ecolab told us, in the context of customer benefits, that its scale affords it the capabilities in terms of innovation and expertise for complex issues. It also said that there were economies of density in relation to the coverage of field service teams.
- (b) With regard to Holchem, we were told that Holchem has the scale in the UK for its staff to become specialists, whereas Ecolab's smaller UK team is a generalist team. The Parties told us that Holchem's specialisation helps 'you to be even more an expert and even more supportive and even more knowledgeable to help your customers in a specific area'.

10.149 In response to the Remedies Working Paper, Ecolab told us that scale benefits were not relevant to whether or not the Alternative Divestiture Proposal is effective and, in any event, if the CMA did have concerns, these would be addressed by the ~~20~~ purchasers that the Ecolab has identified, ~~20~~. Ecolab also said that the additional scale afforded to a suitable purchaser with existing F&B capabilities by purchasing the divestment package would address any concerns as to any 'scale advantages.'

10.150 Ecolab also told us that ~~20~~ already have the necessary capability to compete for smaller and larger F&B customers.

10.151 ~~20~~.

10.152 The lack of existing scale in the UK F&B market and the length of transition periods under discussion would suggest to us that the proposed purchasers of the customers in the Alternative Divestiture Proposal are unlikely to be

²³² [Merger remedies guidance CMA87](#), paragraph 4.57.

²³³ ~~20~~.

able to exert a sufficient constraint on the merged entity and other large suppliers to comprehensively address the SLC and the adverse effects we have found to arise from the Merger.

10.153 We have found that the four largest suppliers generally compete with each other, and that the competitive constraint from smaller suppliers is low. We do not consider that transferring customers alone enhances the capability of another provider. To be effective, any remedy must confer on the purchaser an improved capability to compete for customers sufficiently to address the SLC comprehensively.

10.154 In this context, we also take account of the considerable uncertainty in respect of the composition of the proposed portfolio of Divestment Customers,²³⁴ which further undermines the Parties' assertion that the Alternative Divestiture Proposal has sufficient scope to address the SLC. By excluding international customers and ☒ from the scope of the Alternative Divestiture Proposal, any suitable purchaser of the divestiture package will not be able to operate at the same scale as Ecolab.

10.155 Whilst we accept that Holchem does not compete for international customers, the Parties do compete for multinational customers that procure separately for the UK, and once account is taken of such customers there is a significant disparity between the size of Ecolab's F&B business and that which is included in the Alternative Divestiture Proposal. Our inquiry has found that the Parties generally compete against the two other large suppliers, Christeyns and Diversey, and that they compete against other, smaller, suppliers in very few instances. It is therefore not clear that a newly created competitor that is around a third of the size of Ecolab in the F&B market could exert a sufficient level of competitive constraint on the merged entity to address the SLC we have found.

10.156 ☒, and so it should be excluded from the list of Divestment Customers. However, we note that ☒ told us that it ☒. The exclusion of ☒ (which represents approximately ☒ of ☒ turnover in the UK F&B market) provides further evidence that the Alternative Divestiture Proposal will not comprehensively address the SLC and adverse effects that we have found to arise from the Merger.

10.157 The Parties have offered to include ☒ in the Alternative Divestiture Proposal. Given that most of these customers do not have contracts, it is not clear how these customers would be effectively transferred so as to ensure a newly

²³⁴ As demonstrated by the significant changes, outlined at paragraph 10.111 above, to the proposed portfolio.

created competitor would have sufficient scale. In addition, at the response hearing the Parties told us that it would not be attractive to extend the Alternative Divestiture Proposal to include smaller F&B customers, as this would divert focus from the transfer of the Large UK Customers and risked undermining the effectiveness of the Alternative Divestiture Proposal.

10.158 However, not transferring the ✂ would further reduce the scope of the divestiture package and thus the size and scale of any purchaser, further exacerbating our concerns that the purchaser in combination would not comprehensively address the SLC that we have identified. The practical implications of transferring Small UK Customers is discussed further in paragraphs 10.160 to 10.172.

10.159 Notwithstanding our serious concerns with the scope of the Alternative Divestiture Proposal, we also assessed other design issues set out in paragraph 10.98 above.

Creation of an effective competitor

10.160 An effective remedy would create a competitor with the ability to compete sufficiently effectively in the market to address the SLC and the adverse effects that we have found to arise from the Merger. We examined the composition of the Alternative Divestiture Proposal and assessed the risks and issues involved in creating such an effective competitor. In particular, we looked at issues regarding:

- (a) the transfer of customers;
- (b) the transfer of staff;
- (c) warehousing, distribution and manufacturing; and
- (d) brand and reputation.

- *Transfer of customers*

10.161 As outlined in paragraphs 10.142 to 10.159, the proposed portfolio of F&B customers is only a proportion of ✂ UK F&B business. Leaving aside the issue of comprehensiveness and the considerable uncertainty regarding the composition of the portfolio that would be divested,²³⁵ for the remedy to be

²³⁵ See paragraph 10.111 above.

effective we must be confident that customers will transfer to the new provider and remain with that provider.

