

# Anticipated acquisition by Lanxess AG of Emerald Kalama Chemical LLC

## Decision on relevant merger situation and substantial lessening of competition

**ME/6934/21**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 23 July 2021. Full text of the decision published on 12 August 2021.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

### SUMMARY

1. Lanxess AG (**Lanxess**) has agreed to indirectly acquire 100% of the share capital of Emerald Kalama Chemical, LLC (**EKC**, and together with Lanxess, the **Parties** and with regard to statements about the future, the **Merged Entity**) from American Securities LLC (the **Merger**).
2. The Competition and Markets Authority (**CMA**) considered whether, as a result of horizontal unilateral effects, the Merger may give rise to a substantial lessening of competition (**SLC**). Both Parties are specialty chemical companies active in, amongst other products, the supply of chemical products derived from toluene, in particular benzyl alcohol (**BALC**), benzaldehyde (**BALD**) and cinnamic aldehyde (**CALD**).
3. In assessing the competitive effects of the Merger in each of these products, the CMA considered a range of evidence, including shares of supply, the Parties' internal documents and third-party views. In all three product categories, the CMA found that, post-Merger, there will remain sufficient competitive constraints from several alternative suppliers. Furthermore, the available evidence shows that there is significant excess capacity to serve UK customers.

4. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.
5. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties and transaction

6. Lanxess is a specialty chemicals company. It is active in the development and manufacturing of chemical intermediates, additives, specialty chemicals (including toluene derivative chemicals) and plastics. Lanxess is listed on the Frankfurt Stock Exchange. EKC is a manufacturer of specialty chemicals that are primarily derived from toluene.
7. On 13 February 2021, Lanxess and EPM Polymer Additives Holding Corp <sup>1</sup>, which in turn owns 100% of EKC entered into an Agreement and Plan of Merger (the **Agreement**). Under the Agreement, Lanxess plans to acquire<sup>2</sup> 100% of the share capital and exclusive control of EKC.

### Jurisdiction

8. Each of Lanxess and EKC is an enterprise. As a result of the Merger, these enterprises will cease to be distinct. The Parties overlap in the supply of BALC with a combined share in the UK in 2020 of [30-40%] with an increment of [0-10%]. The CMA therefore believes that the share of supply test in section 23 of the Act is met. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

### Counterfactual

9. The CMA assesses a merger's impact relative to the situation that would prevail without the merger (ie the counterfactual).<sup>3</sup> The Merger is the result of a competitive bidding process. The Parties submitted that the relevant counterfactual is the prevailing conditions of competition.<sup>4</sup> The Parties also submitted that there were several competing bidders for EKC. The CMA

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<sup>1</sup> Pre-transaction, EKC is owned by ASP Emerald Acquisition Holdings One LLC, ASP Emerald Acquisition Holdings Three LLC and ASP Emerald Investco LP.

<sup>2</sup> Through Lanxess' wholly owned subsidiary, Lanxess Corporation.

<sup>3</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021 (**Merger Assessment Guidelines**), paragraph 3.1.

<sup>4</sup> FMN, paragraph 11.1

considered whether a sale of EKC to an alternative bidder would have resulted in a more competitive counterfactual than the prevailing conditions of competition; however the CMA does not consider that any of the alternative purchasers would have led to a more competitive counterfactual. The CMA therefore assessed the Merger against the prevailing conditions of competition.

## Competitive assessment

### *Background*

10. The Parties overlap in the manufacture and supply of BALC, BALD and CALD, which are toluene derivative specialty chemicals.<sup>5</sup> Toluene derivative chemicals may be produced using either an oxidation or a chlorination process (as shown for BALC in Figure 1 below).

**Figure 1: Chlorination and oxidation production processes**

[✂]  
Source: [✂]"

11. Lanxess and the majority of other speciality chemicals suppliers produce toluene derivatives using the chlorination process, while EKC is only one of a few speciality chemicals suppliers which produce toluene derivatives using oxidation. The chlorination process results in traces of chlorine in the product which may make it unsuitable for some end uses. EKC manufactures its toluene derivative chemicals in the US and in the Netherlands. Lanxess manufactures toluene derivative chemicals in Germany, India and the U.S.

