

Completed acquisition by Ecolab Inc. of The Holchem Group Limited

Final Undertakings given by Ecolab Inc. and The Holchem Group Limited to the Competition and Markets Authority pursuant to section 82 of the Enterprise Act 2002

Background

1. On 30 November 2018, Ecolab Inc. (**'Ecolab US'**) acquired 100% of the issued share capital of The Holchem Group Limited (**'Holchem'**). As a result, Ecolab US has ownership and control of Holchem (the **'Merger'**).
2. On 24 December 2018, the Competition and Markets Authority (the **'CMA'**) made an initial enforcement order (**'IEO'**) pursuant to section 72(2) of the Enterprise Act 2002 (the **'Act'**) for the purpose of preventing pre-emptive action in accordance with that section. On 10 May 2019, the CMA issued directions pursuant to paragraph 10 of the IEO requiring Ecolab US, Ecolab U.S. 2 Inc. (**'Ecolab US 2'**) and Ecolab (U.K.) Holdings Limited (**'Ecolab UK'**) and together with Ecolab US and Ecolab US 2, **'Ecolab'**) to appoint a monitoring trustee. ✂ was appointed as monitoring trustee on 17 May 2019.
3. On 24 April 2019, the CMA, in accordance with section 22(1) of the Act, referred the Merger to a group of CMA panel members to determine, pursuant to section 35 of the Act:
 - (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'**) in any market or markets in the United Kingdom (**'UK'**) for goods or services.
4. On 8 October 2019, the CMA published a final report pursuant to section 38 of the Act (the **'Report'**) which concluded that:
 - (a) the Merger has created a relevant merger situation;

- (b) the creation of that situation has resulted in, and may be expected to result in an SLC in relation to the supply of formulated cleaning chemicals and ancillary services to food and beverage ('F&B') customers in the UK; and
 - (c) the CMA should take action to remedy the SLC and any adverse effects resulting from it.
- 5. The CMA, having regard to its findings, requires the divestiture of Holchem Laboratories Limited (the '**Remedy**').
- 6. The implementation of the Remedy will be subject to the following safeguards:
 - (a) Ecolab will be subject to regular reporting requirements.
 - (b) The Monitoring Trustee, appointed in accordance with paragraph 6, will monitor the progress of the implementation of the Remedy.
 - (c) The purchaser must be an Approved Purchaser in accordance with the Purchaser Approval Criteria in Annex 2.
 - (d) These Final Undertakings include a provision enabling the CMA to direct the appointment of a Divestment Trustee to effect the final disposal of the Divestment Business in accordance with the conditions set out at paragraph 10.
- 7. The IEO ceases to be in force on the date of acceptance by the CMA, pursuant to section 82 of the Act, of these Final Undertakings.
- 8. Now therefore each of Ecolab and Holchem gives to the CMA on behalf of itself and, where relevant, its Subsidiaries and Affiliates, the following Final Undertakings pursuant to section 82 of the Act for the purpose of remedying, mitigating or preventing the SLC identified in the Report and any adverse effects resulting from it.

1. Interpretation

- 1.1. The purpose of these Final Undertakings is to give effect to the Remedy identified in the Report and they shall be construed accordingly.
- 1.2. Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report (as appropriate).

- 1.3. The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 1.4. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 1.5. References to recitals, paragraphs, subparagraphs, annexes and schedules are references to the recitals to, paragraphs and subparagraphs of, annexes and schedules to these Final Undertakings unless otherwise stated.
- 1.6. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate.
- 1.7. The annexes form part of these Final Undertakings.
- 1.8. The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.
- 1.9. Further in these Final Undertakings:

‘the Act’	means the Enterprise Act 2002;
‘Affiliate’	means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;
‘Approved Purchaser’	means any purchaser approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 2;
Approved Initial Timetable	means the timetable notified by the CMA to Ecolab in accordance with paragraph 3.3;
‘Approved Timetable’	means the timetable notified by the CMA to Ecolab in accordance with paragraph 9.1;
‘Asset Maintenance Undertakings’	means those undertakings set out in paragraph 4;