- 10.162 The Alternative Divestiture Proposal includes the transfer of customer contracts ‘where applicable’. At the response hearing ☒ told us that ☒% (☒) of sales to Large UK Customers are under contract. Information subsequently provided to us by ☒ showed that ☒ of the ☒ Large UK Customers that comprised its proposed divestiture package did not have contracts.²³⁶ We understand an even lower proportion of Small UK Customers have contracts – the Alternative Divestiture Proposal says that these customers ‘typically do not have contracts’.²³⁷
- 10.163 We note that there is no legal mechanism to ensure that the customers the Parties propose to transfer will actually move and stay with any purchaser. Even if ☒ decided not to service them, these customers are likely to choose to move to one of the other large suppliers.
- 10.164 The Parties have told us that where contracts are in place, they are easily broken: Ecolab told us that when a customer under contract is not content, it will call another competitor and there are no barriers to switching. Ecolab told us that for those customers where there was a contract, there was typically a change of control clause which would allow the customer to terminate the contract in the event the Parties attempted to transfer it to a new supplier. We consider that these typical contractual conditions would make it easy for a Divestment Customer to return to ☒ or choose a new supplier.
- 10.165 For those customers without contracts, who constitute a significant part of the proposed remedy package, it is not clear to us what ☒ is proposing to divest. The Alternative Divestiture Proposal appears to offer little more than a promise from ☒ to try and obtain customers’ agreement to transfer to a new supplier that they will not have chosen themselves. Even those customers with contracts can readily choose another provider if forced to move from ☒ as customer consent is required.²³⁸
- 10.166 The evidence from customers as set out in paragraphs 10.131 to 10.139, is clear and conclusive on this point. All the large customers we spoke to would not welcome a transfer of the kind proposed in the Alternative Divestiture


²³⁶ The ☒ customers exclude ☒.


²³⁷ [Ecolab response to the Remedies Notice](#), paragraph 3.5.1.

²³⁸ This contrasts with the Rentokil acquisition of Cannon cited by the Parties where the CMA found that the ‘vast majority’ of customers did not have any change of control clause in their contracts. See [CMA Inquiry into the completed acquisition of Cannon Limited by Rentokil Initial plc](#), paragraph 11.67.


Proposal, and would, at the point of being forced to move, assess their options.

10.167 We found during our inquiry that customers are risk-averse when it comes to changing suppliers.²³⁹ Most customers we spoke to told us 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.²⁴⁰

10.168 At the response hearing  agreed that customers probably would not like having to change suppliers.

10.169 Customers told us that transferring their supply to another provider would be costly and some said it would be time consuming. The costs and risks of changing suppliers can be high for customers, which may deter them from transferring away from  products. Several customers emphasised the importance of validating a new supplier's chemicals due to food safety issues, in order to minimise any risks of a food hygiene incident. We consider that transferring customers to a new supplier imposes costs and risks on a customer and would take up considerable amounts of their time.

10.170 Ecolab told us that the CMA's inquiry into the completed acquisition of Cannon by Rentokil accepted a remedy that involved a transfer of customers, which supports the assessment of the effectiveness of the Alternative Divestiture Proposal. The CMA considers each case on its merits, and with particular regard to the nature of the SLC that it has found, and to what is needed to achieve as comprehensive a solution as is reasonable and practicable to that SLC and its adverse effects. Accordingly, the outcome of prior cases cannot determine the outcome of subsequent investigations. Moreover, of particular relevance to the question of the effectiveness of transferring customers to address the SLC we have found in this case, we note that (in contrast, for example, to Rentokil/Cannon),²⁴¹ all of the customers we spoke to as part of the remedies process in this case raised concerns over the time, costs or risks involved in switching.

10.171  proposed to financially incentivise customers to switch by covering some of their costs. However, the Alternative Divestiture Proposal is not clear how this compensation would be determined and what commitment the customer

²³⁹ [Provisional Findings](#), paragraph 7.46.

²⁴⁰ [Provisional Findings](#), paragraph 19.

²⁴¹ [CMA Inquiry into the completed acquisition of Cannon Limited by Rentokil Initial plc](#), paragraph 11.134.

would need to make to receive this compensation. In any event, even if these issues were to be addressed, the compensation would not address the risks of switching to the customers' businesses, nor the customer's time and focus on trialling a new supplier's products. As set out in paragraphs 10.131 to 10.139, these risks and the time taken are seen as significant by customers.

10.172 The risks, costs and time involved with transfer to a new supplier, which cannot be adequately mitigated by the compensation proposed by Ecolab, coupled with the lack of a suitable contractual mechanism to carry out the transfer, means that there are serious risks to effectiveness of the Alternative Divestiture Proposal.

- *Transfer of staff*

10.173 At the response hearing the Parties told us that the transfer of the sales staff would be key to increasing the capabilities of a prospective purchaser. ☒ identified ☒ such staff ☒. In its ☒.

10.174 We agree that the successful implementation of the remedy, from the Parties' own rationale, rests in part on a successful transfer of these staff. Without them, there is an even greater risk of customers not transferring to the new purchaser post completion as these staff are key points of contact for ☒ Large UK Customers. In addition, the skills and capabilities of the purchaser would not be enhanced as a result of the remedy. Both risks, if they materialised, would mean the remedy was not effective.

