

**ANTICIPATED ACQUISITION BY SIKA AG OF MBCC GROUP
CASE ME/6984/22**



MBCC GROUP

PHASE 2 REMEDIES SUBMISSION

SUBMITTED ON 24 OCTOBER 2022

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EXECUTIVE SUMMARY

1. BACKGROUND

- 1.1 Sika AG ("**Sika**") has agreed to acquire the whole of the issued share capital of the ultimate parent company of the MBCC Group ("**MBCC**" and together with Sika "**the Parties**") ("**the Merger**").
- 1.2 In the UK, the Parties both supply chemical admixtures.¹ Chemical admixtures are specially formulated chemicals added to concrete, cement or mortar - materials used in construction and other industries - in very small amounts, in order to modify their properties (e.g., reduce water content, improve workability or increase/decrease setting time). Chemical admixtures are produced from water and chemical constituents such as polymers and salts. The manufacturing process is not complex, as it involves the basic blending of polymers and other widely available raw materials. Chemical admixtures are mixed according to a specific formula. The precise formulation is typically slightly adjusted to match a customer's specific concrete mix design and characteristics of the local cement and aggregates. Because of these characteristics, the adjustment and supply of chemical admixtures takes place on a national level, in the country where the customer is located.
- 1.3 On 27 July 2022, the Competition and Markets Authority ("**CMA**") decided under section 33(1) of the Enterprise Act 2002 ("**the Act**") that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition in the supply of chemical admixtures in the UK (the "**SLC**"). On 10 August, the CMA referred the Merger to a Phase 2 investigation under section 33 of the Act ("**Decision to Refer**").
- 1.4 On 6 September 2022, the Phase 2 Inquiry Group accepted the Parties' request dated 2 September 2022, to concede the SLC identified by the CMA in the Phase 1 investigation, so that the Phase 2 investigation can focus on the assessment of remedial action.

2. THE PROPOSED REMEDY

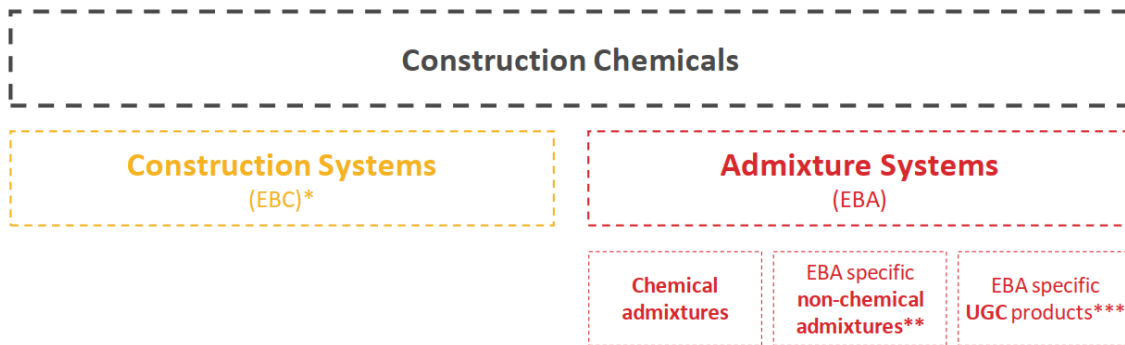
- 2.1 The Parties intend to offer undertakings under section 82 of the Act for the purpose of remedying, mitigating or preventing the SLC and any adverse effects resulting from it ("**Proposed Remedy**"). The Parties will provide a draft text of the proposed undertakings to the CMA in due course, this will be consistent with the draft commitments being discussed with the European Commission, which will also be shared with the CMA.
- 2.2 The purpose of this submission is to set out the architecture of the Proposed Remedy and identify key areas of difference from the Undertakings in Lieu ("**UILs**") offered at Phase 1.
- 2.3 As shown in *Figure 1* below, MBCC Group is comprised of two main business divisions: (A) Construction Systems (the "**EBC business**")² and (B) Admixture Systems (the "**EBA business**"). The chemical admixtures business of MBCC Group is part of the EBA business,

¹ To a lesser extent, the Parties also overlap in other construction-related products, including waterproofing, premix mortars, industrial flooring products, sealants, adhesives and fibres. However, the CMA did not find an SLC in relation to any market other than the supply of chemical admixtures in the UK.

² MBCC Group has a smaller wood protection division ("**EBS**") which is standalone, focuses purely on wood protection (Wolman brand). Since the CMA has not found a realistic prospect of an SLC in the activities of this division, it forms part of the Retained Business. For brevity, the term "EBC business" in this submission is used to refer to all aspects of MBCC Group's business that are not the EBA business - this is mainly Construction Systems.

together with adjacent products that are used with chemical admixtures. These adjacent products are: (A) EBA-specific non-chemical admixtures; and (B) EBA-specific underground construction products (“UGC”).

Figure 1 MBCC Group's main business divisions



* E.g., industrial floorings, waterproofing, ETICS, sealants, adhesives, etc.
 ** E.g., fibers, mineral admixtures.
 *** E.g., injection resins, foams and greases for tunnel boring machines.

The Proposed Remedy

2.4 The Proposed Remedy involves a commitment by the Parties to divest to a purchaser (“**Purchaser**”) approved by the CMA within a divestiture period to be agreed with the CMA:

- (a) the worldwide EBA business of MBCC Group with the exception of the Retained ROW EBA Business³; and
 - (b) the EBC business of MBCC Group in Australia and New Zealand
- together, the “**Divestment Business**”.

2.5 For the purposes of the Proposed Remedy, the Retained ROW EBA Business and the Orange Retained EBC Business⁴ together comprise the “**Retained Business**” that will be carved out and retained by Sika (along with the EBC business of MBCC Group outside of the Orange perimeter).

Post-Implementation of the Proposed Remedy

2.6 Following implementation of the Proposed Remedy, the Purchaser will own the Divestment Business, which includes the following:

- (a) the EBA business of MBCC Group in the EEA, Switzerland and the UK (“**UK Divestment Business**”) (together the “**European Divestment Business**”);
- (b) the EBA business of MBCC Group in the U.S. and Canada (“**N. American Divestment Business**”); and

³“**Retained ROW EBA Business**” means the EBA business of MBCC Group in all countries outside the “**Orange**” perimeter, operated by the MBCC Group legal entities listed in Schedule B paragraph 2 of the draft Commitments to the European Commission. “**Orange**” denotes the geographic perimeter covering the EEA, Switzerland, UK, USA, Canada, Australia, and New Zealand

⁴ “**Orange Retained EBC Business**” means the EBC business of MBCC Group within the Orange perimeter, operated by the MBCC Group legal entities listed in Schedule B paragraph 3 of the draft Commitments to the European Commission (i.e., all MBCC Group legal entities housing the EBC business within the Orange perimeter, except those in Australia and New Zealand).

- (c) the business of MBCC Group in each of Australia and New Zealand ("**ANZ Divestment Business**").
- 2.7 Most relevant to the supply of chemical admixtures in the UK are the European Divestment Business and the UK Divestment Business and this submission mainly focuses on describing these two aspects of the Proposed Remedy.
- 2.8 The Parties are exclusively pursuing the sale of the Divestment Business as a single package (as opposed to divesting the Divestment Business in separate parcels by region).
- 2.9 **Table 1** summarises the key features of the Divestment Business, which comprises a significant international operation with considerable scale and resources. Covering 36 countries, the Divestment Business will have total sales of EUR [CONFIDENTIAL] with an expected EBITDA of approximately [CONFIDENTIAL] in 2022, approximately 1,600 employees, over 30 production sites and 3 R&D sites, including the global R&D centre at Trostberg. In short, the Divestment Business has everything needed to operate as a significant standalone competitive force from Day 1 after closing. The Proposed Remedy also represents a significant improvement on the Parties' Phase 1 offer, taking on board the feedback given by the CMA in the Decision to Refer.

Table 1 Key features of the Divestment Business make the Proposed Remedy a significantly more attractive and improved offer compared to the Phase 1 UILs.

The Divestment Business

- Operates in 36 countries (EEA, Switzerland, UK, U.S., Canada, Australia, New Zealand)
- Manufactures chemical admixtures, fibres, mineral admixtures, UGC and other related products such as polymers
- Net sales of approximately EUR [CONFIDENTIAL] with approximately [CONFIDENTIAL] EBITDA (FY22 rolling forecast)⁵
- 25 legal entities, 7 branches
- 36 production sites
- 53 standalone warehouses
- 19 standalone offices including the whole of Mannheim (MBCC's current HQ)⁶
- 1070 registered trademarks
- 3 R&D sites (Treviso, EBA part of Trostberg and EBA part of Beachwood)
- approx. 1600 FTEs, including approx. [CONFIDENTIAL] R&D/Technical FTEs⁷
- Over 60 Key Personnel including top level executive management [CONFIDENTIAL] and a number of global functional leads [CONFIDENTIAL]
- [CONFIDENTIAL] EBA patent families⁸ and [CONFIDENTIAL] nationalised EBC patents in AUS/NZ
- [CONFIDENTIAL] global EBA R&D projects⁹
- All EBA-related customer/supplier relationships
- TSAs for the benefit of the Divestment Business for IT, Finance, HR and transitional arrangements for the supply of certain products.

