

ANTICIPATED ACQUISITION BY SIKA AG OF MBCC GROUP

Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups¹

Introduction

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. On 2 September 2022, the Parties made a request to the CMA to concede the SLC in the market for the supply of chemical admixtures for cement, concrete and wet mortar in the UK, to enable the CMA to focus on the assessment of remedies. The CMA accepted the Parties' request on 6 September 2022.
3. In its provisional findings on the reference, notified to the Parties on 25 October 2022 (the **Provisional Findings**), the CMA provisionally concluded that the Merger may be expected to result in a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of chemical admixtures for cement, concrete and wet mortar in the UK (the **Provisional SLC**).
4. The CMA's analysis demonstrates that the Provisional SLC may be expected to result in adverse effects, for example in the form of higher prices and/or reduced innovation, service levels and quality, compared to what would otherwise have been the case absent the Merger.
5. This notice of possible remedies (the **Remedies Notice**) sets out the actions which the CMA considers it might take for the purpose of remedying the Provisional SLC and any resulting adverse effects.²

¹ See [Rules of procedure for merger, market and special reference groups: CMA17](#).

² The CMA's Provisional Findings report can be found on the CMA case page [here](#).

6. The CMA invites comments on the Remedies Notice by **17:00 hours (UK time) on Friday 4 November 2022**.
7. The Merger is currently being investigated in a number of other jurisdictions outside the UK.³ For the purpose of identifying actions which the CMA might take for the purpose of remedying, mitigating or preventing the Provisional SLC and any resulting adverse effects, the CMA is liaising with the authorities in each of these jurisdictions.

CMA criteria for remedies

8. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.⁴
9. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.
10. Having identified the effective remedy options, the CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁵
11. For the avoidance of doubt, the CMA's jurisdiction is limited to remedying the Provisional SLC and any adverse effect which may be expected to result from it.

Possible remedies on which views are sought

12. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that may be expected to result from it.
13. In merger inquiries, the CMA will generally prefer structural remedies, such as divestiture or prohibition of the merger, rather than behavioural remedies

³ The Parties' remedy Proposal is currently being considered by the European Commission, the US Department of Justice, the Competition Bureau Canada, the Australian Competition and Consumer Commission and the New Zealand Commerce Commission.

⁴ [Section 36\(3\)](#) of the Act. [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 3.3.

⁵ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 3.4.

designed to regulate the ongoing conduct of the merger parties or control market outcomes (eg prices) following the merger,⁶ because:⁷

- (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring the rivalry that would be lost as a result of the merger;
 - (b) behavioural remedies generally give rise to risks around specification, circumvention, market distortion and/or monitoring, and may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and
 - (c) structural remedies do not normally require ongoing monitoring and enforcement once implemented.
14. The CMA will consider any practicable remedies – whether structural or behavioural in nature – that the Parties, or any interested third parties, may propose that would be effective in comprehensively addressing the Provisional SLC and any resulting adverse effects.
15. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the Provisional SLC or any resulting adverse effects.
16. At this stage, the CMA’s view is that a behavioural remedy is very unlikely to be effective in remedying the Provisional SLC and any resulting adverse effects that the CMA has provisionally identified. This Remedies Notice is, therefore, focused on possible structural remedies. However, the CMA will consider any behavioural remedies put forward in response to this consultation.
17. In this case, the Parties have proposed a partial divestiture remedy (the **Parties’ Remedy Proposal**), as described in more detail in paragraphs 22 to 29 below.
18. Based on the above, the CMA considers that there are three possible structural remedy options:

⁶ [Merger Remedies \(CMA87\)](#) (13 December 2018), section 7 for further guidance on behavioural remedies.

⁷ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 3.46.

- (a) prohibition of the Merger;
 - (b) the Parties' Remedy Proposal; and
 - (c) a divestiture of a broader and/or differently configured divestiture package to the Parties' Remedy Proposal.
19. The CMA is continuing to engage with the Parties and the other competition authorities investigating the Merger on the Parties' Remedy Proposal. The CMA is now inviting views from third parties on the effectiveness of the Parties' Remedy Proposal in comprehensively addressing the Provisional SLC and any resulting adverse effect, including any views on the risks generally associated with a divestiture remedy (which are described in paragraphs 36 to 39 below).
20. The CMA's initial views on each potential structural remedy option (see paragraph 18 above) are set out in more detail below.