10.175 ☒ told us that the identified employees provide the customers with both technical and service support. Ecolab told us that it is not uncommon in the ordinary course of business ☒.

10.176 The Parties told us that whilst some customers may not have their account manager transfer with them as part of the Alternative Divestiture Package, ☒ have experienced a change in account manager in the last ☒ told us that the potential purchasers it has identified in any event would have their own talented staff.

10.177 ☒. The staff in question would need to agree to a transfer of their employment and potentially a change in their contractual conditions.

10.178 We consider there is a significant risk that the ☒ staff in question (☒) may not agree to this transfer. ☒ proposal to financially incentivise the employees to transfer may reduce the risk, particularly with regard to the employees leaving shortly after moving over. However, asking employees to move to a new employer is unusual and higher risk compared to the sale of a stand-

alone business which involves less change for the employees who would typically transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

10.179 For a period after completion, the Divestment Customers would be supplied with ☒ products and (for a majority of them) be served by ☒ staff. We consider that this makes the transition to the purchaser's products more difficult and may only serve to delay the customer transfer risks from materialising.

10.180 Furthermore, the Parties told us at the response hearing that the ☒. That leaves approximately ☒ of customers who would be served by a new account manager. That means that, in effect, some customers are being asked to move to a new company with no familiar people, no familiar management and would soon be forced onto different products. Whilst ☒, that is in the context of continued supply from the same provider with the same services provided. Our view, which is supported by comments from customers, is that the greater the change imposed on customers, the more dissatisfied they are likely to be with any remedy.

- *Warehousing, distribution and manufacturing*

10.181 The Parties' Alternative Divestiture Proposal includes warehousing and distribution support under a transitional services agreement. Ecolab told us that it and Holchem have different service models in this regard with Ecolab outsourcing its distribution and Holchem with in-house distribution. We agree with Ecolab that there are likely various different models through which distribution can be achieved and we do not consider distribution to be a major obstacle.

10.182 ☒. The site does not currently supply cleaning chemicals to F&B customers so would need to be repurposed by the purchaser at cost and time post completion. Even if the site could be readily converted, any staff at ☒ do not supply cleaning chemicals to F&B customers so training and organisational changes would be required, the success of which would remain highly uncertain.

10.183 We note the Parties' submission that there is spare capacity, that toll or contract manufacturing is common in this industry and that a purchaser could readily supply the customers through such means if it did not have manufacturing capacity itself. We consider that sufficient capacity is necessary for a purchaser to be able to provide a similar competitive constraint to Ecolab, and so whilst some small amounts of toll or contract manufacturing may be an acceptable interim solution, in the longer term a

purchaser would also need to have or acquire additional manufacturing, warehousing and distribution capacity in the UK.

10.184 Other suppliers confirmed that whilst this is an industry where some toll/contract manufacturing occurs, there are generally specific reasons for doing so, for example a lack of density in a geographic area, and absent these reasons suppliers would not choose to enter into such agreements.

- (a) ✂ said that it would not consider approaching competitors and outsourcing any of its production to a competitor as costs and marketing cannot sufficiently be controlled.
- (b) ✂ said that the decision of how much to use toll manufacturing versus own manufacturing is a compromise between efficiency and effective delivery – it would be more efficient to manufacture everything in one plant in Europe, but having local manufacturing allows for better delivery times.
- (c) ✂ said toll manufacturing is possible but not a sustainable alternative with inefficiencies and nobody would do so if they had manufacturing capability in the country, as it has implications for the cost of goods sold ✂.

10.185 Neither Ecolab's nor Holchem's F&B business extensively use toll or contract manufacturing in the UK. We consider that without sufficient manufacturing capacity, a purchaser of the Alternative Divestiture Proposal would not be as flexible as Ecolab and Holchem pre-Merger. Nor would it have the same level of control over its costs. Without such capacity, available in a timely manner, we do not consider that the purchaser would be an effective competitor for F&B customers.

10.186 However, we note that ✂ potential suppliers ✂ said that they would have sufficient capacity to handle the manufacturing, formulation and distribution of products to the Divestment Customers.

10.187 ✂ said that, as of today, they do not have large additional incremental industrial capacity in their local UK plant to handle the manufacturing, formulation and distribution of products to the Divestment Customers. However, in the medium term, following additional local manufacturing capital expenditure or implementation of external contract manufacturing agreement, they would be able to manufacture those product volumes locally.