‘Associated Person’	means a person who is an associated person within the meaning of section 127 of the Act;
‘business’	has the meaning given by section 129(1) and (3) of the Act;
‘Commencement Date’	✕;
‘Confidential Information’	means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature;
‘control’	includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise, as defined in section 26 of the Act;
‘Decision Date’	means the day following the date on which proceedings in the Competition Appeal Tribunal pursuant to the application brought by Ecolab under section 120 of the Act in respect of the Report ✕;
‘Divestment Business’	means (i) during the Divestiture Period, Holchem, including Holchem Ireland Limited, Holchem Laboratories, Merlin Chemicals Limited and Imperial Janitorial Supplies Limited; and (ii) after the Divestiture Period but before the Final Disposal, may be limited to ✕ if the Divestiture Trustee considers that the inclusion of ✕, ✕ would be materially detrimental to the timely sale or commercial position of ✕, and shall in any event include all of the assets, contracts, staff, shared services and any intellectual property and brands, pertinent to the operations of Holchem

	Laboratories, even if currently provided by other companies in the Holchem corporate group as specified in Annex 1;
‘Divestiture Period’	means the period starting with the Decision Date and ending \times after the Decision Date or such longer period as the CMA may approve on request;
‘Divestiture Trustee’	means a person appointed in accordance with paragraph 10;
‘Ecolab’	means Ecolab US, Ecolab US 2 and Ecolab UK;
‘Ecolab business’	means the business conducted by Ecolab in the UK;
‘Ecolab’s Legal Representatives’	means DLA Piper UK LLP;
‘Ecolab UK’	means Ecolab (U.K.) Holdings Limited;
‘Ecolab US’	means Ecolab Inc.;
‘Ecolab US 2’	means Ecolab U.S. 2 Inc.;
‘Final Disposal’	means the divestiture of the Divestment Business to an Approved Purchaser;
‘Final Undertakings’	means these undertakings, including the Annexes, accepted by the CMA pursuant to section 82 of the Act;
‘Holchem’	means The Holchem Group Limited;
‘Holchem Laboratories’	means Holchem Laboratories Limited;
‘Key Staff’	means those staff who are in positions of executive or managerial responsibility and/or whose performance affects the viability of the relevant business;
‘Monitoring Trustee’	means a person appointed or retained in accordance with paragraph 6;

‘ordinary course of business’	means customary commercial transactions and practices in the day-to-day supply of products and services;
‘Purchaser Approval Criteria’	means the criteria set out in Annex 2;
‘Related Person’	means any Subsidiary, Affiliate or Associated Person;
‘Report’	means the report entitled “Completed Acquisition by Ecolab Inc. of The Holchem Group Limited” dated 7 October 2018 and published by the CMA on 8 October 2019;
‘SLC’	means the substantial lessening of competition and adverse effects identified by the CMA in the Report;
‘Specified Period’	∞;
‘Subsidiary’	has the meaning given by section 1159 of the Companies Act 2006;
Trustee Divestiture Period	means a period of up to ∞ (or such longer period as the CMA may direct) for the Divestment Trustee to meet the Trustee Obligation commencing from the date of appointment of the Divestment Trustee;
‘Trustee Obligation’	means bringing about the Final Disposal, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of effecting the Final Disposal promptly and, in any event, within the Trustee Divestiture Period (or such longer period as the CMA may direct) and such obligation shall include: (a) ∞; and (b) not to impose any restriction on Ecolab or any of its Subsidiaries to operate as they did before the Merger or to compete with the Divestment Business in the future;

	and (c) ✕;
‘UK’	means the United Kingdom of Great Britain and Northern Ireland;
‘Working Day’	means a day that is not a Saturday or Sunday or a bank holiday in England.
‘written consent’	✕.