The CMA's initial views on possible remedies

Prohibition of the Merger

21. Prohibition of the Merger would result in each of Sika and MBCC continuing to operate under separate ownership as independent competitors. It would maintain the competitive structure of the market that would have otherwise been changed by the Merger and therefore prevent the Provisional SLC from arising. The CMA's initial view is that prohibition would be an effective remedy as it would represent a comprehensive solution to all aspects of the Provisional SLC (and consequently any resulting adverse effects) and the risks in terms of its effectiveness are very low.

Parties' Remedy Proposal

22. By way of background information, MBCC is comprised of two main business divisions:
- (a) the 'Admixture Systems' business division (the **EBA business**), which contains:
 - (i) MBCC's chemical admixtures business; and
 - (ii) a number of businesses in adjacent markets (namely, MBCC's 'non-chemical admixtures' business and its 'underground construction' (**UGC**) business, which supply fibres for concrete and injection resins, foams and greases for tunnel boring machines etc); and

- (b) the 'Construction Systems' business division (the **EBC business**), which supplies industrial floorings, waterproofing, ETICS, sealants, adhesives, etc.⁸
23. The Parties have proposed a partial divestiture remedy comprising the divestiture of the following MBCC businesses to a single purchaser:
- (a) the global EBA business excluding the EBA businesses in all countries outside Australia, Canada, the countries of the European Economic Area (**EEA**), New Zealand, Switzerland, the UK and the United States; and
 - (b) the EBC business in Australia and New Zealand,
- (together, the **Divestment Business**).
24. The Merged Entity will retain the MBCC businesses which are outside the scope of the Divestment Business, namely:
- (a) the EBA business outside the EEA, Switzerland, UK, Canada, United States, Australia and New Zealand (the **Retained ROW EBA Business**); and
 - (b) the global EBC business except in Australia and New Zealand (the **Retained EBC Business**).
- (The Retained ROW EBA Business and the Retained EBC Business together, the **Retained Business**).
25. The CMA published on its case page, a non-confidential version of the Parties' detailed submission on the Parties' Remedy Proposal, which provide further details about the Parties' Remedy Proposal.⁹
26. The Parties have proposed the divestiture of the EBA businesses in the UK, the EEA and Switzerland (the **European Divestment Business**) to address specifically the areas of overlap between the Parties in the UK and the relevant markets being investigated by the European Commission. The Parties have also proposed to divest the EBA businesses in Australia, Canada, New Zealand and the United States and the EBC businesses in Australia and New Zealand as part of the same package, not only to address the potential concerns of the relevant competition authorities in their respective geographical markets, but also to provide the Divestment Business

⁸ The EBA and EBC businesses accounted for 49% and 51% of MBCC sales (respectively) in 2020.

⁹ The Parties' detailed submission on the Parties' Remedy Proposal can be found on the CMA case page [here](#).

with sufficient scale and resilience overall to compete effectively in the relevant markets where the Divestment Business operates.