- *Brand and reputation*

- 10.188 Given the characteristics of the F&B market, in particular the importance to UK F&B customers of having a supplier with an established reputation, reliability and a proven track record in meeting their product quality and service requirements, the starting point for our assessment of whether the Alternative Divestiture Proposal would be effective at addressing the SLC is to consider whether it is capable of creating a new supplier that meets these important customer requirements.
- 10.189 The Alternative Divestiture Proposal does not include the transfer of a stand-alone business, with an established reputation, reliability and a proven track record. It does not include a brand. The cleaning chemicals supplied by the Parties are unbranded products. However, during the inquiry we found that customers valued reliability backed up by high quality technical support services. Customers place weight on a strong supplier relationship.
- 10.190 Ecolab and Holchem are well recognised by customers, with trusted reputations and long-standing UK presence. A supplier without these attributes is likely to struggle, due to a lack of reputation, to convince both the larger customers and smaller customers to switch supply and, more generally, to compete sufficiently effectively to address the SLC that we have found arises from the Merger, whether in the short- or longer-term.
- 10.191 Ecolab told us that customers can, and do, test suppliers' reliability rather than rely on reputation. We agree with this characterisation of competitive conditions. However, given the costs, time and risk transferring imposes on customers set out in paragraphs 10.131 to 10.139, customers are more likely to test trusted companies with long-standing UK presence.
- 10.192 We consider having well-recognised and well-established brands such as Ecolab and Holchem gives customers some assurance as to reliability, and therefore having an equivalent brand strength is likely to be an important factor in ensuring the remedy would be effective at creating a competitor with the ability to compete sufficiently effectively to address the SLC and the adverse effects that we have found to arise from the Merger (see paragraphs 7.37 and 7.39).
- 10.193 Ecolab told us that the ☒ potential purchasers it has identified, ☒ are ☒ suppliers and therefore have a well-recognised brand. Whilst ☒ parties might benefit from strong ☒ brand awareness, in our inquiry we found this not to be the case with UK customers who had limited knowledge of ☒. ☒ told us that the lack of a recognised name meant that expanding its business took

time, which suggests that Divestment Customers may not recognise their brand.



10.194 In light of the above, we consider there are a number of significant deficiencies and material risks with regard to the scope of the Alternative Divestiture Proposal to address the SLC comprehensively, including an absence of scale benefits, material risks with customer transfer, reliance on a small number of transferring staffs and no established reputation in the UK for the business.

10.195 We consider these deficiencies result in a divestiture package of limited attractiveness, which significantly narrows the pool of potential purchasers who would be able to overcome them. The next section assesses whether there are any purchasers that might be able to overcome these significant shortcomings.

Availability of suitable purchasers

10.196 The identity and capability of a purchaser is of major importance in ensuring the success of a divestiture remedy. The CMA will wish to satisfy itself that a prospective purchaser is independent of the merger parties; has the necessary capability to compete; is committed to competing in the relevant market; and that divestiture to the purchaser will not create further competition concerns.²⁴²

10.197 As set out above, the Alternative Divestiture Proposal contains, in our view, a number of significant deficiencies. In particular, it is not a viable, stand-alone business and therefore any purchaser is likely to find it difficult to compete sufficiently effectively to address the SLC that we have found to arise from the Merger.

10.198 One of our principal concerns is that in this market there is customer reluctance to switching suppliers and, in the event they are required to move, customers are likely to re-assess their options. The Divestment Customers have chosen to be supplied by , and our evidence shows that they view switching suppliers as a costly, risky and time-consuming business. As a result, we consider that a number of the Divestment Customers may choose to move back to  or switch to alternative suppliers, at the point of transfer or shortly afterwards, rendering the remedy ineffective. We do not consider that either the Parties or any potential purchaser can provide the CMA with

²⁴² [Merger remedies guidance CMA87](#), paragraph 5.20-5.21.

assurance that they could sufficiently mitigate this risk because it is inherent to the design of the remedy.

- 10.199 The Parties consider that any third party currently making F&B cleaning chemicals sales in the EEA could potentially be suitable as a purchaser of the Divestment Business (though they noted that the CMA would likely rule out a sale to Diversey or Christeyns on the basis of the provisional findings).²⁴³ At the response hearing the Parties told us that due to the scheduled withdrawal of the UK from the European Union, it might be preferable if a purchaser was already operating in the UK. The Parties also told us that there were no significant barriers to European suppliers operating in the UK.
- 10.200 The Parties told us that the proposed divestiture portfolio of contracts represented an annual turnover of approximately £~~20~~ million.²⁴⁴ They said that production of the additional volume of the purchaser's products required to supply the Divestment Customers should not be an issue for any purchaser, given supply-side substitutability and the lack of capacity constraints in the industry and/or the minimal costs involved in acquiring the necessary additional manufacturing assets.²⁴⁵ The Parties also said that if a purchaser did not have sufficient capacity then it could enter into a toll manufacturing agreement.
- 10.201 At the response hearing the Parties told us they were talking to ~~2~~ potential purchasers, ~~2~~. ~~2~~ are active in the food and beverage business. ~~2~~. The Parties told us that ~~2~~ companies have a UK presence and ~~2~~ and that ~~2~~.
- 10.202 ~~2~~ told us it has sufficient production and formulation capacity to service the divested customers, has some recognition of its brand and name in the marketplace, with a product brand name used elsewhere in the world. ~~2~~ told us that it considers that it has the staff, assets and capability to integrate the divested customers but timing would be customer driven.
- 10.203 ~~2~~ also told us that it has not carried out any similar customer transfer before, although it understands ~~2~~ has done this successfully. ~~2~~ told us that customers are likely to require a trial period which could be three to six months to try a new formulation. ~~2~~ said that this trial period depends on the customer having sufficient downtime in its manufacturing capacity and that some customers might not be willing to trial the new products immediately.
- 10.204 ~~2~~ told us that it would expect to transfer the majority of the divested customers to its products, but it had insufficient information to provide a

²⁴³ [Ecolab response to the Remedies Notice](#), paragraph 3.10.