⁵ Net Sales and EBITDA Margin are based on perimeter adjusted figures including standalone cost adjustments

⁶ Including 14 in the European Divestment Business, 2 in the ANZ Divestment Business and 3 in the N. American Divestment Business. For completeness, Bensheim (Germany), which does in fact not have any office space and is just used as a show room, is also counted as an office.

⁷ The absolute number of FTEs within the Divestment Business is subject to normal fluctuations (e.g., as a result of future leavers and new hires) so the counts cited in this submission are indicative only. The FTE count is derived from an FTE base dated 30 June 2022 and excluding certain categories of employees based on information that is current as of 4 October 2022 (e.g., those on temporary leave, apprentices, trainees and contractors). Count does not reflect leavers in U.S. and Canada.

⁸ Data as of May 2022.

⁹ Status as of April 2022.

Significant improvements vs. the Parties' UIL offer in Phase 1

- Sale of the Divestment Business to a **single buyer**, resulting in significant economies of scale, financial resilience and incentive to invest.
- **Global ownership of all EBA patents and trademarks** (including the Master Builders' Solutions brand and other IP related to the EBA business) enables and incentivises the Divestment Business to expand beyond the EEA, UK, Switzerland, Canada, U.S., Australia and New Zealand
- **Addition of [CONFIDENTIAL] global and regional management Personnel** to ensure a strong strategic leadership
- **Significantly expanded Key Personnel list.** [CONFIDENTIAL]
- Conservative approach [CONFIDENTIAL] skewed in favour of the Divestment Business
- The **entire Mannheim office HQ will remain with the Divestment Business**
- The Purchaser will have the benefit of procurement and supply links throughout the entire Divestment Business
- **Refreshed sales process and engagement with numerous potential purchasers** to take into account the expanded perimeter of the Divestment Business.
- Updated and more **detailed timeline** of the reverse carve-out divestment process and parallel regulatory approvals from six concurrent regulators.

3. THE PROPOSED REMEDY WILL FULLY AND COMPREHENSIVELY SOLVE THE SLC

A structural solution

- 3.1 The sale of the Divestment Business will be executed as a share sale. The Purchaser will purchase the entire issued share capital of the existing MBCC Group legal entities that carry on the Divestment Business, as set out in **Annex 1 MBCC Structure Chart by End State**, in the EEA, UK, Switzerland, U.S., Canada, Australia and New Zealand.
- 3.2 Prior to the sale of the Divestment Business, the Orange Retained EBC Business will be separated from those MBCC Group legal entities.
- 3.3 In most jurisdictions in Europe (including the UK)¹⁰ the separation plan will be effected by transferring to Sika those specific assets, personnel and relationships (incl., customers/suppliers) that pertain to the Orange Retained EBC Business in the EEA, Switzerland and UK. They will be transferred out of those MBCC Group legal entities before the sale of the Divestment Business to the Purchaser takes place. Where the legal entity is not currently exclusive to the European Divestment Business or, in a limited number of cases, the Orange Retained EBC Business in the EEA, Switzerland and UK, a business transfer will therefore separate the respective assets accordingly Detailed plans are being prepared to allow for a smooth and swift carve out to avoid any disruption to the European Divestment Business.
- 3.4 No composition or asset risks arise¹¹ from the legal separation since the European Divestment Business already largely operates as a separate and independent operating business from the Orange Retained EBC Business in the EEA, Switzerland and UK (see **Appendix**, section 2).

Elimination of overlap in chemical admixtures in the UK

- 3.5 The sale of the European Divestment Business eliminates the entire overlap between the Parties in chemical admixtures in the UK (and in the EEA and Switzerland) and therefore comprehensively resolves the SLC in the supply of chemical admixtures within the UK. Given

¹⁰ The few exceptions to the reverse carve out structure are [CONFIDENTIAL]. See Appendix for details.

¹¹ CMA Guidance *Merger Remedies* (CMA87), paragraph 5.7 and 5.12

the scope of the businesses being divested, the Proposed Remedy extends even further than the SLC.

- 3.6 The European Divestment Business is a viable and standalone business capable of competing effectively in the UK market post-Merger. In particular, in this perimeter, it is not just MBCC Group's chemical admixtures business, but **the whole of MBCC Group's EBA business in the EEA, Switzerland and the UK (i.e., the entire Admixture Systems division) - as defined below - that will be sold.** The Purchaser of the European Divestment Business will therefore acquire:
- (a) MBCC Group's chemical admixtures business in the EEA, Switzerland and the UK;
 - (b) MBCC Group's non-chemical admixtures business that is also part of the EBA division (e.g., the fibres and mineral admixtures businesses) in the EEA, Switzerland and the UK, and
 - (c) MBCC Group's UGC products business that is also part of the division (e.g., injection resins, foams and greases for tunnel boring machines) in the EEA, Switzerland and the UK.
- 3.7 To remedy any possible concern the CMA may have¹² regarding the scale and viability of the Divestment Business, the addition of the N. American and ANZ Divestment Business creates a **strong chemical admixtures business with scale and capability** to continue to be an effective competitor to Sika in the EEA, Switzerland and the UK (as well as in the U.S., Canada, Australia and New Zealand).

All assets included for an effective, standalone business, with a potential to expand geographically

- 3.8 The Divestment Business comprises (a) the worldwide EBA business of MBCC Group with the exception of the Retained ROW EBA Business and (b) the EBC business of MBCC Group in Australia and New Zealand.
- 3.9 Following the carve out, the Divestment Business will have all necessary facilities, personnel and tangible and intangible assets for it to compete effectively and on a standalone basis. Moreover, the Divestment Business will have all the patents, R&D staff and R&D facilities to bring to market improved chemical admixtures that have a more sustainable profile and characteristics - the customer benefits arising from the Merger described in the Final Merger Notice.¹³ The design of the Proposed Remedy fully preserves these customer benefits.
- 3.10 The Divestment Business is even equipped to expand beyond its current geographic perimeter. The Purchaser will retain global ownership of all registered patents and trademarks pertaining to the EBA business.¹⁴ They allow the Purchaser to expand the Divestment Business geographically, which – given the low entry barriers and the low amount of investments needed – is not just a theoretical possibility.

¹² Paragraph 21 of the Decision to Refer.

¹³ See section 24 of the Final Merger Notice for the Parties' submissions on efficiencies and customer benefits.

¹⁴ With the exception of trademarks pertaining to Pozzolith in Japan, and subject to time-limited exclusive licenses to Sika to ensure continuity of the Retained Business. With respect to EBC, the Divestment Business will also own [CONFIDENTIAL] patent registrations related to EBC products and required by the Divestment Business in Australia and New Zealand and all EBC related product trademarks in Australia and New Zealand. See Appendix, section 7 and 8 for more details

3.11 Overall, Sika has therefore adopted a very conservative approach to defining the EBA business-related assets (including staff), skewed in favour of the Divestment Business. This is in order to guarantee that the Purchaser has control over all relevant assets contributing to the Divestment Business. For example, only purely dedicated EBC production sites (i.e., which only produce EBC products) will be transferred out as part of the Orange Retained EBC Business in Europe, with the European Divestment Business retaining over half of MBCC Group's production sites in the EEA, Switzerland and the UK.

4. THE PROPOSED REMEDY WILL BE EFFECTIVE

4.1 There are no material doubts that the Proposed Remedy will be effective in addressing the SLC. The Divestment Business as a whole gives the Purchaser the ability to compete effectively in chemical admixtures in the EEA, Switzerland and the UK (no composition risk), suitable purchasers are interested in acquiring the Divestment Business (no purchaser risk) and there is no risk the Divestment Business will deteriorate prior to the completion of their sale to the Purchaser (no asset risk).

No composition risk

4.2 The European Divestment Business, and Divestment Business more broadly represent a comprehensive and attractive standalone and effectively competitive business. There is no risk that the scope of the European Divestment Business will give rise to composition risk (i.e., that it would not allow the Purchaser to operate as an effective competitor in the market).

4.3 In particular, the Parties have taken note of the CMA's comments during its Phase 1 investigation. As explained below, the Proposed Remedy addresses all of the points made by the CMA in the Decision to Refer around possible composition risks.

4.4 **First**, Sika will commit to divest to a single purchaser, to allow the Purchaser to function as an effective and financially resilient competitor with an incentive to operate at scale across three major regions - Europe, Australia/New Zealand and United States/Canada. This combined geographic scope guarantees that the Divestment Business will continue to benefit from significant economies of scale.¹⁵ The possibility to expand the Divestment Business to any other country beyond its current perimeter will provide for economies of scale. This resolves the CMA's concern at paragraph 21 of the Decision to Refer, that separating the European Divestment Business from the wider MBCC business could impact on financial resilience and incentives to invest (including potential lost economies of scale).

4.5 **Second**, the European Divestment Business will be *operationally* independent of the Orange Retained EBC Business in Europe.

(a) The customer-facing (sales & marketing) function of the European Divestment Business is already managed almost entirely separately (as the EBA Division) from the Orange Retained EBC Business, at the local, regional and global levels. [CONFIDENTIAL] (see **Appendix**, section 5).

(b) Virtually all production sites which are part of the EBA business in Europe are fully dedicated to the European Divestment Business. The three¹⁶ sites that are shared with

¹⁵ See Appendix, section 12 for a discussion of the economies of scale.