2. Commencement

- 2.1 These Final Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

3. Divestiture Undertakings

- 3.1 Ecolab and Holchem each give the following undertakings:
- 3.1.1 to implement the Final Disposal within the Divestiture Period having due regard to the findings in the Report;
 - 3.1.2 to comply with any written directions given by the CMA under these Final Undertakings, and to take such steps as may be specified or described in the directions for complying with these Final Undertakings, in particular the appointment of a Divestment Trustee, in the event that:
 - 3.1.2.1 Final Disposal does not take place within the Divestiture Period; or
 - 3.1.2.2 the CMA otherwise directs.
- 3.2 Ecolab undertakes, ✕ implementation of the Final Disposal after the Decision Date.
- 3.3 Ecolab undertakes to provide the CMA, ✕, with a timetable setting out the steps that it proposes to take to ensure compliance with paragraph 3.2 above. The CMA will either approve this timetable as proposed or require reasonable amendments to it and will notify Ecolab of the Approved Initial Timetable.
- 3.4 Ecolab undertakes to inform the CMA as soon as practicable, and in any event within two Working Days, of each of: (i) heads of terms being agreed (if applicable), (ii) a sale and purchase agreement being agreed, and (iii) completion of the Final Disposal.

- 3.5 Ecolab undertakes to seek CMA approval of the final terms of the divestiture prior to the Final Disposal.
- 3.6 Ecolab undertakes to inform the CMA as soon as practicable, and in any event within three Working Days of becoming aware, if it will not, or believes it is unlikely to, achieve divestiture within the Divestiture Period.
- 3.7 Subject to complying with the requirements of Annex 1, the precise configuration of the Divestment Business shall be agreed between Ecolab and any Approved Purchaser, and then approved by the CMA before the Final Disposal (3.7). Ecolab undertakes to provide the CMA with sufficient information regarding each potential purchaser having regard to the Purchaser Approval Criteria to enable the CMA to give its approval of that potential purchaser, which shall not be unreasonably withheld.
- 3.8 The CMA will advise Ecolab whether any potential purchaser is an Approved Purchaser within a reasonable time of the CMA concluding it has received sufficient information.

4. Asset Maintenance Undertakings

- 4.1 Except with the prior written consent of the CMA (which, for the avoidance of doubt, includes any derogations already granted by the CMA under the IEO, which will remain applicable during the Specified Period), Ecolab and Holchem undertake, during the Specified Period, not to take any action which might impede the Final Disposal, including any action which might:
 - 4.1.1 lead to the integration of the Divestment Business with any business controlled by Ecolab;
 - 4.1.2 transfer the ownership or control of any element of the Divestment Business; or
 - 4.1.3 otherwise impair the ability of the Divestment Business to compete independently in the market for the supply of formulated cleaning chemicals and ancillary services to F&B customers in the UK.
- 4.2 Further and without prejudice to the generality of paragraph 4.1, Ecolab and Holchem undertake at all times during the Specified Period to procure that, except with the prior written consent of the CMA (which includes any previously granted derogations under the IEO):
 - 4.2.1 no action is taken by Ecolab to solicit the transfer of customers or staff from the Divestment Business to Ecolab;

- 4.2.2 the Divestment Business is carried on separately from the Ecolab business and the Divestment Business's separate sales or brand identity is maintained;
- 4.2.3 the Divestment Business is maintained as a going concern and sufficient resources are made available for the development of the Divestment Business, on the basis of its pre-Merger business plans;
- 4.2.4 except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Divestment Business;
- 4.2.5 the nature, description, range and quality of goods and/or services supplied in the UK by the Divestment Business are maintained and preserved;
- 4.2.6 except in the ordinary course of business for the separate operation of the two businesses:
 - 4.2.7 all of the assets of the Divestment Business are maintained and preserved, including facilities and goodwill;
 - 4.2.8 none of the assets of the Divestment Business are disposed of; and
 - 4.2.9 no interest in the assets of the Divestment Business is created or disposed of;
- 4.2.10 there is no integration of the information technology of the Divestment Business and Ecolab businesses, and the software and hardware platforms of the Divestment Business remain essentially unchanged, except for routine changes and maintenance;
- 4.2.11 the customer and supplier lists of the two businesses are operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Divestment Business are carried out by the Divestment Business alone and for the avoidance of doubt the Ecolab business will not negotiate on behalf of the Divestment Business (and vice versa) or enter into any joint agreements with the Divestment Business (and vice versa);
- 4.2.12 all existing contracts of the Divestment Business and the Ecolab business continue to be serviced by the business to which they were awarded;
- 4.2.13 no changes are made to Key Staff of the Divestment Business;