²⁴⁴ ~~2~~.

²⁴⁵ [Ecolab response to the Remedies Notice](#), paragraph 3.6.1.

precise estimate of the likely number of customers that would successfully transfer, which it acknowledged is a risk.

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10.210 Ecolab told us that it considered there would be other potentially interested and suitable purchasers for the Alternative Divestiture Proposal. However, it said that competition issues would be likely to arise if the purchaser were one of the larger established players in the UK.²⁴⁶

10.211 We consider that, were a small cleaning chemical supplier in the UK to purchase the portfolio of customers set out by the Parties, the smaller competitor would need to increase its technical support services, for a diverse range of customers, in a reasonable time frame. We consider that there would be some inevitable execution risk, as well as a transitional period where customers might not get the support that they expect, which increases the risk that customers might refuse to transfer as part of the Alternative Divestiture Proposal. It is not clear that such a purchaser would have the ability to compete sufficiently effectively to address the SLC and the adverse effects that we have found to arise from the Merger.

10.212 The portfolio of customers in the Parties' Alternative Divestiture Proposal covers several segments of the F&B market (eg food, brewing, dairy). As a result, a suitable purchaser would need technical expertise in each of these segments. Many of the smaller players in the UK focus on one particular segment of the F&B market in order to be successful. The smaller UK suppliers do not on the whole serve larger UK customers, so they are unlikely to have the capability to serve them. It is not clear that customers would be satisfied with being served by a small competitor with limited experience in their segment, which increases the risk the customers may refuse to transfer as part of the divestiture.

10.213 It is also far from clear that any of the smaller competitors in the UK have sufficient capacity to integrate such a large customer base, and even if ✂ were able to help with the integration, it is not clear that a smaller competitor

²⁴⁶ ✂.

would have the scale and capacity to compete effectively going forward to provide a competitive constraint sufficient to address the SLC we have found. For example, from our estimates, the largest competitor outside the top four in the F&B market is Niche Solutions which has annual revenues of approximately £100 million. Niche Solutions would be £100 million in size if it took on the £100 million customer portfolio from [redacted] and would still have an F&B business less than half the size of [redacted]. Niche Solutions has a much larger UK F&B customer base than [redacted]. Alongside the challenge of taking on the Large UK Customer portfolio, any purchaser would need an ability to compete for new business, as we would expect the Parties to have done in the absence of the Merger.

10.214 Unless part of a wider group of companies, we do not consider smaller UK F&B suppliers can offer the price, quality or service levels that would help attract and retain the Large UK Customers that comprise the divestment portfolio and address the SLC resulting from the Merger. A substantial proportion of the portfolio of customers would be likely to object to a transfer to such a buyer, undermining the effectiveness of the remedy.

10.215 All of the above suggests that the pool of potential purchasers may be very small. In our view most of the smaller suppliers do not have the operational capacity or sector expertise to be able to effectively integrate and service the proposed portfolio of Divestment Customers. While [redacted] told us that they did have this capability, notwithstanding their views, their relatively small size and lack of a long-term track record in the UK could undermine the effectiveness of the divestiture, as customers put a premium on reliability and reputation. In any event, even if these potential acquirers had sufficient capability this would not overcome the material remedy composition risks we have identified.

Risks to the divestiture process

10.216 At the response hearing, Ecolab told us that it was in discussions with [redacted] potential purchasers. It said that it was confident that it would be able to complete the transfer of customers within 12 months and that it could continue to provide transitional services to the purchaser. [redacted].

- *The transfer process*

10.217 [redacted]. Customer consent would be required before customers will move to another supplier. The Alternative Divestiture Proposal is structured such that, after completion, customers would continue to be supplied with [redacted] until transferred to the purchaser's products during a post-completion transition period.

10.218 This means that, for a period after completion, a prospective purchaser would not be directly serving the new customers with its own products. This means that even in the event that all the customers were willing to transfer, the SLC would not be remedied until a point in time in the future post completion of any deal. This is not the case with comprehensive structural divestments of stand-alone businesses where the remedy addresses the SLC on completion of the transaction. We do not consider this to be a comprehensive solution to address the SLC and resulting adverse effects.

10.219 ✂. All firms have an incentive to protect themselves from reputational damage and if customers are adversely affected by transferring to another supplier this could harm Ecolab. We agree Ecolab would have an incentive to avoid a disruptive transfer process.

10.220 However, whilst ✂ might be incentivised to avoid customer disruption as far as possible, as outlined above, one of the fundamental problems with the design of the Alternative Divestiture Proposal is that customers will not transfer to the purchaser's products until after completion. Following the completion of such a deal the CMA has limited powers to intervene if customers reasonably refuse to transfer or promptly transfer to another provider or return to ✂. This increases the risk that the divestiture process will not be effective.

10.221 ✂. This does not address our concerns, and the resulting loss of customer choice would demonstrate a loss of competition rather than remedying it. The merged entity's commitment not to supply or solicit these customers for a period is also likely to restrict or distort competition. No matter how hard the merged entity and an approved purchaser tried to convince customers to transfer, there is no obligation on a customer to transfer, and the CMA would have no certainty of customers doing so and no redress if they chose not to.