¹⁶ In addition there are two sites (Rodekro, Denmark, and Swinton, UK) which are essentially fully dedicated to EBA production but where de minimis EBC volumes are produced. Production of these de minimis EBC

EBC will be vacated by the Orange Retained EBC Business with contract manufacturing agreements put in place for a short period after closing (see **Appendix**, section 3). Although some warehouses and offices are shared between the EBA business and the EBC business in Europe, the Parties have developed a simple separation plan (there will be no co-location post-divestment - see **Appendix**, section 4). In Trostberg, the R&D activities will be reorganised to achieve a clear physical separation between the EBA and EBC activities. The Trostberg chemical park will house only the R&D activities of the Divestment Business with the Orange Retained EBC Business moving to a distant separate building outside the chemical park.

- (c) Also, the Orange Retained EBC Business will vacate the Mannheim HQ of MBCC Group (which is currently shared between the Divestment Business and the Retained Business) within a period of [CONFIDENTIAL] after the closing of the sale to the Purchaser.
- (d) A clear approach has been developed to ensure that the European Divestment Business has all the personnel it needs and that contribute to the European Divestment Business. For further details please see please see **Appendix**, section 5.
 - (i) [CONFIDENTIAL].¹⁷
 - (ii) [CONFIDENTIAL]
 - (iii) [CONFIDENTIAL]
 - (A) [CONFIDENTIAL]
 - (B) [CONFIDENTIAL]¹⁸
- (e) The IT operations of the Divestment Business are outsourced to [CONFIDENTIAL]. The Divestment Business will continue to benefit from the IT services provided by [CONFIDENTIAL]. IT employees needed will remain part of the Divestment Business (see **Appendix**, section 5 for details).
- (f) [CONFIDENTIAL] employees working at supra-national level will remain with the European Divestment Business. In particular, in addition to employees who were originally allocated to the European Divestment Business when the intention was to pursue a standalone European sale, [CONFIDENTIAL] global and regional management personnel will now be acquired by the Purchaser. This includes the top management of MBCC Group, [CONFIDENTIAL] and many of the global and regional heads of the support functions. This will ensure that the Divestment Business are supported by strong management (see **Appendix**, section 5 for further details).
- (g) All R&D FTEs of MBCC's EBA business, (and in particular, those personnel who contribute to R&D for the European Divestment Business [CONFIDENTIAL]) will remain with the European Divestment Business (see **Appendix**, section 6).¹⁹ [CONFIDENTIAL]. Further, the R&D activities at the shared R&D site in Trostberg

volumes will be ceased at both sites by closing of the sale of the Divestment Business. Further details are provided at Appendix, section 3.

¹⁷ Excluding leavers.

¹⁸ The [CONFIDENTIAL] also include certain FTEs at the global/regional level, e.g., personnel working in intellectual property roles as well as top-level management positions. [CONFIDENTIAL]

¹⁹ [CONFIDENTIAL]

can easily be reorganised by simple relocations of the EBA and EBC activities between existing buildings so that the Trostberg chemical park houses only the R&D activities of the Divestment Business with a separate building outside the chemical park and across a railway line housing the R&D activities of the Orange Retained EBC Business.

- (h) There are no patents which are relevant to both the Divestment Business and the Orange Retained EBC Business (see **Appendix**, section 7). Similarly, there are no product trademarks which are shared between the Divestment Business and the Orange Retained EBC Business.²⁰
- (i) There are limited customer relationships which are shared by the European Divestment Business and the Orange Retained EBC Business in Europe, including just [CONFIDENTIAL] shared UK customers, with the majority of shared customers buying product on a spot purchase basis rather than through a formal contract. Similarly where procurement of direct inputs is covered by a written supply contract, in the case of only [CONFIDENTIAL] suppliers do these relationships relate to the supply of both EBA and EBC products throughout the EEA, UK and Switzerland. MBCC's direct procurement is generally [CONFIDENTIAL]. These relationships can be easily separated (see **Appendix**, section 9 and **Appendix**, section 10).
- (j) Given that the European Divestment Business is already largely standalone business division, there are no composition risks arising from the legal separation process. The separation structure further ensures that no relevant assets are "lost" in the separation process, as explained in **Appendix**, section 2.

4.6 **Third**, the Parties confirm that the European Divestment Business is not dependent on the Retained ROW EBA Business. As set out in **Appendix**, section 11:

- (a) The European Divestment Business sources raw materials (in particular polymers) either from third parties, or "in-house". Such "in-house" supply occurs within the European Divestment Business perimeter. As such the European Divestment Business will in no way be dependent on the Orange Retained EBC Business in this regard.
- (b) All of the R&D needs of the European Divestment Business are met through the R&D activities at Trostberg and Treviso, which will remain part of the Divestment Business.²¹

4.7 **Fourth**, the links between the European Divestment Business and the Orange Retained EBC Business will be limited to only a few specific arrangements described in further detail in **Appendix**, section 11. For example, the transitional agreements for supply of products and services to the European Divestment Business will be limited to:

- (a) TSAs in relation to support functions for a limited timeframe (IT, Finance and HR, and one TSA specific to fleet management services in North America) provided to the Divestment Business by the Retained Business;

²⁰ There are limited exceptions [CONFIDENTIAL] which will be re-branded and [CONFIDENTIAL] in the U.S. and Canada. See Appendix section 8.

²¹ The limited collaboration on [CONFIDENTIAL] R&D projects between [CONFIDENTIAL] is no longer relevant to the assessment of composition risk since both sites will now be part of the Divestment Business and in any event, the [CONFIDENTIAL] projects are being [CONFIDENTIAL].

- (b) short-term contract manufacturing agreements at the three shared production sites relating to the production of EBC products by the European Divestment Business for the benefit of the Orange Retained EBC Business in the EEA, Switzerland and the UK;
 - (c) short-term supply of certain products by the Orange Retained EBC Business to the European Divestment Business on an arm's length basis.²²
- 4.8 **Fifth**, all the assets of the European Divestment Business to allow it to compete effectively will be acquired by the Purchaser. In particular, the Master Builders' Solutions trademark will remain with the Divestment Business and all patents and product trademarks relating to the EBA business globally will remain with the Divestment Business.²³
- 4.9 **Finally**, in response to paragraph 21 of the Decision to Refer, the Parties estimate that there will be no loss of financial resilience or incentives to invest nor the loss of any material economies of scale on the part of the Divestment Business as a result of implementing the Proposed Remedy. On the contrary, the Divestment Business will be able to operate profitably and efficiently from Day 1. As set out in **Appendix**, section 12:
- (a) There are limited diseconomies of scale with respect to the Divestment Business. This is because the Divestment Business is profitable, viable, competitive and largely standalone.
 - (b) Indeed, on a standalone basis, the Divestment Business would have operated an EBITDA margin of [CONFIDENTIAL] on sales of approximately [CONFIDENTIAL] million in FY2022 and it is expected that similar levels of sales and profitability will be achievable by the Divestment Business after its sale. It will be viable and attractive to a purchaser, as reflected by the strong interest already shown by bidders and will be able to compete effectively throughout the EEA, Switzerland, UK, U.S., Canada, Australia, and New Zealand (and potentially beyond).
 - (c) The Divestment Business will benefit from [CONFIDENTIAL] senior management (including senior individuals [CONFIDENTIAL]; as well as numerous global and regional leads [CONFIDENTIAL]) compared to when the Parties were considering three separate divestment transactions. This will ensure that the Divestment Business is able to operate across the three regions. However, the additional management overhead and other non-staff costs associated with providing global support do not materially affect the cost base of the Divestment Business. Fully internalising global and regional support services will lead to an increase in costs for the Divestment Business of just [CONFIDENTIAL] percentage points of FY2022 RF EBITDA margin. The Divestment Business will continue to operate on a profitable basis.
 - (d) The cost base will not be materially affected by underutilised staff or assets (including R&D assets). In particular, in relation to the minority of production sites and warehouses that are currently shared, lost economies of scale will be just [CONFIDENTIAL] percentage points of FY2022RF EBITDA margin.
 - (e) The estimated lost economies of scale to the European Divestment Business from shared offices are small at just EUR [CONFIDENTIAL] in FY2022 RF

²² The volume of these supply agreements is de minimis. The period of supply will be [CONFIDENTIAL]. See **Annex 14** for further detail.

²³ With the exception of one umbrella brand in Japan, Pozzolith, which will transfer to Sika, as detailed at Appendix, Section 7.

([CONFIDENTIAL]% of the European Divestment Business' revenue) will not materially affect the competitive position of the Divestment Business and a portion of these lost economies can be recaptured in the short term.