- 4.2.14 no Key Staff are transferred between the Divestment Business and the Ecolab business;
- 4.2.15 all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Business; and
- 4.2.16 no Confidential Information passes, directly or indirectly, from the Divestment Business (or any of its employees, directors, agents or Related Persons) to the Ecolab business (or any of its employees, directors, agents or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory, accounting obligations and/or pursuant to a derogation granted by the CMA and any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.
- 4.3 Ecolab undertakes that until Final Disposal, it will (and shall procure that the Divestment Business shall) keep the CMA informed of any material developments (and with the consent of the CMA such updates may be provided through the Monitoring Trustee in accordance with paragraph 8 of these Final Undertakings) relating to the Divestment Business, which include but are not limited to:
- 4.3.1 any interruption of the Divestment Business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements);
- 4.3.2 all substantial customer volumes won or lost or substantial changes to the customer contracts for the Divestment Business, including any substantial changes in customers' demand;
- 4.3.3 substantial changes in contractual arrangements or relationships with key suppliers at the Divestment Business; and
- 4.3.4 substantial changes in the financial position and/or performance of the Divestment Business.
- 4.4 Ecolab undertakes that within a period of five Working Days from the Commencement Date, it will provide a written statement to the CMA confirming its compliance with these Asset Maintenance Undertakings (subject to any granted derogations) and setting out any details of material developments for the purposes of this paragraph 4.4 of these Final Undertakings of which it is aware. Thereafter, Ecolab will provide similar compliance statements to the CMA on a monthly basis until Final Disposal,

with the first such monthly statement to be submitted to the CMA no later than one month from the first written statement.

4.5 Ecolab undertakes to notify the CMA when the Final Disposal has taken place.

4.6 Ecolab undertakes to inform the CMA, without delay, of any developments of which it becomes aware that would risk the Final Disposal within the Divestiture Period.

5. Procedure for consent and notification

5.1 Ecolab undertakes that any application by it for the CMA's consent or approval shall make full disclosure of every material fact and matter within its knowledge that it believes is relevant to the CMA's decision.

5.2 Ecolab recognises that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.

5.3 In the event that Ecolab discovers that an application for consent or approval has been made without full disclosure to the CMA, in accordance with paragraph 5.1, Ecolab undertakes to:

5.3.1 inform the CMA in writing, identifying the information that it omitted to include in the application for consent within two Working Days of becoming aware that the relevant information is misleading or incomplete; and

5.3.2 at the same time or not later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 5.3.1 above, provide to the CMA an application for consent that includes the missing information.

5.4 Ecolab shall use all reasonable endeavours to make each application, or to procure that each application for consent or approval is made, so that it is received by the CMA at least five Working Days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of these Final Undertakings.

5.5 The CMA will use all reasonable endeavours to grant or refuse any consent or approval within the five Working-Day period referred to in paragraph 5.4 above. This provision is without prejudice to the CMA's duties under the Act.