10.222 The remedy requires customer contracts to transfer to the prospective purchaser on completion. This is not something that can be done easily in an industry such as this, as customer consent is required, and customers usually undergo trials and testing prior to agreeing to move to another provider. Ecolab has suggested that the transitional period might last up to a year after completion.

- *The transitional period*

10.223 We consider there are significant risks and potential deficiencies in the divestiture process, in particular the risk that customers do not want to transfer to a new supplier, or that after completion the customers switch away

from the purchaser and back to ✂. The Parties propose to mitigate these risks through an ‘extensive transition agreement’.

- 10.224 The Alternative Divestiture Proposal involves an extensive transitional period, of at least a year, in which the merged entity would continue to provide chemicals and expert support needed beyond the expertise of the employees who would transfer to the purchaser and continue to support the accounts, to the extent needed by a purchaser. We consider that this would only delay the costs and risks associated with switching rather than eliminating them.
- 10.225 During the period in which the customers are being transferred, it is not clear that the prospective purchaser would have the capacity to be actively and effectively competing in the market (see paragraphs 10.196 to 10.215). We consider that, at the very least, the purchaser’s focus would be likely to be on integrating and retaining the transferred customers rather than attempting to win new ones. It is also not clear how the purchaser could be said to be competing effectively with the Parties during this transitional period if it is supplying its customers with ✂ products.
- 10.226 Whilst the CMA sometimes accepts the need for transitional agreements, the length and scope of these agreements should always be kept to a minimum to sever links between the merger parties and the purchaser as soon as possible. The longer any post-completion cooperation between the merger parties, including the need for an extensive transitional service agreement, the higher the risk of ineffectiveness of the remedy.
- 10.227 Transitional agreements also typically provide for only limited support for a purchaser in specific, non-core aspects of a business such as IT systems or property. The Alternative Divestiture Proposal transitional agreement would be for ✂ to service all of the customers’ needs until customers decide to switch to the approved purchaser or another supplier.
- 10.228 It is unclear how long, post-completion, it would take to switch customers to the purchaser’s products, but it is likely to take a significant amount of time. The Parties told us that they understand that Diversey’s integration of Zenith Hygiene’s customers took longer than a year. However, the Parties also told us that ultimately customers were able to switch all their products, which in the Parties’ view demonstrates that customers can switch easily suppliers and that switching is not uncommon.
- 10.229 Ecolab said that it was willing to limit the duration of the transitional services agreement to one year. However, this still leaves a significant period when we would not expect the remedy to be an effective or comprehensive

solution, and it is unclear what would happen at the end of the period if divested customers were still being supplied with ☒.

Conclusion on the effectiveness of the Alternative Divestiture Proposal

10.230 As outlined in the sections above, we consider the proposed remedy package has serious shortcomings with regard to its comprehensiveness and material risks with regard to its effectiveness.

10.231 The Alternative Divestiture Proposal is not that of a stand-alone business that includes all of the relevant assets pertinent to the SLC. It is ☒ of the size of Ecolab's UK F&B business. This limitation in the scope of the divestiture package and uncertainty regarding its precise composition in terms of customers included in the portfolio constrains its ability to act as a comprehensive solution to address the SLC we have found.

10.232 A fundamental source of risk is the transfer of customers from ☒ to a purchaser, as opposed to transferring a viable, stand-alone business. The evidence from customers is clear and conclusive: they would not welcome a remedy of this type as it would impose costs on them, take time and create risk to their ongoing operations. Most customers in this market cannot be forced to move without their consent, as they either have no contract or would need to agree to novation of their contract, and at the point of being required to transfer, customers are likely to weigh up their options, which include returning to ☒ or finding another supplier. Some may agree to move to a purchaser and be supplied with its products, but we have no certainty of customers doing so, no guarantee they will remain and no powers of redress if they reasonably choose not to.

10.233 We have also identified significant further risks that undermine the comprehensiveness and effectiveness of the remedy:

- (a) The remedy relies heavily on the cooperation of ☒ employees agreeing to change employer.
- (b) A number of customers do not have contracts, so it is unclear what is being divested.
- (c) During the period in which the customers are being transferred, it is not clear that the prospective purchaser would have the capacity to be actively and effectively competing in the market and it is not clear how the purchaser can be said to be competing effectively with the Parties during a substantial transitional period if it is supplying its customers with ☒ products.

10.234 Given the manifest shortcomings that we have identified in terms of the composition of the remedy package, we consider that these would be very difficult for a purchaser to overcome.

10.235 In this context we have carefully considered the purchasers proposed by the Parties and consider that they would not overcome these shortcomings. Moreover, we do not consider any other suitable purchaser would be able to overcome these shortcomings.

10.236 The evidence from customers and the above risks lead us to conclude that the risk profile of the Alternative Divestiture Proposal is high, and therefore it is very unlikely to be an effective remedy.

10.237 Based on the evidence set out above, we consider that the Parties' Alternative Divestiture Proposal would not represent an effective or comprehensive solution to address the SLC and resulting adverse effects identified by the CMA.