No purchaser risk

- 4.10 There is no risk that a suitable purchaser will not be available or that the Parties will divest to a weak or otherwise inappropriate purchaser.
- 4.11 The composition of the package has been crafted regardless of the purchaser - its effectiveness does not depend on the identity of the purchaser.
- 4.12 Sika has instructed [CONFIDENTIAL] to market the Divestment Business as a single package to prospective purchasers. Engagement with prospective purchasers is currently ongoing. On [CONFIDENTIAL], [CONFIDENTIAL] sent process letters to the following [CONFIDENTIAL] **potential purchasers**: [CONFIDENTIAL].²⁴ In the weeks since then, the prospective management team of the Divestment Business has been engaging in "fireside chats" with [CONFIDENTIAL]. During these conversations, the high level of interest already indicated by potential purchasers has been confirmed. The sale process commenced on [CONFIDENTIAL] 2022, when the Confidential Information Memorandum ("CIM") for the Divestment Business (including selected financial information) was sent out to each of the [CONFIDENTIAL] potential purchasers who received the process letter. Potential purchasers are being asked to provide their non-binding offers by the end of [CONFIDENTIAL], with likely around [CONFIDENTIAL] parties progressing to a due diligence round. The second phase will complete no later than [CONFIDENTIAL]. For further details on the sale process, see **Appendix**, section 13.
- 4.13 Bidders are aware of and understand the need to engage with the CMA and to provide the CMA with evidence as to their suitability as a potential purchaser. We expect their first representations to the CMA to be in response to the Notice of Potential Remedies.

No implementation or asset risks

- 4.14 The Merger is an anticipated transaction and the Parties have been continuing to compete independently since signing the sale and purchase agreement in November 2021. There are no risks that the competitive capability of the European Divestment Business will deteriorate before completion of divestiture.
- 4.15 The Parties have revised the proposed regulatory timeline that seeks to align the remedies processes across the [CONFIDENTIAL] jurisdictions. Taking on board the feedback provided in paragraph 30 of the Decision to Refer and subsequent discussions with the CMA, European Commission and other regulators, a revised timetable is attached as **Annex 16 Global Timeline**. As set out in **Appendix**, section 13, the Parties suggestion is that the CMA's formal purchaser approval process occurs simultaneously with that of the European Commission (planned for [CONFIDENTIAL]) and also overlaps with similar processes taking place in other jurisdictions. The Parties will facilitate the informal engagement between committed potential purchasers and the CMA in [CONFIDENTIAL].
- 4.16 The period between the approval of the Purchaser and the closing of the sale of the Divestment Business will not be long. Since the Decision to Refer, the Parties have developed a step plan that maps out the timetable for the separation process. As set out in **Appendix**, section 13, there

²⁴ [CONFIDENTIAL].

will no longer be a prolonged period between signing and closing of the sale of the Divestment Business. Moreover, [CONFIDENTIAL]. Finally, the Parties anticipate appointing a monitoring trustee to give the European Commission (and the CMA) comfort that there is no deterioration risk for the European Divestment Business.

- 4.17 The Parties trust that the CMA will be convinced, based on the evidence in this submission and further information provided in the Phase 2 process, that the Proposed Remedy is an effective solution to the SLC in this case.

5. NEXT STEPS AND CO-OPERATION WITH OTHER REGULATORS

- 5.1 The Parties hope this submission is helpful in assisting the CMA in understanding the Proposed Remedy and stand ready to answer any further questions the CMA may have.
- 5.2 The Parties are committed to working hard with the CMA (and, in parallel, with the European Commission) to finalise the assessment of the Proposed Remedy for the UK and Europe within the Parties' suggested timeframe. In parallel, Sika is also engaging with the DOJ in the U.S., the CCB in Canada, the ACCC in Australia and the NZCC in New Zealand, with respect to the N. American and AUS/NZ Divestment Business. [CONFIDENTIAL]. The Parties stand ready to facilitate the exercise of this coordination, including by [CONFIDENTIAL].

Appendix

DESCRIPTION OF THE PROPOSED REMEDY

1. KEY FEATURES OF THE PRODUCTION AND SUPPLY OF CHEMICAL ADMIXTURES IN THE UK²⁵

Common types of chemical admixtures

- 1.1 Chemical admixtures are specially formulated chemicals added (in very small amounts) to concrete, cement or mortar - materials used in construction and other industries - in order to modify their properties (e.g., reducing water content in concrete, improving workability or increasing/decreasing setting time).
- 1.2 There are several "types" or product lines of chemical admixtures often found in the product portfolios of a chemical admixture suppliers in the UK. The most common type are water-reducing admixtures, which reduce the water content for a concrete mixture by 5-10%. Other types of chemical admixtures sold in the UK include retarding and accelerating admixtures, plasticisers and superplasticisers, corrosion-inhibiting admixtures and air-entraining admixtures.²⁶
- 1.3 All types of chemical admixtures are produced from water and chemical constituents such as polymers and salts which are mixed according to a specific formula developed by an individual supplier. The manufacturing process is not complex - it involves the basic blending of polymers and other widely available raw materials, based on technologies that have existed for 30 years. There is no sophisticated production equipment or intricate processes involved in production.

"True" innovation is limited

- 1.4 It is important to understand that "true" innovation and R&D in the chemical admixtures industry is limited. Whilst there is some research activity, the chemical admixtures market is not comparable or analogous to R&D-intensive industries likely pharmaceuticals or crop science. The key innovations are decades old. There are attempts to improve product offerings (sometimes called "new" products) with different formulation combinations in order to, for example, reduce water usage and to create more sustainable products. However, this is not comparable to R&D in industries where new patents are regularly created because innovation is an important competitive dimension or parameter.
- 1.5 In essence, the real focus of R&D in chemical admixtures is on supporting long-established commodity product lines and updating or slightly adjusting existing formulations rather than developing wholly new technologies or products. The majority of the MBCC Group's R&D activity is for product maintenance. All this activity for the European Divestment Business is carried out at the global R&D centre in Trostberg and the regional R&D centre in Treviso.

Chemical admixture formulations undergo local testing/adjustments

- 1.6 Chemical admixtures are a fundamentally local product, with the basic formulation tweaked/adjusted to meet local customer requirements. Initially, admixtures are mixed according to a specific formula of the supplier. However, to be able to determine the exact dosage of chemical admixtures to meet a particular customer's needs, the products must be

²⁵ For further details, please refer to Final Merger Notice sections 12 and 15

²⁶ See paragraph 147 onwards, Final Merger Notice.

tested (evaluated) in the concrete mix in concrete testing laboratories according to harmonised European Standards “BS EN 934”, “BS 8443” and “EN 480”.

- 1.7 The precise mix needed depends on the composition of the concrete, e.g., the cement and aggregates, which vary from site to site and over time so adjustments to mix/dose are needed if mix designs are changed or input materials are changed or vary over time. Type and dose also depend on what properties are needed for the concrete. For example, fresh concrete customers may specify workability or setting time, whereas for hardened concrete, compressive strength may be important.
- 1.8 While the mix/dose used by one customer may slightly differ from that used by others (based on factors such as the specific cement/aggregates each customer is using), the chemical admixture product *itself* is not tailored to the needs of specific customers (i.e., concrete producers). Chemical admixtures are essentially commodity products with functionality and quality being the same across suppliers.
- 1.9 There are only rare instances where construction projects do entail tailored requirements - in the case of "special projects", which are largescale, intensive infrastructure projects, subject to a specific set of criteria and construction methods (e.g., nuclear power stations or projects requiring 'Slipform' concrete). For such "special projects", the customer may require an individual specification that goes beyond the minimum performance requirements set out under the BS standards. However, even then, the solutions are still a blend of existing products and raw materials - there is no new polymer or other raw material development for specific customers or projects. Moreover, the specification itself is also not proprietary information of the customer, since it is usually developed by third party specifiers working on the initial design, rather than the cement manufacturers who supply the concrete, cement and mortar for the construction process.
- 1.10 The routine tweaks and adaptations of basic ingredients and formulation of chemical admixtures for particular projects, local conditions or customer specifications, do not represent separate “product lines” that are unique to a particular supplier, considering the constituent ingredients that make up each formulation are essentially the same. All chemical admixtures products are essentially based on the same technology that has been known to market participants for 30 years.
- 1.11 For MBCC Group, this routine tweaking and adaptation of chemical admixture formulations for the needs of UK customers is carried out in local technical service labs at the Swinton production site.

2. STRUCTURE OF THE DIVESTMENT [CONFIDENTIAL]

Global

- 2.1 The Proposed Remedy comprises a commitment to divest the worldwide EBA business of MBCC Group, with the exception of the Retained ROW EBA Business, as well as the EBC business of MBCC Group in Australia and New Zealand.
- 2.2 The Proposed Remedy will be implemented by way of a structural divestment. The Purchaser will purchase the entire issued share capital of the existing MBCC Group legal entities that carry on the Divestment Business, as set out in **Annex 1 MBCC Structure Chart by End State**, in the EEA, UK, Switzerland, U.S., Canada, Australia and New Zealand.