6. Monitoring Trustee – Appointment

- 6.1 Ecolab undertakes to secure the appointment or retention of an independent Monitoring Trustee to perform the functions in paragraph 8 on behalf of the CMA. Provided that the other conditions set out in this paragraph 6 are complied with, the Monitoring Trustee may be the same as already appointed by Ecolab on 17 May 2019. The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities.
- 6.3 The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
- 6.4 Ecolab shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out its functions.
- 6.5 The appointment of the Monitoring Trustee and its terms and conditions must be approved by the CMA. Ecolab shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that it proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed by Ecolab, Ecolab shall provide the CMA with a copy of the agreed terms and conditions of appointment.
- 6.6 If the proposed Monitoring Trustee is rejected by the CMA, Ecolab shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 6.2-6.4 above.
- 6.7 The provisions of paragraph 6.8 below shall apply if:
 - 6.7.1 Ecolab fails to nominate persons in accordance with paragraph 6.5 above;
 - 6.7.2 those further persons nominated by Ecolab in accordance with paragraph 6.6 above are rejected by the CMA; or

- 6.7.3 Ecolab is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
- 6.8 The CMA shall nominate one or more persons to act as Monitoring Trustee, and Ecolab shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
- 6.9 The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out in paragraph 8 below and that the Monitoring Trustee will monitor the compliance of Ecolab with its obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as it reasonably considers necessary to carry out its functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out its functions under these Final Undertakings.
- 6.10 In event that Ecolab proposes to retain the current Monitoring Trustee, no later than five Working Days after the Commencement Date, Ecolab shall provide the CMA with a copy of the updated agreed terms and conditions of appointment that reflect these Final Undertakings.

7. Monitoring Trustee – replacement, discharge and reappointment

- 7.1 Ecolab acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require Ecolab to replace the Monitoring Trustee.
- 7.2 If the Monitoring Trustee is removed under paragraph 7.1 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has affected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in paragraph 6 above.

8. Monitoring Trustee – functions

- 8.1 The Monitoring Trustee's functions as set out in this paragraph 8 are to monitor and review compliance with these Final Undertakings and progress towards the Final Disposal, and shall in particular include:
- 8.1.1 monitoring compliance with the Asset Maintenance Undertakings;
and

8.1.2 monitoring the progress made against the Approved Timetable towards Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings including:

8.1.2.1 the steps that have been taken towards the preparation of agreements for the transfer of the Divestment Business and the persons to whom such agreements have been distributed;

8.1.2.2 where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between Ecolab and its financial or other advisers and possible purchasers or its financial or other advisers in connection with the disposal process; and

8.1.2.3 in instances where the Monitoring Trustee reasonably considers there to be a risk that Ecolab will not meet a step in the Approved Timetable, the Monitoring Trustee may attend meetings between Ecolab and possible purchasers in connection with the disposal process.

8.2 The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these Final Undertakings and will provide a written report to the CMA every four weeks, the first report to be submitted not later than three weeks from the Commencement Date.

9. Divestiture Reporting Obligations

9.1 Ecolab undertakes that within the period of five Working Days from the Decision Date it will provide a written report to the CMA setting out the timetable that it proposes to adopt, subject to the CMA's approval, to ensure the Final Disposal. The CMA will either approve this timetable as proposed or require reasonable amendments to it and will notify Ecolab of the Approved Timetable.

9.2 The report provided under paragraph 9.1 shall also outline the progress that Ecolab has made towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings, and shall in particular report on:

9.2.1 the status of any discussions that have been held with potential purchasers of the Divestment Business;

- 9.2.2 the progress that has been made towards agreeing heads of terms (if applicable);
 - 9.2.3 the steps that have been taken towards reaching a sale and purchase agreement and the persons to whom any agreement has been distributed; and
 - 9.2.4 such other matters as may be directed by the CMA from time to time.
- 9.3 Thereafter Ecolab will provide similar reports to the CMA every two weeks, or at such other interval as agreed by the CMA, until Final Disposal. The reports will include an update on the progress that has been made against the Approved Timetable and, with the consent of the CMA, such reports may be provided through the Monitoring Trustee.
- 9.4 Ecolab undertakes that in the report to the CMA, it shall, among other things, provide to the CMA:
 - 9.4.1 the total number of persons who have lodged a formal bid with Ecolab for the acquisition of the Divestment Business since the publication of the Report;
 - 9.4.2 the name, address, email address, contact point and telephone number of each person who has lodged a formal bid with Ecolab, since the publication of the Report and subsequently been short-listed by Ecolab as a preferred purchaser; and
 - 9.4.3 details of the efforts taken by Ecolab and its financial advisers to solicit purchasers for the Divestment Business.
- 9.5 In the event that Ecolab does not meet a step as set out in the Approved Timetable or is otherwise delayed in implementing the Final Disposal, Ecolab undertakes to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than three Working Days from becoming aware that a step in the Approved Timetable has not been met.

