

## **DEROGATION LETTER IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

### **Completed acquisition by Ecolab Inc. of The Holchem Group Limited**

[Please note that ✕ indicates figures or text which have been deleted at the request of the parties for reasons of commercial confidentiality.]

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 24 December 2018 as varied on 22 January 2019.**

We refer to your letter dated 21 October 2019 requesting that the CMA consents to derogations to the Initial Enforcement Order of 24 December 2018 (as varied on 22 January 2019) (the "**Initial Order**"). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Ecolab Inc. ("**Ecolab**"), Ecolab U.S. 2 Inc. ("**Ecolab US**") and Ecolab (U.K.) Holdings Limited ("**Ecolab UK**") are required to hold separate the Ecolab business from The Holchem Group Limited ("**Holchem**") business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Ecolab may carry out the following actions, in respect of the specific paragraph of the Initial Order.

#### **1. Paragraph 5(l) of the Initial Order**

The CMA understands that in order to comply with the CMA's Final Report, personnel working for Ecolab as listed in Annex 1 ("**Ecolab Deal Team**") need to communicate and meet with Holchem senior management as listed in Annex 2 ("**Relevant Holchem Personnel**"). This is required to organise and coordinate the potential sale and to discuss the future corporate structure of Holchem Laboratories Limited and potential buyers (the "**Sale Planning Purpose**").

The Ecolab Deal Team must also be able to communicate with Relevant Holchem Personnel and access certain confidential information relating to the Holchem business in order to properly assist with the implementation of the remedy. This is required so that the Ecolab Deal Team can prepare a 'teaser' document, an information memorandum for sale, the necessary data room information and be in a position to negotiate the sale agreement and any warranties (together, the "**Sale Materials**"). The Sale Materials will contain information about the Holchem business in a form suitable for prospective investors to consider (the

**“Sale Materials Purpose”**). The Sale Materials will contain a description of the Holchem business together with its most recent financial position and its business plans. This information will also facilitate the basis on which detailed due diligence information requirements can also be prepared, including for the purpose of a data room.

The CMA recognises it is important to allow Ecolab and Holchem to initiate these communications as soon as possible to proceed efficiently and enable effective decision making to take place.

Therefore, for the Sale Planning Purpose, the CMA grants consent for Ecolab and Holchem to meet and communicate with each other, subject to the following conditions:

- a) the Holchem personnel who will be party to these discussions are strictly limited to Relevant Holchem Personnel;
- b) the Ecolab personnel who will be party to these discussions are strictly limited to the Ecolab Deal Team;
- c) all members of the Ecolab Deal Team and the Relevant Holchem Personnel have entered into confidentiality agreements in a form agreed by the CMA;
- d) any discussions must be strictly limited and necessary for the Sale Planning Purpose; and
- e) the Monitoring Trustee is copied into all written correspondence relating to the Sale Planning Purpose.

For the Sale Materials Purpose, the CMA grants consent for Ecolab and Holchem to meet and communicate with each other and obtain commercially sensitive information, subject to the following conditions that:

- a) any discussions must be strictly limited to and necessary for the Sale Materials Purpose;
- b) any Holchem information is only shared with the individuals listed in Annex 1;
- c) all Ecolab Deal Team individuals have entered into confidentiality agreements in a form agreed by the CMA;
- d) the CMA may amend the individuals listed in Annex 1 and 2 upon written request; and
- e) the Monitoring Trustee is copied into all written correspondence relating to the subject-matter of this derogation.

Yours Sincerely,

**Steve Pantling**

Assistant Director – Remedies, Business and Financial Analysis

18 November 2019

## **Annex 1**

The Ecolab Deal Team consists of:



## **Annex 2**

Relevant Holchem Personnel consists of:

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