- 2.3 Prior to the sale of the Divestment Business, the Orange Retained EBC Business (along with the EBC business of MBCC outside of the Orange perimeter) will be carved out of those MBCC Group legal entities.²⁷
- 2.4 Please refer to **Annex 1 MBCC Structure Chart by End State** which shows the relevant legal entities which will form part of the Divestment Business and those which will form part of the Retained Business.²⁸ For those entities that are currently common to both the Divestment Business and the Orange Retained EBC Business, the divestment will be effected by way of a transfer of the Orange Retained EBC Business assets out of the legal entity, which is also reflected in this structure chart using a black border (or exceptionally in limited cases where the reverse carve out will not apply, a transfer of the local EBA business into a NewCo or branch).²⁹
- 2.5 A list of MBCC Group legal entities that pertain to the Retained ROW EBA Business referred to in Schedule B of the draft Commitments to the European Commission will be provided in due course.
- 2.6 **Annex 2 Implementation Plan** contains further details on the steps anticipated in these jurisdictions to effect the divestment of the Divestment Business.³⁰

Europe

- 2.7 In relation to the European Divestment Business specifically, the above structure means that the Purchaser will purchase the entire issued share capital of the existing MBCC Group legal entities that carry on the Divestment Business, as set out in **Annex 1 MBCC Structure Chart by End State**, in the EEA, UK, Switzerland.
- 2.8 All assets, staff, and resources of the European Divestment Business will remain in the existing MBCC Group legal entities. This will ensure that the European Divestment Business will have all assets necessary and that contribute to its operation and no relevant asset will get "lost" during the separation process.
- 2.9 A reverse carve out means that the European Divestment Business will remain in the relevant MBCC Group legal entities and the assets of Orange Retained EBC Business in the EEA, Switzerland and the UK will be carved out of these legal entities prior to the share sale. The assets of the Orange Retained EBC Business in the EEA, Switzerland and the UK will be moved either to a NewCo, or in some smaller jurisdictions to existing Sika legal entities.³¹
- 2.10 The reverse carve out structure has been chosen to ensure that the European Divestment Business will be economically viable, clear-cut and stand-alone and to secure business continuity, reducing significantly any separation risk. The European Divestment Business will be unaffected by any separation measures – the MBCC Group legal entities will continue to have all assets necessary and that contribute to operate the European Divestment Business and no European asset will get "lost" during the separation process (Sika takes the risk of the

²⁷ The few exceptions to the reverse carve out structure are [CONFIDENTIAL].

²⁸ This chart also reflects the EBA and EBC businesses, respectively, in non-European jurisdictions.

²⁹ As explained above, within the EEA this affects [CONFIDENTIAL].

³⁰ Both Annex 1 and Annex 2 are working documents reflecting the Parties' current understanding of the anticipated divestment structure.

³¹ Limited exceptions to the reverse carve out model will occur in [CONFIDENTIAL], where due to very small size of the local European Divestment Business that part of the European Divestment Business will be carved out instead. More specifically, carve outs (instead of reverse carve outs) are proposed because it is significantly easier, faster and less disruptive for the integrity of the European Divestment Business; [CONFIDENTIAL].

separation measures). Accordingly, there will be no impact on the operation and the continuity of the European Divestment Business.

- 2.11 No part of the above legal and separation structure jeopardises the status and the continuity of the European Divestment Business as a substantial and standalone business, which will be in a position to continue to compete effectively in the EEA, Switzerland and the UK from Day 1. The “carve out” is not a carve out of the European Divestment Business (which will be untouched) but a carve out of the Orange Retained EBC Business in Europe. Accordingly, there will be no impact on the operation of the European Divestment Business and no risk that assets relevant to the operation of the European Divestment Business inadvertently get excluded as a result of the separation steps. Accordingly, there is no composition risk.

UK

- 2.12 In the UK, the [CONFIDENTIAL] process will work as follows:
- (a) In the UK the carve out process will work as follows: (a) A NewCo will be established to hold the Orange Retained EBC Business in the UK. All assets dedicated to the Orange Retained EBC Business in the UK will be transferred to the UK NewCo via a going concern/business transfer agreement. These assets will include a total of [CONFIDENTIAL] EBC-dedicated employees ([CONFIDENTIAL] in Redditch; [CONFIDENTIAL] from Swinton, [CONFIDENTIAL]) assets, permits, finished goods and contracts.
 - (b) The Swinton production facility will remain in the existing MBCC Group legal entity (Master Builders Solutions UK Ltd) as will all employees that are [CONFIDENTIAL].³²
 - (c) Following the carve out of the Orange Retained EBC Business the shares in the UK NewCo will be transferred to Sika and the Purchaser will indirectly acquire shares in the MBCC UK legal entity, which will hold the entire UK Divestment Business.

3. PRODUCTION SITES

- 3.1 All production sites that are used to manufacture chemical admixtures in the EEA, Switzerland, UK, U.S., Canada Australia and New Zealand, and those used to manufacture EBC products in Australia and New Zealand, will remain with the Divestment Business.
- 3.2 **Annex 3 Production sites** sets out all the production sites of the Divestment Business and all the production sites of the Orange Retained EBC Business.³³ The remainder of this section focuses on describing the production sites of the European Divestment Business.
- 3.3 As illustrated in **Figure 2**, MBCC Group currently operates 30 sites in 16 countries in the EEA, Switzerland and the UK. Only the dedicated EBC production sites (i.e., which only produce EBC products) will be carved out as part of the separation of the Orange Retained EBC Business. All dedicated EBA sites (i.e., which only produce EBA products) and all shared sites (i.e., those which produce both EBA and EBC products) will be part of the European

³² [CONFIDENTIAL] See Appendix, Section 5 for a further explanation [CONFIDENTIAL]

³³ MBCC Group production sites in Australia and New Zealand are not included in the Retained Business, since the entire MBCC Group business is part of the Divestment Business. Limited amounts of ancillary products produced in facilities of the Orange EBC Retained Business are provided to the Divestment Business.

Divestment Business. The European Divestment Business will therefore operate a total of 17 production sites in 15 countries.

Figure 2 MBCC Group production sites in the EEA, Switzerland and the UK and the Parties' classification

[CONFIDENTIAL]

- 3.4 **Annex 3 Production sites** sets out, for each of the 17 sites that will form part of the European Divestment Business, their locations, the production volumes (in kt and in %) at each site used for EBA products, and a description of the types of (EBA and EBC) products manufactured at each site. The 17 sites include MBCC Group's site in Swinton in the UK, where all of MBCC Group's UK chemical admixtures production takes place. The production site at Swinton will continue to produce EBA powders, and this will form part of the European Divestment Business. MBCC Group also has a production site in Redditch, which is exclusively engaged in EBC production and will not be part of the European Divestment Business for this reason.
- 3.5 As can be seen from **Annex 3 Production sites**:
- (a) 13 of the 17 production facilities are owned by MBCC Group and the legal title to the freehold will remain with the European Divestment Business. The remaining four production facilities (i.e., [CONFIDENTIAL]) are leased and the lease agreement will be assigned.
 - (b) the majority of the 17 production sites are used *exclusively* for the production of EBA products (i.e., 100% of the production output). There are only three³⁴ shared sites that manufacture both EBA and EBC products, and where the EBC production accounts for a significant proportion of the site's output (i.e., [CONFIDENTIAL]).
- 3.6 For completeness, there are two additional sites, which the Parties do not consider truly "shared" given that they are essentially dedicated to the EBA business, but where a *de minimis* part of the production relates to EBC products. These are Swinton (UK) and Rodekro (Denmark), the details of which are provided below:
- 3.7 *Rodekro (Denmark)*: In 2022, [CONFIDENTIAL] tonnes of premix mortar (i.e., an EBC product) were planned to be produced in Rodekro. The majority of these sales [CONFIDENTIAL] were for [CONFIDENTIAL]. As there are raw materials left [CONFIDENTIAL] these will be produced and sold [CONFIDENTIAL]. Once these [CONFIDENTIAL] are made, EBC production will cease at Rodekro completely. This will occur prior to the sale of the Divestment Business (and indeed by the end of [CONFIDENTIAL]).
- 3.8 *Swinton (UK)*: In Swinton, production relates predominantly to chemical admixtures [CONFIDENTIAL] of the total Swinton production volume of [CONFIDENTIAL]. There is further a powder production line, housed in a much smaller powder plant on the site, producing the remaining [CONFIDENTIAL] production volumes of the site (equating to [CONFIDENTIAL]). Of these [CONFIDENTIAL]:
- (a) the majority [CONFIDENTIAL] relate to a [CONFIDENTIAL] agreement with [CONFIDENTIAL] for [CONFIDENTIAL] (an EBC product). The [CONFIDENTIAL] arrangement requires no day-to-day management (less than [CONFIDENTIAL]) and is taken care of, as and when required, by

³⁴ The CMA [CONFIDENTIAL] incorrectly refers to four shared sites. The Parties correct this assumption in this submission.

[CONFIDENTIAL]. The [CONFIDENTIAL] Divestment Business will retain the agreement and continue to [CONFIDENTIAL] post-closing. The necessary equipment and know-how relating to the EBC powder production will therefore remain at the [Swinton site as this will be required to perform the powder production required to fulfil this contract.

- (b) The remaining [CONFIDENTIAL] are split between:
 - (i) EBA powders, which will be retained by the UK Divestment Business; and
 - (ii) EBC powder production, the production of which will transfer to [CONFIDENTIAL] (which will be part of the Retained Business) or another Sika site post-closing. Sika will make plans to move the production of those remaining powders before the completion of the sale of the Divestment Business. Accordingly, no toll-manufacturing arrangement will be required to be in place from closing.

3.9 Details of each of these five sites and the arrangements that the Parties will put in place to move the EBC operations from these sites are described in detail below. In addition, **Annex 4 Floorplans of Five Shared Production Sites** provides floorplans for the three shared sites and in the interest of full disclosure, we have also provided the relevant floorplans of Rodekro and Swinton. These floorplans indicate areas exclusive to the EBA business, areas exclusive to the EBC business and common areas.

3.10 For completeness, the Parties confirm that there are no shared sites in the N. American Divestment Business. All production sites of the EBA business in the U.S. and Canada are dedicated to EBA production.