27. While the CMA will consider the effectiveness of the Parties' Remedy Proposal with reference to all of the businesses that form part of the Divestment Business, the CMA's assessment is focused on whether the remedy is capable of remedying, mitigating or preventing the Provisional SLC identified in the UK and any resulting adverse effect.
28. Based on the Parties' Remedy Proposal (the details of which are set out in the published non-confidential version of the Parties' submission on the Parties' Remedy Proposal on the CMA's case page), the CMA notes the Parties' submissions that:
 - (a) The Divestment Business will comprise all assets relevant to the operation of the EBA businesses in the perimeter of the Divestment Business (and of the EBC businesses in Australia and New Zealand), including employees and other resources. This includes certain assets that are currently shared between MBCC's EBA and EBC businesses. Details of the proposed structure of the divestment and separation can be found at paragraphs 2.1 to 2.9 of the Appendix to the Parties' submission on the Parties' Remedy Proposal.
 - (b) The Divestment Business will have all know-how relating to ongoing research and development (**R&D**) projects relevant for the Divestment Business' operations.¹⁰ All R&D staff who contribute to MBCC's European EBA business will transfer with the European Divestment Business.¹¹ The European Divestment Business will also have two R&D sites: MBCC's regional R&D centre in Treviso (Italy) and the 'EBA parts' of MBCC's global R&D centre in Trostberg (Germany).^{12, 13} The Parties propose to reorganise the R&D activities in Trostberg such that the Trostberg chemical park will house only the R&D activities of the Divestment Business with the Retained Business moving to a distant separate building outside the chemical park.¹⁴
 - (c) The Divestment Business will own all trademarks for the Master Builders' Solutions (**MBS**) brand worldwide.¹⁵ The Divestment Business will also have full ownership of all EBA-related product trademarks worldwide (with

¹⁰ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.8.

¹¹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 6.17.

¹² The Divestment Business will also have the 'EBA part' of MBCC's regional R&D centre in Beachwood (United States).

¹³ Parties' submission on the Parties' Remedy Proposal, paragraph 2.9, Table 1.

¹⁴ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraphs 6.6-6.11.

¹⁵ Parties' submission on the Parties' Remedy Proposal, paragraph 4.8 and Appendix, paragraph 8.5.

one exception being the 'Pozzolith' 'umbrella' brand used by both the Retained ROW EBA Business in Japan and the Retained EBC Business in Japan).¹⁶ The Merged Entity's Retained Business will be granted a transitional period to rebrand and cease using the MBS brand, MBS trademarks and all EBA-related product trademarks in the various countries where the Retained Business will operate (the **Rebranding Transitional Period**). During the Rebranding Transitional Period, Sika will obtain an exclusive royalty-free licence to use these trademarks in relation to the Retained ROW EBA Business and the Retained EBC Business.¹⁷

- (d) The Divestment Business will own all patents relating to the EBA business, worldwide.¹⁸ The Merged Entity will obtain a sole licence from the Purchaser to use the patents until the end of life for the Retained ROW EBA Business in the Retained ROW EBA Business's geographic perimeter.¹⁹ For EBC-related patents, all patents worldwide will transfer to Sika, with the exception of nationalised EBC patents that are relevant to the EBC business in Australia and New Zealand.²⁰ The Divestment Business will own all Bills of Materials relating to the EBA operations at each of the production sites included in the Divestment Business.²¹
- (e) There are a number of instances where certain assets, including personnel and sites (as well as certain production sites) are shared by both the Retained EBC Business and the European Divestment Business (see, in particular paragraph 4.5 of the Parties' submission on the Parties' Remedies Proposal, published on the CMA case page, which summarises the shared assets and the Parties' approach to their separation).
- (f) There will be some transitional service and supply arrangements in place between the European Retained EBC Business and the Purchaser of the Divestment Business.²²

29. The Parties are currently marketing the Divestment Business on the basis of the package described in paragraph 28 above for sale to a single purchaser.²³

¹⁶ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 8.9.

¹⁷ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 8.7.

¹⁸ Parties' submission on the Parties' Remedy Proposal, paragraph 4.8 and Appendix, paragraph 7.4(a).

¹⁹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.4(a).

²⁰ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.4(b).

²¹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.11(b).

²² The proposed arrangements are: Transitional Service Arrangements (**TSAs**) relating to Finance, HR and IT services provided to the European Divestment Business; supply of UGC products to the European Divestment Business; and contract manufacturing services relating to the EBC products manufactured in 3 shared production sites to the European Retained EBC Business.

²³ The suitability of the purchaser will be assessed separately by the relevant competition authorities in each of the countries in which the Divestment Business operates.

