

ANTICIPATED ACQUISITION BY SIKA AG OF MBCC

Issues statement

21 September 2022

The reference

1. On 10 August 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition by Sika AG (**Sika**) of the whole of the issued share capital of LSF11 Skyscraper Holdco S.à.r.l., the ultimate parent company of the MBCC group (**MBCC**) (the **Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). Sika and MBCC are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. In exercise of its duty under section 36(1) of the Act, the CMA must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that relevant merger situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
3. In answering these two questions, the CMA will apply a ‘balance of probabilities’ threshold to its analysis. That is, it will decide whether it is more likely than not that a relevant merger situation has been created and that the Merger will result in an SLC.¹

Background

4. **Sika** is the Swiss-based parent company of a global group that manufactures and supplies a broad range of products sold under the Sika brand and other group brands.

¹ [Merger Assessment Guidelines \(CMA129\) \(March 2021\) \(MAGs\)](#), paragraphs 2.31 and 2.36.

5. **MBCC** is a global group headquartered in Germany that manufactures and supplies a broad range of products under brands including Master Builders Solutions.
6. Both Parties overlap in the supply of products used in the construction industry, including chemical-based admixtures.
7. Chemical admixtures are specially formulated chemicals added to cementitious products (concrete, cement, and mortar) to modify their properties, for example to slow their setting rate so they can be transported over longer distances. Chemical admixtures also enable concrete producers to reduce the amount of cement required to produce concrete, which not only cuts the overall cost of concrete production, but also reduces its environmental impact.
8. Modern construction methods rely on admixtures, which are therefore considered an essential input in the production of cementitious products.

Concession of the SLC identified at phase 1

9. On 2 September 2022, the Parties requested to concede the SLC identified in the CMA's Phase 1 decision (the **Phase 1 Decision**),² accepting that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of chemical admixtures in the UK.
10. The Parties have agreed to waive their right to challenge this position during the CMA's phase 2 investigation and have confirmed that they intend to submit remedies to address the SLC.
11. The process that applies where merging parties request to concede an SLC is set out in paragraphs 7.18 to 7.21 of the CMA's guidance on jurisdiction and procedure.³
12. We communicated our decision to accept the Parties' request to concede the SLC on 6 September 2022.

Purpose of this issues statement

13. We have accepted the Parties' request to concede the SLC identified in the Phase 1 Decision, which will enable us to undertake a streamlined investigation with a focus on the assessment of remedial action. However, we must still reach a decision, applying a balance of probabilities threshold, on

² Phase 1 Decision, 27 July 2022: [Sika AG / MBCC Group merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/sika-ag-and-master-builders-solutions-agree-to-concede-a-substantial-lessen-of-competition)

³ [Mergers: Guidance on the CMA's jurisdiction and procedure \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/114444/Mergers-Guidance-on-the-CMA-s-jurisdiction-and-procedure) (CMA2 Revised), paragraphs 7.18-7.21.

the SLC question (paragraph 2(b) above) having had regard to all the evidence available to us, including the evidence received during the Phase 1 investigation and any new evidence submitted.

14. We are publishing this issues statement to assist parties submitting evidence to our investigation. This statement sets out the issues we currently envisage being relevant to our investigation and we invite interested parties to notify us if there are additional relevant issues which they believe we should consider.

Our inquiry

15. The Phase 1 Decision contains much of the detailed background to this issues statement. Below we set out some specific areas of our intended assessment to help parties who wish to make representations to us.

Jurisdiction

16. We shall consider the question of jurisdiction in our inquiry. In the Phase 1 Decision the CMA found that it is or may be the case that the CMA has jurisdiction to review the Merger on the basis that:
 - (a) each Party is an enterprise and these enterprises will cease to be distinct as a result of the Merger; and
 - (b) the share of supply test is met.⁴

The counterfactual

17. The application of the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'.⁵ The CMA's Phase 1 Decision found that the counterfactual was the pre-existing conditions of competition.⁶ In our phase 2 investigation we currently intend to adopt the prevailing conditions of competition as the most likely counterfactual to the Merger.
18. As noted in the Phase 1 Decision, Compagnie de Saint-Gobain S.A. (**Saint-Gobain**) has announced its intention to acquire GCP Applied Technologies Inc. (**GCP**) (the **Saint-Gobain/GCP merger**). The CMA announced the launch

⁴ Phase 1 Decision, paragraphs 29-33.

⁵ The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether the merger gives rise to an SLC. See [MAGs](#), paragraph 3.1.

⁶ Phase 1 Decision, paragraph 34.

of a Phase 1 merger inquiry into the Saint-Gobain/GCP merger on 26 July 2022.⁷

19. At Phase 1 the CMA did not undertake a detailed assessment of the Saint-Gobain/GCP merger as part of its assessment of the counterfactual.⁸ Instead, the CMA considered the potential impact of the transaction as part of its competitive assessment. We currently intend to adopt the same approach for the phase 2 investigation.⁹
20. The CMA concluded that the outcome of the Saint-Gobain/GCP merger would not make a material difference to the outcome of the CMA's competitive assessment of the Merger.¹⁰

Assessment of the competitive effects of the Merger

21. Taking into account the Parties' SLC concession, the evidence gathered during phase 1, and any further evidence we obtain during our investigation, we intend to assess whether the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of chemical admixtures in the UK.¹¹
22. We will also consider any evidence put to us on:
 - (a) Market definition – the starting point for our analysis will be the frame of reference used in the Phase 1 Decision;
 - (b) Closeness of competition between the Parties and constraints from other existing suppliers of chemical admixtures;
 - (c) Whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find including as a result of entry and/or expansion by third parties.
23. The CMA is not precluded from considering any other theories of harm which may be identified during the investigation. However, subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger.

⁷ See the commencement notice published by the CMA pursuant to Section 96(2A) of the Act: https://assets.publishing.service.gov.uk/media/62de973ee90e0766b251ab30/Saint-Gobain-GCP_-_Notice_commencement_.pdf

⁸ Phase 1 Decision, paragraph 35.

⁹ The CMA will also take account of any final decision reached by the CMA in its review of the Saint-Gobain/GCP merger. The current statutory deadline for the CMA to announce its decision is 22 September 2022.

¹⁰ Phase 1 Decision, paragraph 123.

¹¹ The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative to which customers could switch to. The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. See [MAGs](#), paragraph 4.3

Possible remedies and relevant customer benefits

24. Should we conclude that the Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
25. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.¹²

Responses to this issues statement

26. Any party wishing to respond to this issues statement should do so in writing, no later than **5pm on 5 October 2022** by emailing Sika.MBCC@cma.gov.uk.

¹² [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15–3.24.