Shared sites: [CONFIDENTIAL]

3.11 [CONFIDENTIAL]% of the production [CONFIDENTIAL] relates to EBC products. The EBC production at these sites is mainly powders (i.e., pre-mix mortars).³⁵

3.12 Each of these production sites serves customers in the country in which it is located - i.e., [CONFIDENTIAL] ³⁶ [CONFIDENTIAL]. This reflects the local nature of the market.

3.13 The Divestment Business will retain full ownership of these shared sites. There will be no need for ring-fencing or complex re-modelling of these sites, as the Retained Business will not occupy any part of these sites post-closing. Sika confirms that no building on any of these production plants will be demolished.

³⁵ Mortar is a building material, usually made of sand, binders (like cement) and various additives (e.g., pigments or waterproof compounds) that is used to bind construction materials together or to fill the gap between them. In particular, construction mortars are used for various building construction purposes (e.g., casting and setting, masonry, plastering, floor levelling, and concrete repair); while tile-fixing mortars are used for fixing tiles, both on substrate (adhesive mortars) and as sealants between tiles (grouts). Premix mortars, are premixed at the plant, and on-site mortars, which are mixed at the construction site. In the UK, the Parties are not active in on-site mortars.

³⁶ Out of the [CONFIDENTIAL] tonnes of total production at [CONFIDENTIAL], [CONFIDENTIAL] of the total production is carried out for customers located in [CONFIDENTIAL]. This site also produces [CONFIDENTIAL], [CONFIDENTIAL] of which is exported to the European Divestment Business and a remaining [CONFIDENTIAL] to the rest of the world.

- 3.14 The transfer of EBC production from the shared sites to the relevant sites will be straightforward. Sika will organise for its nearby existing powder plants to take over the EBC volumes (mainly pre-mix mortars) that are currently produced at these shared sites. Once each Sika site is ready to start producing the MBCC Group premix mortar products, [CONFIDENTIAL] and the production equipment will move to the Sika site. Until the transfer takes place, the shared sites will continue to produce the EBC volumes for the Merged Entity under a contract manufacturing agreement (described in further detail in section 11), and the EBC production equipment and EBC know-how will therefore temporarily remain at the shared sites for the duration of this arrangement.³⁷
- 3.15 The Retained Business will obtain the know-how necessary for the EBC product production. The necessary know-how will be transferred quickly [CONFIDENTIAL], as this simply involves adding the bill of materials ("BOM") of the relevant MBCC Group products to the SAP system at the receiving Sika plant (and training Sika employees on how to utilise this know-how).³⁸
- 3.16 Pre-mix mortar products are simple and the volumes produced at the shared sites are limited (i.e., [CONFIDENTIAL]). Sika has enough capacity to take on this production volume [CONFIDENTIAL].³⁹
- 3.17 After the divestment, the three shared sites will still operate at a viable scale to produce chemical admixtures products and will remain economically viable and competitive. For a discussion of warehouses and offices located at these sites, see **Appendix**, section 4 and for a discussion on economies of scale, see Appendix, section 12.

Other sites with de minimis EBC volumes: Swinton (UK), Rodekro (Denmark)

- 3.18 In Swinton (UK) and Rodekro (Denmark), where a *de minimis* part of the production relates to EBC products, the sites will remain with the European Divestment Business.
- 3.19 The transfer of this *de minimis* EBC production from these "shared" sites to Sika will also be straightforward. Sika will organise for its existing powder plants to take over the EBC volumes (mainly pre-mix mortars) that are currently produced at these shared sites as follows:
- (a) The production line at Swinton will stay with the UK Divestment Business and the EBC volumes will simply be discontinued. The production at Swinton will be produced instead at the MBCC site in Redditch (UK), which is part of the EBC Retained Business.
 - (b) At Rodekro, once the [CONFIDENTIAL] are made (as described above), EBC production will cease as the customer contract will have been fulfilled.
- 3.20 Further details are provided below.

Swinton (UK)

³⁷ For completeness, at [CONFIDENTIAL] the powder plants also produce *de minimis* volumes of EBA powders (these equate to [CONFIDENTIAL] and [CONFIDENTIAL]). The European Divestment Business will continue to produce these from the existing plants, and [CONFIDENTIAL] will be able to do so easily and readily from other sites (given the *de minimis* volumes involved).

³⁸ Such training is not cumbersome.

³⁹ [CONFIDENTIAL].

- 3.21 Most of MBCC Group's chemical admixtures sold in the UK are manufactured at Swinton. Chemical admixture production comprises the majority of the total production at the site (equating to [CONFIDENTIAL] of the total Swinton production volume of [CONFIDENTIAL]). This production will remain with the UK Divestment Business.
- 3.22 The remaining [CONFIDENTIAL] of Swinton's production relates to a powder production line (equating to [CONFIDENTIAL], which is housed in a separate, much smaller powder plant. Of the [CONFIDENTIAL]:
- (a) the majority ([CONFIDENTIAL] relate to a [CONFIDENTIAL] agreement with [CONFIDENTIAL] for [CONFIDENTIAL] (an EBC product). The [CONFIDENTIAL] arrangement requires no day-to-day management (less than [CONFIDENTIAL]) and is taken care of, as and when required, by [CONFIDENTIAL]. The UK Divestment Business will retain the agreement and continue to [CONFIDENTIAL] post-closing. The necessary equipment and know-how relating to the [CONFIDENTIAL] powder production will therefore remain at the Swinton site as this will be required to perform the powder production required to fulfil this contract.
 - (b) The remaining [CONFIDENTIAL]% are split between:
 - (i) EBA powders, which will be retained by the UK Divestment Business; and
 - (ii) EBC powder production, the production of which will transfer to [CONFIDENTIAL] (which will be part of the Retained Business) or another Sika site post-closing. Sika will make plans to move the production of those remaining powders before the completion of the sale of the Divestment Business. Accordingly, no toll-manufacturing arrangement will be required to be in place from closing.
- 3.23 The warehouse and office located at the Swinton production site will remain with the UK Divestment Business (see Appendix, section 4).

Rodekro (Denmark)

- 3.24 Prior to signing the Merger Agreement, MBCC Group started [CONFIDENTIAL] the Rodekro EBC production plant with a view to [CONFIDENTIAL]. [CONFIDENTIAL] will transfer to the Orange Retained EBC Business. With regards to Rodekro, [CONFIDENTIAL] tonnes of premix mortar production (i.e., a EBC product) [CONFIDENTIAL] produced at the site in 2022. The majority of these sales [CONFIDENTIAL] were for [CONFIDENTIAL], and have already been produced and the contract fulfilled. As there are raw materials left for the remaining [CONFIDENTIAL], these will be produced and sold to other customers in Europe. Once these [CONFIDENTIAL] are made, EBC production will cease at Rodekro completely. This will occur prior to the sale of the Divestment Business (and indeed by the end of [CONFIDENTIAL]).
- 3.25 The on-site office/warehouse present on the Rodekro site will remain with the European Divestment Business. In Rodekro there are [CONFIDENTIAL].⁴⁰

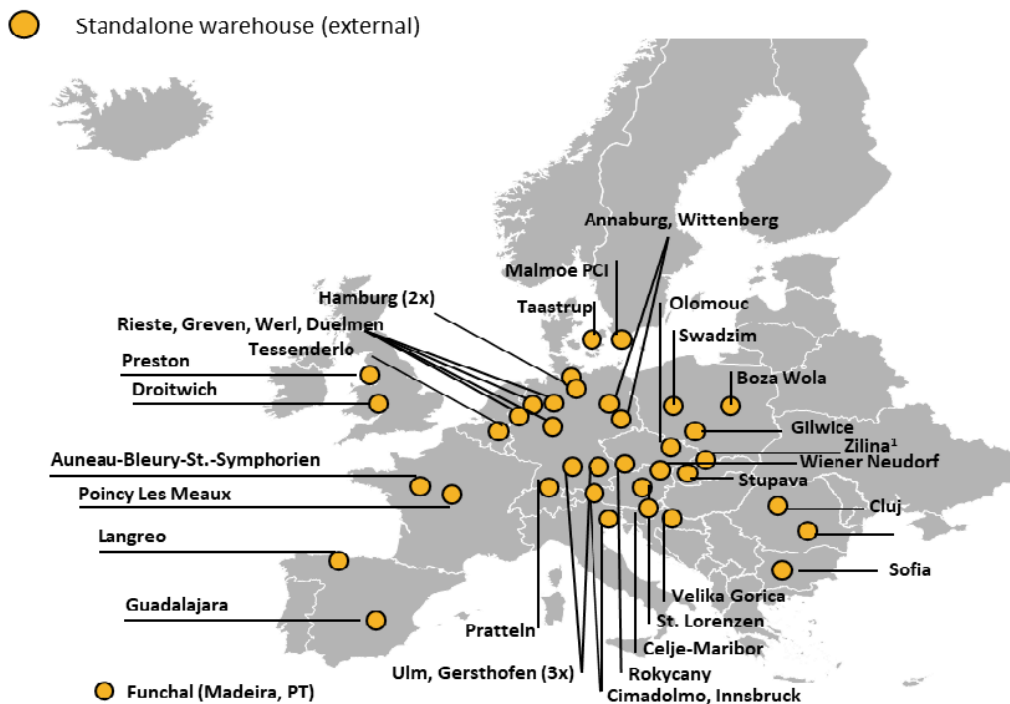
⁴⁰[CONFIDENTIAL].