10. Divestiture Trustee – appointment

- 10.1 Ecolab recognises and acknowledges that the CMA may direct the appointment of a Divestment Trustee at any time after the expiry of the Divestiture Period, or prior to the expiry of the Divestiture Period, where the CMA, upon reasonable grounds, considers that Ecolab has not complied with the Approved Timetable in such a way that final disposal of the Divestment Business may not be expected to take place within the Divestiture Period.

- 10.2 Ecolab undertakes that on the direction of the CMA and in accordance with such directions given as to timing, Ecolab shall submit to the CMA for approval a list of persons from which it proposes to appoint a Divestiture Trustee with sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 10.3 below and shall include among other things:
- 10.2.1 the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil the Trustee Obligation; and
- 10.2.2 a schedule of the steps to be taken to give effect to the mandate.
- 10.3 Each person on the list referred to in paragraph 10.2 shall be independent of and unconnected to Ecolab, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
- 10.4 The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld or delayed) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one name is approved, Ecolab shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, Ecolab shall be free to choose the Divestiture Trustee to be appointed from among the names approved. Ecolab undertakes to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
- 10.5 If all the proposed Divestiture Trustees are rejected by the CMA, Ecolab shall submit the names of at least two further persons within four Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 10.2-10.4 above.
- 10.6 The provisions of paragraph 10.7 below shall apply only if:
- 10.6.1 Ecolab fails to nominate persons in accordance with paragraph 10.2 above;
- 10.6.2 those further persons nominated by Ecolab in accordance with paragraph 10.5 above are rejected by the CMA;

10.6.3 Ecolab is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.

10.7 The CMA shall nominate one or more persons to act as a Divestiture Trustee, and Ecolab shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

11. Divestiture Trustee – functions

11.1 Each of Ecolab and Holchem recognise and acknowledge that:

11.1.1 the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty to implement the Trustee Obligation;

11.1.2 in order to implement the divestiture of the Divestment Business, the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the ~~SC~~, where the CMA has reasonable grounds for believing that the divestiture of the Divestment Business cannot be achieved within the Trustee Divestiture Period;

11.1.3 the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of the Trustee Obligation such terms and conditions as the CMA considers appropriate; and

11.1.4 the Divestiture Trustee shall protect the legitimate financial interests of Ecolab subject to the Divestiture Trustee's overriding obligations to give effect to the Trustee Obligation.

11.2 Ecolab recognises and acknowledges that the Divestiture Trustee shall take such steps and measures as it considers necessary to discharge the Trustee Obligation and to that end, the Divestiture Trustee may give written directions to Ecolab and Holchem. Ecolab and Holchem undertake to comply with such directions or to procure compliance with such directions as are within their respective powers and to take such steps within their respective competence as the Divestiture Trustee may specify.

11.3 Ecolab recognises and acknowledge that in the performance of the Trustee Obligation, the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of Ecolab or Holchem. Ecolab