30. The CMA's experience is that partial divestiture (such as the Parties' Remedy Proposal) is, in some cases, capable of effectively remedying SLCs, provided that it is appropriately configured to allow a purchaser to operate as an effective competitor in the relevant market and to attract a suitable purchaser.²⁴
31. In this case, the CMA's initial view is that while the Parties' Remedy Proposal could potentially represent an effective remedy to the Provisional SLC, the CMA will need to be highly confident that the composition, purchaser and asset risks (see paragraphs 33 to 39 below) associated with a partial divestiture can be appropriately mitigated. The CMA will consider any further evidence it receives, including any responses and submissions to this Remedies Notice. The CMA invites views on these areas at paragraphs 44 to 49 below.

Divestiture of a broader or differently configured divestiture package

32. The CMA invites views on whether it should consider a broader or differently configured divestiture package to the Parties' Remedy Proposal, eg a divestiture of MBCC's entire EBA business worldwide (see paragraph 50 below).

Considerations for the design of effective divestiture remedies

33. The CMA sets out below the considerations for the design of effective divestiture remedies.
34. In evaluating possible divestitures as a remedy to the Provisional SLC it has found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. The CMA's guidance on remedies sets out three categories of risk that can impair the effectiveness of any divestiture remedy:²⁵
- (a) composition risk arises if the scope of the divestiture business is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
 - (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available; and

²⁴ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 5.3.

²⁵ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 5.3.

- (c) asset risk arises if the competitive capability of the divestiture business deteriorates before completion of the divestiture.
35. Further details on each risk category and the CMA's approach to mitigating such risks are provided below.

Composition risk

36. When considering composition risk, any divestiture package would need to be appropriately configured to address the SLC; be attractive to potential purchasers; and enable the purchaser to compete as an effective competitor and restore the competitive constraint imposed by MBCC that would be lost as a result of the Merger in a timely manner. In general, the CMA has a preference for avoiding 'mix-and-match' divestitures, eg a combination of Sika's and MBCC's assets, which can create additional composition risks such that a divestiture package will not function effectively.²⁶
37. In defining the scope of a divestiture package that will address any SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.²⁷ The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.²⁸

Purchaser risk

38. When considering purchaser risk, the CMA will normally wish to be satisfied that a prospective purchaser:²⁹
- (a) is independent of the merger parties;
 - (b) has the necessary capability to compete;
 - (c) is committed to competing in the relevant markets; and
 - (d) will not create further competition concerns.

²⁶ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 5.16.

²⁷ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 5.7.

²⁸ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 5.12.

²⁹ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraphs 5.20 and 5.21.

Asset risk

39. When considering asset risk, the CMA will seek to ensure an effective divestiture process that will protect the competitive potential of any divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale. The process should also allow prospective purchasers to make an appropriately informed acquisition decision.³⁰ As such, the CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with divestiture.

Consultation on possible remedies

40. The CMA invites comments on possible remedies and submissions on the CMA's questions below.
41. As set out in paragraphs 21 and 31 above, the CMA's current view is that:
- (a) prohibition of the Merger represents an effective remedy; and
 - (b) while the Parties' Remedy Proposal could potentially represent an effective remedy, this is subject to any further evidence the CMA receives on the Parties' Remedy Proposal and on any other remedy option, and the CMA satisfying itself as to potential composition, purchaser and asset risks discussed below.
42. In order to address any potential composition, purchaser and asset risks (see paragraphs 33 to 39 above) and ensure the effectiveness of a divestiture remedy, the CMA will have regard to the following critical elements of its design:
- (a) the scope of the divestiture package;
 - (b) identification and availability of a suitable purchaser; and
 - (c) the effectiveness of the divestiture process.

Invitation for views on the scope of the divestiture package needed to address the Provisional SLC:

43. To be effective in remedying the Provisional SLC, any divestiture package would need to be appropriately configured to be attractive to potential

³⁰ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 5.33.

purchasers and to enable the purchaser to operate as an effective independent competitor.