4. WAREHOUSES AND OFFICES

Warehouses

- 4.1 All warehouses that belong to the EBA business of MBCC Group in the EEA, Switzerland, UK, U.S., Canada, Australia and New Zealand (with the exception of those belonging to the Retained Business), will be part of the Divestment Business.
- 4.2 **Annex 5 Warehouses** sets out all the warehouses of the Divestment Business and all the warehouses of the Orange Retained EBC Business.⁴¹ The remainder of this section focuses on describing the warehouses of the European Divestment Business.
- 4.3 MBCC Group's warehouses are either located at a production or standalone (i.e., not located at a production site). Figure 3 provides an overview of all of MBCC Group's standalone warehouses in Europe.

Figure 3 Map with all standalone external warehouses



- 4.4 The European Divestment Business will have 36 warehouses in total, including: (i) all warehouses in the EEA, UK and Switzerland located at a production site that is part of the European Divestment Business (17 in total); and (ii) 19 standalone warehouses. In the UK,

⁴¹ For completeness, this includes three distribution centres in the U.S., - i.e., Ashland, Centerville, Eagan. The Retained Business will not acquire any MBCC Group warehouses in Australia and New Zealand, since the entire MBCC Group business is part of the Divestment Business.

there is one standalone warehouse in Preston (the second warehouse is located at the Swinton production site).⁴²

- 4.5 All standalone warehouses of MBCC Group are operated by third party service providers acting for MBCC Group, i.e., not by MBCC itself, and therefore [CONFIDENTIAL].
- 4.6 Further, **Annex 5 Warehouses** also shows that, certain warehouses (regardless of whether they are externally owned and operated or not) are shared currently between the EBA and EBC business. A warehouse is “shared” if it is used by both the EBA and the EBC business to store raw materials or deliver products to customers. Warehouses are not physically separated between the two businesses as the storage requirements are not fundamentally different and the local entities decide how to use the warehouses most efficiently.⁴³
- 4.7 Sika will exit all of the shared warehouses (leaving them for the Purchaser of the Divestment Business to use exclusively) and make arrangements to store EBC business products at its own warehouses within the Sika network. Sika confirms that its own warehouses have the capacity to store the relevant materials or products. Further details of the separation approach for each of the shared warehouses is provided in **Annex 5 Warehouses**.
- 4.8 This will cause no negative impact on the European Divestment Business. In particular, the European Divestment Business will face no increase in variable costs associated with the handling of EBA products at either standalone or on-site warehouses and the fixed costs per unit of volume will only increase at [CONFIDENTIAL] of 18 shared warehouses (which are currently MBCC Group operated), and even at these facilities the increase in fixed costs per unit of volume will be minimal. Please refer to section 12 for details.
- 4.9 After the completion of the sale of the Divestment Business, owned warehouses will be retained by the European Divestment Business and for any leased warehouses, the relevant leases would also be retained. Similarly, service agreements with third party operators (as applicable to both, owned and leased) will be retained.
- 4.10 There are no floorplans available for warehouses, both for on-site warehouses and standalone warehouses. For on-site warehouses, location and space can be seen in the floorplans/layouts of production sites. Detailed floorplans for the warehouses are however not available. This is because neither the EBA business nor EBC business have fundamentally different storage requirements. Therefore, the local entities decide where to store which products appropriately and at the lowest cost. Standalone warehouses are all externally owned and operated, hence no floorplans are available. Warehouse operators are experts in warehousing/storing and they decide on e.g. layout of warehouses to most efficiently store and handle the products of its customers (i.e., MBCC Group).

⁴² The previous Remedies Form made reference to [CONFIDENTIAL] standalone warehouses. Upon further investigation, it has been determined this information was not correct. However, the Remedies Form submitted to the CMA on 3 August 2022, corrected this information.

⁴³ For completeness, in Annex 5, one warehouse, Evry-Lisses, is also performing minor EBC related storage activities [CONFIDENTIAL]. However the operations are fully mobile and will be moved out of the warehouse prior to Closing.

Offices

- 4.11 All offices that belong to the EBA business of MBCC Group in the EEA, Switzerland, UK, U.S., Canada, Australia and New Zealand (with the exception of those belonging to the Retained Business), will be part of the Divestment Business.
- 4.12 **Annex 6 Offices** sets out a list of all the offices of the Divestment Business and all the offices of the Orange Retained EBC Business. The remainder of this section focuses on describing the offices of the European Divestment Business.
- 4.13 The European Divestment Business includes 30 offices.⁴⁴ Of these 30 offices, 8 relate to offices which are dedicated to the EBA business and will remain with the European Divestment Business. The remaining 22 offices of the European Divestment Business are currently shared between EBA and EBC and the following separation steps will take place in relation to these offices:
- (a) In 1 office, Trostberg in Germany, a physical separation of the site will occur, with the EBA and EBC business occupying different buildings. See **Appendix**, section 6 for further detail.
 - (b) In relation to the Mannheim HQ, Sika will vacate this office, currently shared between the EBA and EBC businesses, within a period of [CONFIDENTIAL] after closing of the sale of the Divestment Business. [CONFIDENTIAL]. However, vacating Mannheim will not overburden the Divestment Business as demonstrated in **Appendix**, section 12 below.
 - (c) For other shared offices, the Retained Business will move out (or in relation to a few isolated exceptions where this is not the case, Sika will offer to vacate if the Purchaser requires this).⁴⁵ [CONFIDENTIAL] Please refer to **Annex 6 Offices** for the specific details of the separation plan in the shared offices.
- 4.14 All on-site offices attached to production sites transferring to the European Divestment Business will remain with that business.
- 4.15 Standalone EBA-dedicated offices will also remain with the European Divestment Business - including the leased office in Rochester which is dedicated to EBA.
- 4.16 Out of the European Divestment Business' 30 offices, 13 are owned (like Swinton). These will remain with the European Divestment Business and EBC FTEs will move out of shared offices. All other 17 offices are leased offices. For the avoidance of doubt, the (owned) Swinton office as well as a leased office in Rochester, UK, will both remain with the European Divestment Business.
- 5. PERSONNEL**
- 5.1 The Divestment Business will consist of staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel, as well as the Key

⁴⁴ For completeness's sake, the count of 30 does not include the show room in Bensheim, which does not have office space and no FTE allocated. Bensheim is included in **Annex 6 Offices** for transparency.

⁴⁵ There are a few isolated exceptions, where staff of the Divestment Business will relocate from the office - unless the Purchaser requires the Orange Retained EBC Business to move out instead. See **Annex 6 Offices** for detailed explanations around those exceptions.

Personnel listed in **Annex 11 Key Personnel** (together, "**Personnel**") The principles relevant to Personnel selection and allocation are further outlined in this section.

Current management structure of the MBCC Group and the European Divestment Business

- 5.2 Please refer to **Annex 7 Global and Functional Organisational Structure of the MBCC Group** which sets out an organisational chart of MBCC Group's top leadership, global and regional supporting functions and the European regional organisation. **Annex 8 Organisational Structure of the Divestment Business in the UK** sets out an organisational chart of the MBCC Group UK business.

Global leadership team

- 5.3 MBCC Group is led by a global leadership team consisting of the CEO (J. Fabritius), CFO (H. Grovener) and COO (H. Heising), who are collectively responsible for the global strategy of the group (including the Divestment Business and the Retained Business) and are ultimately accountable to the company's Board and shareholders.

Operational management

- 5.4 At the level below the global leadership team, the customer-facing side of the organisation is led by three regional Presidents reporting directly to the CEO.⁴⁶ The regional Presidents are responsible for setting the strategy and direction for all business activities in the respective regional markets, covering the whole range of products (both EBA and EBC products). [CONFIDENTIAL] is the regional President for Europe, responsible for both the European Divestment Business (including chemical admixtures) and the Orange Retained EBC Business in Europe.
- 5.5 It is the Presidents' responsibility to make sure the regional strategy is correctly implemented by the local teams on the ground. Individual country teams are managed by a market manager/managing director ("**MD**"), reporting directly to the regional President. The MD (in the UK, [CONFIDENTIAL]) also covers the entire product range including chemical admixtures (within a specific country or - for smaller markets - cluster of countries) and is responsible for the local country teams delivering day-to-day business with local customers.

Functional management

- 5.6 The remainder of the organisation is organised along functional lines.
- 5.7 For Strategy and Marketing, there are different people at global level who are responsible for setting the global sales and marketing strategy of the EBC business ([CONFIDENTIAL]) and the European Divestment Business ([CONFIDENTIAL]). Immediately under the functional global lead there are also separate Regional Marketing leads for the EBA business ([CONFIDENTIAL] in Europe) and EBC business [CONFIDENTIAL] in Europe) who have the equivalent responsibility but for the relevant region. The separation of FTEs between EBA and EBC generally continues at local level. For example, because of the different expertise needed to sell EBA versus EBC products, local sales representatives and sales management are

⁴⁶ UGC, which does not relate to chemical admixtures but is also an operational/market-facing area of business included within the European Divestment Business is managed differently.

either 100% EBA or 100% EBC. Slide 4 of **Annex 8 Organisational Structure of the Divestment Business in the UK** demonstrates this for the UK.⁴⁷

- 5.8 There is no separation in responsibilities between EBA and EBC products for the other parts of the functional organisation⁴⁸ (see also **Annex 7 Global and Functional Organisational Structure of the MBCC Group**).