Conclusions on remedy effectiveness

10.238 We conclude that the following remedies would be effective in addressing the SLC and resulting adverse effects that we have found:

(a) A sale of Holchem; and

(b) A sale of Holchem Laboratories (see also paragraph 10.59).

10.239 We conclude that the following remedy would not be effective:

(a) The Alternative Divestiture Proposal.

10.240 Having identified which remedies would be effective, we next consider whether there are any relevant customer benefits which should affect our decision on remedies, before considering the issue of proportionality.

Relevant customer benefits

10.241 When deciding on remedies, the CMA may have regard to the effects of remedial action on any RCBs.²⁴⁷ An effective remedy to an SLC could be considered disproportionate if it prevents customers from securing substantial benefits arising from the merger, where these benefits outweigh the SLC and any resulting adverse effects. Insofar as these benefits constitute RCBs for

²⁴⁷ Section 35(5) of the Act.

the purposes of the Act, the statutory framework allows us to take them into account when we decide whether any remedy is appropriate.

10.242 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy. The CMA may modify a remedy to ensure retention of an RCB or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy, or it may decide that no remedy is appropriate.²⁴⁸

10.243 We note that the burden of proof of whether RCBs arise from a merger is on the merging parties. The merging parties are expected to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and to demonstrate that these fall within the Act's definition of such benefits.²⁴⁹ The Parties have not made a formal written submission to the CMA on RCBs.

10.244 Despite not making a formal submission on RCBs, at various stages of the inquiry the Parties have talked about the benefits that arise as a result of the Merger and stated that the Merger is complementary as it allows the quality of service of Holchem to be combined with the innovative products and capabilities of Ecolab. At the response hearing the Parties told us that:

- (a) Ecolab's customers will benefit from improvements to service and logistics as Holchem has trucks and warehouses.²⁵⁰ All of Ecolab's and Holchem's customers will benefit from greater economies of density in field service that will arise from Ecolab and Holchem having a greater concentration of customers, eg reduced delivery time on orders (due to reduced driving time).
- (b) Ecolab's customers will benefit from Holchem's more developed specialism, in the food segment.
- (c) Holchem's customers will gain access to Ecolab's international support from internal experts.²⁵¹
- (d) Holchem's customers will gain access to Ecolab's innovations, aimed at helping customers to better produce safe food and/or reduce total cost of operation.

²⁴⁸ [Merger remedies guidance CMA87](#), paragraph 3.16.

²⁴⁹ [Merger remedies guidance CMA87](#), paragraph 3.20.

²⁵⁰ We understand that Ecolab contracts out its distribution.

²⁵¹ ✂.

10.245 The Act defines RCBs as a benefit to relevant customers in the form of lower prices, higher quality, or greater choice of goods or services in any market in the UK, or greater innovation in relation to those goods or services.²⁵² For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution – they are not limited to final consumers.²⁵³

10.246 In addition, to be properly considered as an RCB under the statutory definition, the CMA must believe that:

- (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and
- (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.²⁵⁴

10.247 In this case, no evidence or submission has been provided to substantiate any of the claimed benefits, in terms of the nature of the benefits claimed, how likely they are to be passed onto customers, and why they may be expected to accrue within a reasonable period as a result of the Merger. Similarly, no evidence has been presented to demonstrate that any benefits are unlikely to accrue without the Merger or a similar lessening of competition occurring.

10.248 We have not identified any potential 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 that we have found to be effective.

The proportionality of effective remedies

10.249 In paragraph 10.238 we summarised our conclusions on which remedies would be effective in addressing the SLC and the resulting adverse effects. Having identified which of the remedy options are effective in addressing the SLC and resulting adverse effects, the CMA then considers whether the effective remedies are proportionate. We set out below our assessment of, and conclusions on, which of these would constitute a proportionate remedy in this case.

²⁵² Section 30(1) of the Act.

²⁵³ Section 30(4) of the Act. See also [Merger remedies guidance CMA87](#), paragraph 3.18.

²⁵⁴ Section 30(2) of the Act.

Framework for assessment of proportionality of merger remedies

10.250 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. If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive (we call this the ‘least onerous effective remedy’). In addition, the CMA will seek to ensure that no remedy is more onerous than necessary or disproportionate in relation to the SLC and its adverse effects.²⁵⁵

10.251 To fulfil this, we consider whether there are any relevant costs associated with each effective remedy option. When considering relevant costs, the CMA's considerations may include (but are not limited to):²⁵⁶

- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the parties, third parties, or the CMA; and
- (c) the loss of any RCBs that may arise from the merger which are foregone as a result of the remedy.

10.252 However, our guidance states that ‘[as] the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties’.²⁵⁷ In particular, for completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy, as it is ‘for the merger parties to assess whether there is a risk that a completed merger would be subject to an SLC finding, and the CMA would expect this risk to be reflected in the agreed acquisition price’.²⁵⁸

10.253 Having identified the least onerous effective remedy, we then consider whether this remedy would be disproportionate to the SLC and its resulting adverse effects. In doing so, we compare the extent of harm associated with the SLC with the relevant costs of the proposed remedy.²⁵⁹

²⁵⁵ [Merger remedies guidance CMA87](#), paragraph 3.6.