44. In relation to the Parties' Remedy Proposal, the CMA invites views on:
- (a) whether the Parties' Remedy Proposal would represent an effective remedy to the Provisional SLC and any resulting adverse effects;
 - (b) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market;³¹ and
 - (c) with reference to the non-confidential version of the Parties' submission on the Parties' Remedy Proposal on the CMA's case page, in particular Table 1 of paragraph 2.9), whether any other elements (eg assets) should also be required to be divested.
45. Regarding the Parties' approach to R&D under the Parties' Remedy Proposal (see paragraph 28(b) above), the CMA invites views on:
- (a) how the CMA can ensure that all of the relevant know-how and the R&D and innovation capabilities of the European Divestment Business, in particular in relation to chemical admixtures, can be comprehensively identified and divested to the purchaser of the Divestment Business; and
 - (b) whether the Parties' Remedy Proposal poses any risks to the R&D and innovation capabilities of the European Divestment Business, or more broadly, the Divestment Business.
46. Regarding the Parties' approach to branding under the Parties' Remedy Proposal and the Rebranding Transitional Period (see paragraph 28(c) above), the CMA invites views on:
- (a) what an appropriate timescale would be to enable the Merged Entity to cease using the MBS brand and EBA-related product trademarks and rebrand to a Sika brand;
 - (b) whether this should vary by location (eg by country or region) and, if so, why and what the appropriate timescale per location could be; and
 - (c) whether and to what extent expansion by the Divestment Business into any country in the Retained Business' geographic perimeter during the

³¹ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 5.3(a).

Rebranding Transitional Period would be hampered by the Retained Business' use of the EBA-related product trademarks, and to what extent this may affect the viability of the Divestment Business.

47. Regarding the Parties' approach to patents and IP under the Parties' Remedy Proposal (see paragraph 28(d) above), the CMA invites views on:
- (a) the extent to which patents and/or other IP rights relevant to the EBC business could also be relevant to the EBA business (in particular, to chemical admixtures) (and vice versa); and
 - (b) the steps the CMA or the Parties can take to ensure that a potential purchaser of the Divestment Business can verify that all of the patents and IP relevant to chemical admixtures have been included within the perimeter of the Divestment Business (eg during the due diligence process).
48. Regarding the Parties' approach to the separation of assets which are shared by the Retained EBC Business and the European Divestment Business (see paragraph 28(e) above and paragraph 4.5 of the Parties' submission on the Parties' Remedies Proposal, published on the CMA case page³²), the CMA invites views on the Parties' proposed approach and the extent to which any risks associated with the Parties' proposal could undermine the successful implementation of the Parties' Remedy Proposal.
49. Regarding economies of scale,³³ the CMA invites views on:
- (a) whether the scope of the Divestment Business provides the potential purchaser with sufficient scale to compete effectively with the Merged Entity in the supply of chemical admixtures for cement, concrete and wet mortar in the UK; and
 - (b) what EBITDA³⁴ margin a stand-alone chemical admixtures business in the UK and/or Europe (with sufficient scale and an efficient cost base) might typically expect to generate.
50. The CMA also invites views on whether a broader or differently configured (eg smaller) divestiture package could also be an effective remedy, and if so:

³² The non-confidential version of the Parties' submission on the Parties' Remedy Proposal can be found on the CMA's case page [here](#).

³³ These arise where average costs fall as the level of output rises over a range of output volume.

³⁴ EBITDA means earnings before interest, tax, depreciation and amortisation.

- (a) what the appropriate scope of the package of assets to be divested should be, and which assets (if any) should be excluded from the scope of the divestiture package and why;
- (b) whether there are any risks that the scope of the Divestment Business may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the supply of chemical admixtures for cement, concrete and wet mortar in the UK; and
- (c) what the possible carve-out and separation risks could be of divesting the divestiture package.