### *Horizontal unilateral effects*

12. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its

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<sup>5</sup> The Parties also overlap in the supply of benzyl benzoate, plasticisers, and preservatives. Due to the small combined shares or limited overlap between the Parties, the CMA is of the view that there is no realistic prospect of an SLC arising, so these products are not considered further in this decision. There are also certain vertical relationships between the Parties, namely, (i) the supply of benzoic acid (upstream) into benzoate plasticisers (downstream), (ii) BALD (upstream) into BALD derivative products (downstream), and (iii) sodium benzoate (upstream) into benzyl benzoate (downstream). Due to the absence of concerns arising from the Merger in the respective upstream segments, amongst other factors, the CMA considers there is no realistic prospect of an SLC arising from these vertical relationships, and they are not considered further in this Decision.

own and without needing to coordinate with its rivals.<sup>6</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.<sup>7</sup>

13. In its assessment, the CMA considered (i) frame of reference, (ii) shares of supply, (iii) the Parties' internal documents, (iv) third-party views, and (v) the capacity of alternative suppliers.

#### *Horizontal unilateral effects in the supply of BALC*

14. BALC is primarily used as a synthesis intermediate and solvent in a large variety of industrial applications (eg epoxy hardeners, epoxy diluents for construction applications, solvents, disinfectants and cleaning products, personal care, homecare, and flavour and fragrance products).

#### *Frame of reference*

15. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.<sup>8</sup>
16. Market definition involves identifying the most significant competitive alternatives available to customers of the merger firms.<sup>9</sup> In some cases, market definition can be an important part of the overall merger assessment process. In other cases, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms' behaviour, will capture the competitive dynamics more fully than formal market definition.<sup>10</sup> There may be no need for the CMA's assessment of competitive effects to be based on a highly specific description of any particular market (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether particular products or services fall within it).<sup>11</sup> The approach taken by the CMA will reflect the circumstances of the case.

- *Product scope*

17. The Parties submitted that the relevant product frame of reference should be the supply of BALC.

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<sup>6</sup> Merger Assessment Guidelines, paragraph 4.1.

<sup>7</sup> Merger Assessment Guidelines, paragraph 4.8.

<sup>8</sup> Merger Assessment Guidelines, paragraph 9.1.

<sup>9</sup> Merger Assessment Guidelines, paragraph 9.2.

<sup>10</sup> Merger Assessment Guidelines, paragraph 9.2.

<sup>11</sup> Merger Assessment Guidelines, paragraph 9.5.

18. As set out above, Lanxess uses a chlorination process to manufacture BALC, while EKC uses an oxidation process. The CMA therefore considered whether the product frame of reference for BALC should be segmented further according to its production process.
19. However, only a minority of customers which responded to the CMA's investigation considered that the method of production for BALC (which impacts the level of chlorine in the product) was important or very important in their choice of BALC supplier. One competitor submitted that [REDACTED].
20. While some customers cannot substitute between the grades of BALC produced by chlorination and oxidation methods (and hence the Parties are not competitors for them), other customers will be able to switch between them. On a cautious basis, the CMA has considered the effect of the Merger on a frame of reference containing both BALC produced via oxidation and chlorination, as this is where the Parties overlap.

- *Geographic scope*

21. The Parties submitted that the appropriate geographic frame of reference for BALC should be worldwide. Neither of the Parties manufactures BALC in the UK.
22. The available evidence shows that suppliers of BALC are largely active on a global basis. The Parties' internal documents also do not segment the market geographically, instead the Parties monitor the supply of BALC on a global basis, taking into account competitors in the EEA, the US and Asia.
23. This is also consistent with the third-party evidence. The majority of UK customers considered that suppliers based outside the EEA (notably Chinese and Indian producers) are suitable alternatives to the Parties, with only a minority submitting that the location in which the product is manufactured or transportation costs were important or very important in their choice of BALC supplier.
24. The CMA therefore considers that competition takes place on a wider than national basis. Whilst the CMA has focused its assessment on the effects of the Merger on the supply of BALC to UK customers, it has also considered competitive dynamics on an EEA and global basis where appropriate.

*Shares of supply*

25. The Parties submitted that, as there is no publicly available or official source that can be used to estimate markets shares in a consistent or calibrated way,

shares of supply for BALC can only be estimated based on a broad range of evidence.

26. In preparing their estimates, the Parties referred to the following sources:
- (a) national, regional and global trade statistics;
  - (b) the Parties' understanding of competitors' production volumes and capacity utilisation; and
  - (c) other sources of market intelligence, such as information on customer demand and customers' use of multiple suppliers for the same product.<sup>12</sup>
27. The CMA found that the Parties' shares of supply estimates were broadly consistent with evidence gathered from third parties, as well as the Parties' internal documents.
28. The CMA has included UK shares in its assessment, which provide information in relation to suppliers currently supplying UK customers. As stated at paragraph 24 above, the CMA considers that competition takes place on a wider than national basis. Therefore, on a cautious basis, the CMA has also taken into account EEA<sup>13</sup> and global shares of supply in its assessment.
29. The Parties' shares of supply estimates for the supply of BALC in the UK, as well as on an EEA-wide and a global basis, by volume are shown in Table 1.