undertakes that it shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

12. Divestiture Trustee – duties and obligations of Ecolab

- 12.1 Ecolab and Holchem undertake to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request, relevant to the divestiture but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require to divest the Divestment Business.
- 12.2 Ecolab and Holchem recognise and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege) and Ecolab and Holchem undertake to provide the Divestiture Trustee upon reasonable request with copies of any such items. On the reasonable request of the Divestiture Trustee, Ecolab and Holchem undertake to make available to the Divestiture Trustee one or more offices on their respective premises and ensure personnel where necessary are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary for divestiture, subject in each case to the Divestiture Trustee's compliance with Holchem's or Ecolab's internal policies.
- 12.3 Ecolab and Holchem undertake to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation, including by the appointment of advisers to assist with the disposal process. Ecolab and Holchem undertake that upon the reasonable request of the Divestiture Trustee they shall execute the documents required to give effect to the Trustee Obligation.
- 12.4 Ecolab and Holchem undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the duty to divest the Divestment Business and Ecolab and Holchem recognise and acknowledge that the Divestiture Trustee, its employees, agents or advisers shall have no liability to Ecolab or Holchem or any of their respective Subsidiaries or Affiliates for any liabilities arising out of the proper performance of the duty to divest the Divestment Business, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.

- 12.5 Ecolab undertakes that, at Ecolab's expense, the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate for the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by Ecolab. Should Ecolab refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Ecolab, approve and direct the appointment of such advisers.
- 12.6 Each of Ecolab and Holchem undertake to make no objection to the Final Disposal save on the grounds of either bad faith by the Divestiture Trustee or failure of the Divestment Trustee to reasonably protect the legitimate financial and business interests of the Parties, subject to the Trustee Obligation. Where the either of Ecolab or Holchem wish to make an objection on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee reasonably to protect its legitimate financial and business interests, the relevant party shall submit to the CMA a notice setting out its objections within two Working Days from the day on which it became aware of the fact or facts giving rise to its objection.

13. Divestiture Trustee – replacement, discharge and reappointment

- 13.1 Ecolab acknowledges that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require Ecolab to replace the Divestiture Trustee.
- 13.2 If the Divestiture Trustee is removed under paragraph 13.1 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has affected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraph 10 above.
- 13.3 Ecolab recognises and acknowledges that, other than in accordance with paragraph 13.1 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

14. Variations to these Final Undertakings

- 14.1 The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.

14.2 Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.

14.3 The consent of the CMA shall not be unreasonably withheld.

15. General obligations to provide information to the CMA

15.1 Ecolab undertakes that it shall promptly provide to the CMA such information and such cooperation as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections 82, 83 and 94 of the Act.

15.2 Ecolab undertakes that should it at any time be in breach of any provision of these Final Undertakings, it will notify the CMA within three Working Days starting with the date it becomes aware of the breach to advise the CMA that there has been a breach and of all the circumstances of that breach.

15.3 Where any person, including a Monitoring Trustee or Divestiture Trustee must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, Ecolab undertakes that it will take reasonable steps within its power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of Ecolab to any person other than to the CMA, without the prior written consent of both the CMA and Ecolab.

16. Acceptance of service

16.1 Ecolab hereby authorises Ecolab's Legal Representatives, whose address for service is Alexandra Kamerling, Richard Jenkinson and Chloe Cumber of DLA Piper UK LLP, 160 Aldersgate St, Barbican London, EC1A 4HT, to accept on its behalf service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to Ecolab or its Subsidiaries or Affiliates in connection with proceedings in court in the UK).

16.2 Unless Ecolab (as the case may be) informs the CMA that Ecolab's Legal Representatives have ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on its behalf, any document, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served on Ecolab if it is served on Ecolab's Legal Representatives, and service or

receipt shall be deemed to be acknowledged by it if it is acknowledged by email from Ecolab's Legal Representatives to the CMA.

- 16.3 Paragraph 16.1 has effect irrespective of whether, as between Ecolab and Ecolab's Legal Representatives, Ecolab's Legal Representatives have or continue to have any authority to accept and acknowledge service on behalf of it (unless it informs the CMA that Ecolab's Legal Representatives have ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by Ecolab's Legal Representatives (including a failure to notify Ecolab of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

17. Effect of invalidity

- 17.1 Ecolab undertakes that should any provision of these Final Undertakings be contrary to law or invalid for any reason, it shall continue to observe the remaining provisions.

18. Extension of time

- 18.1 Ecolab recognises and acknowledges that the CMA may, where it considers it appropriate, in response to a written request from Ecolab showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which Ecolab, the Monitoring Trustee and/or the Divestiture Trustee (as the case may be) must take action.