Invitation for views on the identification and availability of a suitable purchaser for the Divestment Business:

- 51. The CMA's standard criteria for a suitable purchaser are set out in paragraph 38 above. The CMA invites views on whether in the particular circumstances of this case or the relevant market, there are any other specific factors or requirements to which the CMA should pay particular regard in assessing purchaser suitability.
- 52. The CMA invites views on whether any downstream customer which purchases chemical admixtures for cement, concrete and wet mortar (eg heavy building material companies) in the UK and the other non-UK markets where the Divestment Business operates:
 - (a) could and/or would effectively compete to supply chemical admixtures to its downstream competitors; and
 - (b) would raise any other concerns which should cause this type of purchaser to be ruled out as potentially suitable.
- 53. The CMA also invites views on whether there are any other specific types of purchaser which should be ruled out as potentially suitable purchasers, including (but not limited to):
 - (a) financial buyers (eg private equity funds);
 - (b) any supplier of the raw inputs required in the manufacture of chemical admixtures (eg chemicals producers), eg a supplier engaged in the manufacture and/or distribution of polymers in the UK and the other non-UK markets where the Divestment Business operates; and

- (c) any other company currently active in any other part of the supply chain in relation to chemical admixtures for cement, concrete and wet mortar in the UK and the other non-UK markets where the Divestment Business operates.
54. The CMA invites views on whether there are any other specific purchasers which should be ruled out as potentially suitable purchasers, and if so, who and why.
55. The CMA invites views on the risks that a suitable purchaser is not available or that the Parties will be incentivised to divest the Divestment Business to a weak or otherwise inappropriate purchaser.

Invitation for views on ensuring an effective divestiture process for the Divestment Business:

56. The CMA invites views on:
- (a) the appropriate timescale for achieving a divestiture (the **Initial Divestiture Period**);³⁵
 - (b) the risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture, and whether an independent Monitoring Trustee³⁶ should be appointed to oversee the divestiture process and to ensure that the operations and assets to be divested are maintained and properly supported during the course of the process; and
 - (c) the most appropriate transaction structure for the divestment to ensure that the Divestment Business have all the necessary assets required to effectively compete as a supplier of chemical admixtures in the UK.

Cost of remedies and proportionality

57. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the

³⁵ The initial divestiture period will normally commence once the CMA has accepted final undertakings or made a final order (up to 12 weeks after the final report) in relation to the required remedy in the CMA's final report. The length of this initial divestiture period will depend on the circumstances of the merger, but will normally be a maximum period of six months (see also [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 5.41).

³⁶ Where the CMA requires remedies, an independent Monitoring Trustee may be appointed, whose role may be to ensure that any divestiture process is carried out in compliance with the CMA's remedy decision (see also [Interim measures in merger investigations: CMA108](#) (December 2021), section 4 titled 'Monitoring trustees and hold separate managers').

CMA considers equally effective, it will choose that which imposes the least cost or restriction. In relation to completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.³⁷

58. The CMA invites views on what costs are likely to arise in implementing each remedy option.

Relevant customer benefits

59. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.³⁸
60. Relevant customer benefits are limited by the Act to benefits to customers in the form of:
- (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or
 - (b) greater innovation in relation to such goods or services'.³⁹
61. The Act provides that a benefit is only a relevant customer benefit if:
- (a) it has accrued to relevant customers, or may be expected to accrue, within the UK within a reasonable period as a result of the creation of that situation; and
 - (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.⁴⁰
62. The CMA invites views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options we are considering.

Next steps

63. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by **17:00 hours (UK time) on Friday 4 November 2022** (see Note (i)).

³⁷ [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraphs 3.6.

³⁸ [Section 36\(4\)](#) of the Act, see also [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 3.15.

³⁹ [Section 30\(1\)\(a\)](#) of the Act, see also [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 3.17.

⁴⁰ [Section 30\(2\)](#) of the Act. See also [Merger Remedies \(CMA87\)](#) (13 December 2018), paragraph 3.19.

64. A copy of this Remedies Notice will be posted on the CMA case page.

Richard Feasey
Inquiry Group Chair
25 October 2022

Note

- (i) This notice of possible actions to remedy, mitigate or prevent the SLC or any resulting adverse effects is made having regard to the Provisional Findings announced on 25 October 2022. Interested parties have until **17:00 hours (UK time) on 15 November 2022** to respond to the Provisional Findings. The CMA's findings may alter in response to comments it receives on its Provisional Findings, in which case the CMA may consider other possible remedies, if appropriate.