**Table 1: The Parties' shares of supply estimates by volume (2020)**

<b>Suppliers</b>	<b>UK</b>	<b>EEA</b>	<b>Global</b>
Lanxess	[20-30%]	[40-50%]	[30-40%]
EKC	[0-10%]	[0-10%]	[0-10%]
<b>Combined</b>	<b>[20-30%]</b>	<b>[50-60%]</b>	<b>[30-40%]</b>
Valtris	[30-40%]	[30-40%]	[10-20%]
Greenhome	[20-30%]	[10-20%]	[20-30%]
KLJ	[10-20%]	[0-10%]	[0-10%]
Wuhan	[0-10%]	[0-10%]	[0-10%]
Others (China)	[0-10%]	[0-10%]	[0-10%]
Others (India)	[0-10%]	[0-10%]	[0-10%]
Others (Unknown)	[0-10%]	[0-10%]	[0-10%]

Source: Parties' estimates

Note: Volumes supplied to UK customers are included in the EEA volumes.

30. Table 1 shows that, post-Merger, the Parties will be the second largest supplier of BALC in the UK (with a share of supply of [20-30]%). The Parties will be the largest supplier of BALC on an EEA-wide and global basis ([50-

<sup>12</sup> RFI 1, Annex 8.

<sup>13</sup> For the purposes of calculating the shares of supply considered, this includes the UK. This applies throughout this Decision.

60%] and [30-40]%, respectively). The Merger will result in a small increment of [0-10]% to Lanxess' share of supply on each basis. Furthermore, Table 1 shows that, post-Merger, the Parties will be constrained by three competitors with a share of supply greater than [0-10%] in the UK (Valtris, Greenhome and KLJ), two competitors with shares of supply greater than [0-10%] in the EEA (Valtris and Greenhome) and three competitors with shares of supply of [0-10%] or more globally (Valtris, Greenhome and Wuhan).

#### *Internal documents*

31. The CMA has reviewed the Parties' competitive monitoring documents produced in the normal course of business. These documents show that the Parties regularly monitor each other as well as a number of other competitors.
32. In particular, EKC's internal documents show that it [REDACTED]. EKC regularly monitors a number of other competitors on a global basis (including [REDACTED]), in particular as regards production volumes.<sup>14</sup> Lanxess' documents typically track [REDACTED].<sup>15</sup>
33. Overall, the CMA considers that the Parties' internal documents show that, while they do track one another to some extent, the Parties do not consider each other as particular close competitors and refer to each other amongst a range of other EEA and global suppliers.

#### *Third party views*

34. Whilst a small number of third parties raised concerns in relation to the impact of the Merger on the supply BALC, almost all third parties stated that they do not consider Lanxess and EKC to compete closely. This may in part be because the different grades of BALC produced may not be suitable for the same end uses. For example, one competitor submitted the Parties are not close competitors to each other in part due to the different manufacturing processes they use.
35. All customers which responded to the CMA's investigation stated that they could easily switch between alternative suppliers. The majority of customers submitted that they have at least one other very close alternative supplier to one or both of the Parties. The majority of customers also submitted that they considered Chinese and Indian producers (examples cited were Kelin Boulin, Wuhan Youji, KLJ, Tianjin Dacals) to be viable alternative suppliers for BALC. One customer noted that EKC is not in its view an important player in the

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<sup>14</sup> For example, EKC Annex [REDACTED] page 7

<sup>15</sup> For example, Lanxess Annex 5.2, page 3.

supply of BALC.

36. All competitors that responded to the CMA's investigation stated that, other than the Parties, they competed closely or very closely with at least two other suppliers of BALC.

#### *Capacity of other suppliers*

37. The Parties submitted estimates of production volumes and capacity in the EEA and on a global basis which showed that there is currently significant excess production capacity of BALC in the EEA and on a global basis.<sup>16</sup> This was consistent with the views of the Parties' competitors which responded to the CMA's investigation. Competitors that currently supply BALC to the UK also submitted that they currently have spare production capacity, which they could use to supply new UK customers.