19. Undertakings given jointly and severally

- 19.1 Where undertakings in these Final Undertakings are given by Ecolab and Holchem, they are given jointly and severally.

20. Governing Law

- 20.1 These Final Undertakings shall be governed by and construed in all respects in accordance with English law.
- 20.2 Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

FOR AND ON BEHALF OF ECOLAB INC.

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Signed

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Name

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Title

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Date

FOR AND ON BEHALF OF ECOLAB U.S. 2 INC.

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Signed

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Name

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Title

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Date

FOR AND ON BEHALF OF ECOLAB (U.K.) HOLDINGS LIMITED

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Signed

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Name

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Title

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Date

FOR AND ON BEHALF OF THE HOLCHEM GROUP LIMITED

.....
Signed

.....
Name

.....
Title

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Date

Annex 1: Matters included within the Divestment Business

(a) Final Disposal during Divestiture Period

If the Final Disposal is concluded during the Divestiture Period: a sale of all the shares held by Ecolab Inc. and its Subsidiaries in Holchem and all of its Subsidiaries.

(b) Final Disposal by Divestiture Trustee

If the Final Disposal is concluded after the Divestiture Period by the Divestiture Trustee: a sale of Holchem (see above) or ~~SC~~. If the Divestiture Trustee considers that the inclusion of ~~SC~~, ~~SC~~ would be materially detrimental to the timely sale or commercial position of ~~SC~~ it may limit the Final Disposal to ~~SC~~ and to the extent to which assets, staff or operations pertinent to the operations of Holchem Laboratories are provided by or held within other parts of the Holchem corporate group, as per paragraph 10.59 of the Report, a divestiture of Holchem Laboratories shall include all such assets, staff and operations.

A sale of Holchem Laboratories therefore includes any of the following, even if currently provided by other companies in the Holchem corporate group:

- (i) all of the assets in the Holchem corporate group pertinent to the operations of Holchem Laboratories;
- (ii) all of the contracts with customers held by the Holchem corporate group that are serviced by Holchem Laboratories;
- (iii) all of the staff in the Holchem corporate group, pertinent to the operations of Holchem Laboratories;
- (iv) all of the shared services in the Holchem corporate group that provide services to Holchem Laboratories;
- (v) any intellectual property, including any brands of the Holchem corporate group that are used by Holchem Laboratories; and
- (vi) any necessary transitional services, if required by a purchaser, for a period to be approved by the CMA and in any event, of a duration not exceeding 6 months from date of Final Disposal.

Annex 2: Purchaser Approval Criteria

These Purchaser Approval Criteria are to be construed in a manner that is consistent with, and for the purpose of giving effect to, the Report.

1. Independence

At the time of the Final Disposal, the Approved Purchaser must have no significant connection (for example financial, ownership or management links) to Ecolab that may compromise the Approved Purchaser's incentives to compete with Ecolab after Final Disposal.

2. Capability

The Approved Purchaser must have access to or be able to secure appropriate financial resources and expertise (including managerial, operational and technical capability) to enable the Divestment Business to be an effective competitor in the market. This access should be sufficient to enable the Divestment Business to continue to develop as an effective competitor.

3. Commitment to the relevant market

The Approved Purchaser must demonstrate to the satisfaction of the CMA that it has an appropriate business plan to maintain and operate the Divestment Business as a viable and active business in competition with Ecolab and other competitors in the relevant market so as to remedy the SLC and the adverse effects that are expected to result from it.

4. Absence of competitive or regulatory concern

In considering whether to give consent to an Approved Purchaser, the CMA shall consider whether the terms of the sale and purchase agreement (and any other agreements or arrangements ancillary or connected to the agreement) would give rise to a material risk that the sale of the Divestment Business would not remedy the relevant SLC and the adverse effects that may be expected to result from it. In addition, the CMA shall require that the divestiture of the Divestment Business to the Approved Purchaser must not raise further competition or regulatory concerns in the relevant market.