²⁵⁶ [Merger remedies guidance CMA87](#), paragraph 3.10.

²⁵⁷ [Merger remedies guidance CMA87](#), paragraph 3.8.

²⁵⁸ [Merger remedies guidance CMA87](#), paragraph 3.9.

²⁵⁹ [Merger remedies guidance CMA87](#), paragraph 3.6.

Views of the Parties

- 10.254 Ecolab told us there is no plausible concern with respect to either international customers or smaller customers (which are managed centrally, typically outside of the UK), no concern with respect to institutional customers, and no concern (nor CMA jurisdiction) with respect to customers in the Republic of Ireland. The remedy, should one be required, need only be sufficient to address a concern relating to 'Large UK Customers'.²⁶⁰
- 10.255 Ecolab told us that a divestiture of all of Holchem clearly goes beyond that necessary to address a concern relating to Large UK Customers. Ecolab told us that such a remedy includes sales with other customer segments outside of the identified area of concern (ie international customers, unformulated, institutional customers, customers located in the Republic of Ireland and Small UK Customers), ✂ the CMA would be requiring a remedy that substantially exceeds and is disproportionate to the overlap.²⁶¹ Ecolab considers the Alternative Divestment Proposal is the most proportionate effective remedy.
- 10.256 Ecolab told us that the Alternative Divestiture Proposal would be sufficient to address the CMA's concerns and significantly less costly than the CMA's suggested remedy. Therefore, in the event that the CMA determines there is an SLC, it is proportionate to accept the Alternative Divestiture Proposal rather than require the divestiture of all or part of Holchem, as proposed by the CMA.²⁶²

Assessment of proportionality

- 10.257 In our assessment of proportionality, we first identified those remedies that are effective and selected the least onerous effective remedy. We then considered whether this remedy was disproportionate to the SLC and its adverse effects.
- 10.258 The Alternative Divestment Proposal put forward by the Parties is not relevant to our proportionality assessment because we found it to not be effective.²⁶³

²⁶⁰ [Ecolab response to the Remedies Notice](#), paragraph 2.3.

²⁶¹ [Ecolab response to the Remedies Notice](#), paragraph 2.4.

²⁶² [Ecolab response to the Remedies Notice](#), paragraph 2.5.

²⁶³ As recognised by the Competition Appeal Tribunal in *SRCL Limited v Competition Commission* [2012] CAT 14 at 46, the CMA is not required to balance the costs of an effective remedy against an ineffective remedy. The Tribunal stated that 'The Guidelines make clear that the comparative cost of different remedies only becomes relevant where the CC identifies a number of remedies which would be effective in addressing the SLC'.

Identification of the least onerous, effective remedy

10.259 We identified the following remedies as being effective solutions to address the SLC and resulting adverse effects that we have found:

- (a) A sale of Holchem; and
- (b) A sale of Holchem Laboratories.

10.260 Holchem Laboratories is a smaller divestiture package than Holchem. As a result, we find the sale of Holchem Laboratories to be the more proportionate remedy.

Is the remedy disproportionate to the SLC and its adverse effects?

10.261 We considered whether a sale of Holchem Laboratories was disproportionate to the SLC and its adverse effects.

10.262 The Parties told us they consider their proposal to be less costly than a sale of Holchem. However, at the response hearing the Parties were not able to advance any relevant costs that should be taken into consideration in our proportionality assessment.

10.263 We have not identified any relevant costs, such as market distortions, from a sale of Holchem Laboratories. Ultimately, we consider this is because such a divestiture would replicate the competitive constraint that Holchem posed pre-Merger. It would also have the benefit of not imposing switching costs and the associated risks on customers who would continue to be serviced by the suppliers they are currently with.

10.264 As noted in paragraph 10.248, we have not identified any relevant RCBs.

10.265 We have found an SLC in the supply of cleaning chemicals (and ancillary services) to F&B customers in the UK. Both Ecolab and Holchem make and supply cleaning chemicals and technical support services for businesses that manufacture, process and package food, drink and dairy products. We are concerned that as a result of this Merger, prices will go up and/or quality standards in crucial support services will deteriorate. Access to competitively-priced, safe and effective cleaning chemicals and services is an important part of keeping food and drink safe and free from contamination.

10.266 These are important concerns, and we have not seen any evidence that the costs of introducing an effective remedy in the form of a divestiture of Holchem Laboratories outweigh the benefits of this remedy.

Conclusion on proportionality

10.267 On the basis of our reasoning as explained above, we conclude that the sale of Holchem Laboratories is the least costly effective remedy and is not disproportionate to the SLC and its resulting adverse effects.

10.268 Therefore, we conclude that the sale of Holchem Laboratories represents a proportionate remedy to the SLC and the resulting adverse effects identified in this final report.

Final decision on remedies

10.269 We conclude that a sale of Holchem Laboratories is an effective and proportionate remedy to address the SLC and its resulting adverse effects we have found.

10.270 We expect to implement the structural remedy by seeking suitable final undertakings from the Parties. The CMA has the power to issue a final order if unable to obtain satisfactory undertakings.