#### *Conclusions on horizontal unilateral effects in the supply of BALC*

38. On the basis of the evidence above, the CMA considers that, although Lanxess is the largest supplier of BALC on an EEA and global basis, and the Merged Entity would be the second-largest supplier of BALC to UK customers, EKC only has a small share of supply, particularly in the UK. The available evidence also shows that the Parties do not compete particularly closely, customers can readily switch supplier, and that post-Merger, the Parties will be constrained by several other competitors with a larger share of supply than EKC.

#### *Horizontal unilateral effects in the supply of BALD*

39. BALD is used as a chemical intermediate input for the production of active ingredients of agrochemical products, coatings, plastics, pharmaceutical products and as a raw material for the production of aroma chemicals, food and beverages, animal feed, fragrance and personal care.

#### *Frame of reference*

- *Product scope*

40. The Parties submitted that the relevant product frame of reference should be the supply of BALD.

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<sup>16</sup> RFI 3, Annex 1.



41. As set out above, Lanxess uses a chlorination process to manufacture BALD, while EKC uses an oxidation process. The CMA therefore considered whether the product frame of reference for BALD should be segmented further according to its production process. The CMA understands that the method of producing toluene derivatives is important to some customers as it affects the end uses for which they are appropriate.
42. A majority of customers that responded to the CMA's investigation considered the production process was important to them. For customers who require BALD with very low or no residual chlorine content, there may be limited or no substitutability between EKC and Lanxess. However, for some the production process was not an important factor. In addition, some of the customers that submitted that the production process was important also submitted that they were able to use BALD produced via the chlorination and oxidation methods for their needs. On a cautious basis, the CMA has considered the effect of the Merger on a frame of reference containing both BALD produced via oxidation and chlorination, as this is where the Parties overlap.

- *Geographic scope*

43. The Parties submitted that the appropriate geographic frame of reference for BALD should be worldwide. Neither of the Parties manufactures BALD in the UK.
44. The available evidence shows that suppliers of BALD are largely active on a global basis. The Parties' internal documents also do not segment the market geographically, instead the Parties monitor the supply of BALD on a global basis, taking into account competitors in the EEA, the US and Asia.
45. This is also consistent with the third-party evidence. Customers stated that they currently purchase BALD from suppliers based in the EEA, US, China and India. Several competitors from outside the EEA submitted that suppliers from outside the EEA supply BALD to UK customers.
46. The CMA therefore considers that competition takes place on a wider than national basis. Whilst the CMA has focused its assessment on the effects of the Merger on the supply of BALD to UK customers, it has also considered competitive dynamics on an EEA and global basis where appropriate.

*Shares of supply*

47. The Parties submitted that there is no publicly available or official source that can be used to estimate markets shares in a consistent or calibrated way and that shares of supply for BALD can only be estimated based on a broad range

of evidence. The evidence used by the Parties included:

- (a) national, regional and global trade statistics;
- (b) the Parties' understanding of their competitors' production volumes and capacity utilisation; and
- (c) other sources of market intelligence, such as information on customer demand and customers' use of multiple suppliers for the same product.<sup>17</sup>

48. The CMA found that, as with BALC, the Parties' shares of supply estimates were broadly consistent with evidence gathered from third parties, as well as the Parties' internal documents.
49. The CMA has included UK shares in its assessment, which provide information in relation to suppliers currently supplying UK customers. As stated at paragraph 47 above, the CMA considers that competition takes place on a wider than national basis. Therefore, on a cautious basis, and the CMA has also taken into account EEA and global shares of supply in its assessment.
50. The Parties' shares of supply estimates for BALD on a UK, EEA-wide and on a global basis by volume are shown in Table 2.

**Table 2: The Parties' shares of supply estimates by volume (2020)**

<i>Suppliers</i>	<i>UK</i>	<i>EEA</i>	<i>Global</i>
Lanxess	[0-10%]	[0-10%]	[20-30%]
EKC	[0-10%]	[10-20%]	[10-20%]
<b>Combined</b>	<b>[10-20%]</b>	<b>[10-20%]</b>	<b>[30-40%]</b>
Valtris	[80-90%]	[60-70%]	[10-20%]
Greenhome	[0-10%]	[0-10%]	[10-20%]
KLJ	[0-10%]	[0-10%]	[0-10%]
Tianshi	[0-10%]	[0-10%]	[10-20%]
Others (China)	[0-10%]	[0-10%]	[0-10%]
Others (India)	[0-10%]	[0-10%]	[0-10%]
Others (Unknown)	[0-10%]	[0-10%]	[0-10%]

Source: Parties' estimates

Note: Volumes supplied to UK customers are included in the EEA volumes.

51. Table 2 shows that, post-Merger, the Parties will be the second largest supplier of BALD on a UK and an EEA-wide basis (with a share of supply of [10-20]%) and the largest supplier on a global basis (with a share of supply of [30-40]%). The Merger will result in a small increment of [0-10]% to Lanxess's share of supply on a UK basis and a moderate increment of [10-20]% to Lanxess' share of supply on an EEA-wide and global basis. Table 2 also shows that the Parties will remain in competition with one much larger

<sup>17</sup> Parties' response to CMA RFI 1, Annex 8.

competitor with a share of supply greater than [60-70%] on a UK and EEA-wide basis (Valtris) and by three competitors with shares of supply greater than [0-10%] on a global basis (Valtris, Greenhome and Tianshi).

#### *Internal documents*

52. The Parties' internal documents show that the Parties regularly monitor each other as well as a number of other competitors
53. EKC's internal documents show that [REDACTED]. EKC regularly monitors a number of other competitors on a global basis (including [REDACTED]), in particular as regards production volumes.<sup>18</sup> Lanxess' documents track EKC amongst other competitors such as [REDACTED].<sup>19</sup>
54. Overall, the CMA considers that the Parties' internal documents show that, while they do track one another to some extent, the Parties do not consider each other as particularly close competitors and refer to each other amongst a range of other EEA and global suppliers.

#### *Third-party views*

55. All customers who thought the production process was important to them submitted that the Parties were close competitors in BALD. However, the majority of these customers considered that the Parties compete alongside a range of other suppliers. All customers submitted they have at least one other alternative supplier of BALD (other than the Parties) which they would be able to switch to. The majority of customers also considered that Chinese and Indian competitors are suitable suppliers for BALD.
56. The majority of competitors submitted that Lanxess and EKC do not compete closely in BALD. All competitors which responded to the CMA's investigation, and currently supply BALD to UK customers, submitted that they could easily supply new customers. When asked to name other competitors in the supply of BALC, the majority named at least one other supplier of BALD, other than the Parties.

#### *Capacity of other suppliers*

57. The CMA found that the available evidence on capacity in the supply of BALD was mixed.

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<sup>18</sup> For example, [REDACTED], slide 9

<sup>19</sup> For example, Lanxess Annex 027, page 15.

58. In particular, EKC's internal documents [REDACTED]. Some third parties [REDACTED] submitted that there have been BALD shortages in the past two years.
59. However, the Parties submitted estimates of production volumes and capacity in the EEA and on a global basis which showed that there is currently significant excess production capacity of BALD in the EEA and on a global basis.<sup>20</sup> These estimates were consistent with evidence provided by a third party which responded to the CMA's investigation. In addition, several competitors submitted that they either already had spare capacity or planned to expand in the next one to two years.

*Conclusions on horizontal unilateral effects in the supply of BALD*

60. On the basis of the evidence above, the CMA considers that, although the Merged Entity will be the second largest supplier of BALD on a UK and an EEA-wide basis, and the largest supplier on a global basis, the available evidence shows that the Parties will be constrained by several other competitors post-Merger. In the UK and EEA, the increment arising from the Merger is relatively small, the Merged Entity remains constrained by a much larger existing competitor, and the CMA's investigation found that customers can easily switch to alternative suppliers from India and China.

*Horizontal unilateral effects in the supply of CALD*

61. CALD is used as an aroma chemical ingredient in blends for flavour and fragrance applications, fragrance sticks, fragrance candles, cosmetics, household products, animal feed, and as a lubricant in industrial applications.
- *Product scope*
62. The Parties submitted that the relevant product frame of reference should be the supply of CALD.
63. The CMA found that there is very small demand for CALD and that it is manufactured in low volumes worldwide. Only a minority of customers which responded to the CMA's investigation stated that the level of chlorine in the product or transportation costs were important or very important in their choice of CALD supplier.

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<sup>20</sup> RFI 3, Annex 1.

64. On a cautious basis, the CMA has considered the effect of the Merger on a frame of reference containing both CALD produced via oxidisation and chlorination, as this is where the Parties overlap.
- *Geographic scope*
65. The Parties submitted that the appropriate geographic frame of reference for CALD should be worldwide. Neither of the Parties manufacture CALD in the UK.
66. Suppliers of CALD are largely active on a global basis. Customers submitted that they currently purchase CALD from suppliers based in the EEA, US, China and India.
67. The CMA therefore considers that competition takes place on a wider than national basis. Whilst the CMA has focused its assessment on the effects of the Merger on the supply of CALD to UK customers, it has also considered competitive dynamics on an EEA and global basis where appropriate.

#### *Shares of supply*

68. The Parties submitted that they are unable to estimate specific shares of supply for each of their competitors.<sup>21</sup> This is because of the small product volumes traded in CALD and because no global statistics are produced for CALD. In addition, one third party which responded to the CMA's investigation submitted that the Parties could have a combined share of supply as high as [50-60]% on a global basis. The CMA has therefore placed limited weight on the shares of supply evidence but sets this out for completeness below.
69. The CMA has included UK shares in its assessment, which provide information in relation to suppliers currently supplying UK customers. On a cautious basis, the CMA has also taken into account EEA-wide and global shares of supply in its assessment.
70. The Parties' shares of supply estimates for CALD in the UK, and on an EEA and a global basis by volume are shown in Table 3.

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<sup>21</sup> FMN, fn 54.

**Table 3: The Parties' shares of supply estimates by volume (2020)**

<b>Suppliers</b>	<b>UK</b>	<b>EEA</b>	<b>Global</b>
Lanxess	[10-20%]	[10-20%]	[20-30%]
EKC	[0-10%]	[0-10%]	[0-10%]
<b>Combined</b>	<b>[10-20%]</b>	<b>[20-30%]</b>	<b>[20-30%]</b>
Others (China)	[20-30%]	[10-20%]	[40-50%]
Others (India)	[60-70%]	[50-60%]	[10-20%]

Source: Parties' estimates

Note: Volumes supplied to UK customers are included in the EEA volumes.

71. Table 3 shows that, post-Merger, the Parties will have a combined share of share of supply of [10-20]% on a UK basis (with a very small increment of less than [0-10%]); a share of supply of [20-30]% in the EEA (with a moderate increment of [0-10%]); and [30-40]% on a global basis (with a moderate increment of [0-10%]).

#### *Internal documents*

72. The Parties' internal documents discuss CALD less than BALC or BALD, and the CMA found [REDACTED]. The CMA found that one EKC document refers to [REDACTED] as alternative CALD suppliers.<sup>22</sup>

#### *Third-party views*

73. The majority of third parties submitted that the Parties are close competitors in the supply of CALD and one third party raised concerns, submitting that the Merger could result in higher prices.<sup>23</sup>
74. However, all customers submitted that they have at least one very close or close alternative supplier of CALD to one or both of the Parties. All customers also submitted that they consider Chinese and Indian producers to be suitable suppliers of CALD. The majority of customers which responded to the CMA's investigation also considered that they could easily switch between alternative suppliers of CALD.
75. In addition, one competitor which currently supplies CALD to UK customers [REDACTED].

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<sup>22</sup> EKC Annex 9(a) [REDACTED] p.37

<sup>23</sup> One competitor of the Parties in the supply of CALD also raised concerns about access to BALD post-Merger. BALD is an input to the production of CALD. This customer was concerned that the Merged Entity could, post-Merger, foreclose it by not supplying BALD. In this context, the CMA notes that the same competitor also submitted that it purchases BALD from a number of other suppliers in addition to the Parties. The CMA considered whether the Merged Entity would have the ability or incentive to foreclose rival CALD suppliers. However, given the presence of other upstream suppliers of BALD (as detailed in paragraphs 39 to 61 of this Decision), the CMA considers that the Merged Entity will lack the ability to engage in such a foreclosure strategy post-Merger.

### *Capacity of other suppliers*

76. The Parties submitted estimates of production volumes and capacity in the EEA and on a global basis which showed that there is currently significant excess production capacity of CALD in the EEA and on a global basis.<sup>24</sup> In addition, a third party which currently supplies CALD to UK customers provided data which showed [✂].

### *Conclusions on horizontal unilateral effects in the supply of CALD*

77. On the basis of the evidence set out above, the CMA considers that the Parties will continue to be constrained by several remaining competitors, given that CALD customers indicated they can easily switch to alternative suppliers, including Chinese and Indian suppliers. Whilst the Parties were not able to provide complete share data, EKC does not have a significant share on any geographic basis, with a [0-10%] share of supply in the UK.

## **Decision**

78. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
79. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Douglas Cooper**  
**Director, Mergers**  
**Competition and Markets Authority**  
**23 July 2021**

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<sup>24</sup> RFI 3, Annex 1.