Strategic decision-making relating to chemical admixtures

- 5.9 The regional President for Europe ([CONFIDENTIAL]) makes all operational decisions relating to chemical admixtures sold in Europe, including pricing, customers and business strategy. Input from the functional leads is added where needed. [CONFIDENTIAL].
- 5.10 Matters of global (rather than regional or local) strategy, expenses that exceed certain thresholds and larger capex or plant and machinery investments are taken by so-called decision boards.
- 5.11 [CONFIDENTIAL].
- 5.12 Attendees at decision boards consist of the CEO, CFO and COO, the three regional Presidents and the functional global head responsible for the area where the decision needs to be taken (where relevant local/country heads may also attend). [CONFIDENTIAL].
- 5.13 Past decisions taken by the decision boards include decisions about: [CONFIDENTIAL].

Future management structure of the European Divestment Business

- 5.14 **Annex 7 Global and Functional Organisational Structure of the MBCC Group** sets out [CONFIDENTIAL]⁴⁹ **Annex 8 Organisational Structure of the Divestment Business in the UK** sets out the [CONFIDENTIAL].⁵⁰
- 5.15 Please refer to these annexes for the future management structure of the European Divestment Business.

Global management

- 5.16 The future global management team of the European Divestment Business (together with the N. American and AUS/NZ Divestment Business) will be comprised of existing senior management executives: [CONFIDENTIAL]. Each of these individuals has been designated as Key Personnel and [CONFIDENTIAL].
- 5.17 [CONFIDENTIAL] is not needed for the Divestment Business. [CONFIDENTIAL] current role mainly supports the Retained Business, for example he is responsible for [CONFIDENTIAL]. Moreover, the EBA business is a leaner and more local business, while

⁴⁷ In marketing, there are a few exceptional instances within some European markets (e.g., [CONFIDENTIAL]) where the local marketing head is responsible for both EBA and EBC (with their reporting staff fully dedicated to either area). But usually this is an individual focusing on management duties and with limited involvement the delivery side of the business. In Italy, [CONFIDENTIAL].

⁴⁸ The main other functions are: Procurement, HR, Transformation Office, Counterparty, Risk Management and Trade Finance, Corporate Development, Treasury, Regional CFOs, Controlling, Tax, Audit, Global Insurance; Accounting and Reporting; Finance Projects; Finance Processes & Systems; R&D & Innovation; Operations & Capex; Supply Chain Management; IT; Legal & Compliance; EHSQ; BPO and Insourcing.

⁴⁹ [CONFIDENTIAL]

⁵⁰ [CONFIDENTIAL]

the EBC business is much more heterogeneous and globalised. From a supply chain point of view, the EBA business is local in nature, with the products being mainly shipped directly from the local manufacturing plant to customer, within a 500km radius. On the other hand, the supply chain of the EBC business is more complex with more interdependencies (e.g., different powder and resin components being produced in different locations and shipped to end-customers globally). Due to these characteristics, the Divestment Business need less operational support at a global level, particularly since the regional presidents (discussed below) and the other two central management roles [CONFIDENTIAL] will provide further management support to the Divestment Business. In addition, [CONFIDENTIAL] ([CONFIDENTIAL]) to support the purely operational/manufacturing aspects of the Divestment Business.

Operational management

- 5.18 There will be no change in the operational management structure of the European Divestment Business. ([CONFIDENTIAL])⁵¹ [CONFIDENTIAL]. [CONFIDENTIAL].⁵²
[CONFIDENTIAL]

Functional management

- 5.19 The Strategy and Marketing function of the Divestment Business will continue to be led at a global level by [CONFIDENTIAL]. [CONFIDENTIAL].
- 5.20 The majority of the current global and/or regional functional leads will also remain with the Divestment Business to continue to be involved in the management of those functions. For example, this includes [CONFIDENTIAL]. Please refer to **Annex 7 Global and Functional Organisational Structure of the MBCC Group** for details.
- 5.21 With respect to IT, [CONFIDENTIAL].⁵³ [CONFIDENTIAL] (see *IT [CONFIDENTIAL] personnel*).

Personnel allocation

- 5.22 **Annex 9 Personnel** sets out: [CONFIDENTIAL]
- 5.23 [CONFIDENTIAL].
- 5.24 The Parties' approach to Personnel selection allocation has been to make sure that all personnel who are needed and contribute to the EBA business in the EEA, Switzerland and the UK will be part of the European Divestment Business, in order to continue operating a strong, standalone EBA business in Europe. [CONFIDENTIAL],⁵⁴ [CONFIDENTIAL].⁵⁵
- 5.25 [CONFIDENTIAL].

[CONFIDENTIAL]

- 5.26 [CONFIDENTIAL].⁵⁶
- 5.27 [CONFIDENTIAL].

⁵¹ [CONFIDENTIAL].

⁵² [CONFIDENTIAL].

⁵³ This includes one position that is currently vacant.

⁵⁴ [CONFIDENTIAL].

⁵⁵ Including 2 vacant positions, which will be filled.

⁵⁶ [CONFIDENTIAL].

[CONFIDENTIAL]

5.28 [CONFIDENTIAL].

5.29 [CONFIDENTIAL]:

(a) [CONFIDENTIAL].

(b) [CONFIDENTIAL].

(c) [CONFIDENTIAL].

5.30 Decision-making at MBCC Group more generally is described above. On an individual level, the factors that tend to indicate an individual's decision-making powers within the organisation include how many steps down from the CEO the FTE is, the number of direct reports, higher pay grade or "senior executive" status. Please refer to **Annex 9 Personnel**.

Local personnel

5.31 [CONFIDENTIAL].⁵⁷ [CONFIDENTIAL].

5.32 [CONFIDENTIAL].[CONFIDENTIAL].

5.33 [CONFIDENTIAL].

5.34 [CONFIDENTIAL].

5.35 [CONFIDENTIAL].

5.36 [CONFIDENTIAL] See *IT [CONFIDENTIAL] personnel* below for an explanation.

5.37 For a discussion of R&D personnel, please see **Appendix**, section 6.

Global / regional personnel

5.38 [CONFIDENTIAL], as explained above, the EBA business is already managed on a standalone basis, as a business division, separately from the EBC business at both a global and regional level.

5.39 Approximately [CONFIDENTIAL] of global and regional shared employees will remain with the Divestment Business. In particular, in addition to employees who were originally allocated to the European Divestment Business when the intention was to pursue a standalone European sale, [CONFIDENTIAL] global and regional management personnel will now remain with the Purchaser of the Divestment Business. This means that the Purchaser will maintain the capabilities that MBCC Group has today to be able to continue to operate and manage the Divestment Business as a strong competitor across its markets with the benefit of strategic leadership, just like MBCC Group has today.

IT [CONFIDENTIAL] personnel

5.40 In relation to the IT function, the target operating model is designed with [CONFIDENTIAL] operational IT employees on local, regional and global level to ultimately cover all IT aspects post the TSA (see **Appendix**, section 11 for details of the TSA). [CONFIDENTIAL]. (see **Annex 10 IT Personnel of the Divestment Business**).

⁵⁷ [CONFIDENTIAL].

- 5.41 As is evident from **Annex 7 Global and Functional Organisational Structure of the MBCC Group**, MBCC Group operates a lean IT function. This is because virtually all IT operations [CONFIDENTIAL] are outsourced to [CONFIDENTIAL]. MBCC Group's IT function is limited to handling [CONFIDENTIAL].
- 5.42 Continuity from Day 1 in relation to operational IP aspects will be preserved as follows.
- (a) The Divestment Business will continue to have the benefit of the [CONFIDENTIAL] outsourcing arrangement for a [CONFIDENTIAL] period under the IT TSA (with a possibility to extend), ensuring there is no impact on ongoing IT operations. [CONFIDENTIAL] built the current IT platform for MBCC Group and has operated it for almost [CONFIDENTIAL]. They have the full technical knowledge how to run the IT platform and related services. At the end of the TSA period, the Purchaser can either adopt the systems provided under TSA and enter into a separate support arrangement with [CONFIDENTIAL], enter into an agreement with another 3rd party provider or migrate the Divestment Business onto their existing IT platform as desired. Sika will work with the Purchaser to help them develop the optimal plan.
 - (b) To ensure business continuity while maintaining separation of confidential business information, a clone of the IT platform systems, interfaces and data required by the Divestment Business will be made available to the Divestment Business through the TSA. Dedicated systems will either remain with the Divestment Business (where possible) or will be provided via a TSA. As confirmed by [CONFIDENTIAL], this approach is an industry proven practice which has been used numerous times.
 - (c) Also under the TSA, the IT FTEs allocated to the Retained Business will be providing all necessary know-how and support to the Divestment Business from Day 1, which is why the retention of these resources within the Retained Business is critical. To ensure comprehensive support from Day 1, on request, the Retained Business will provide IT support to the Purchaser's IT team, covering existing processes, practices and capabilities, to the extent needed.

[CONFIDENTIAL] key personnel

- 5.43 The Divestment Business will, as part of its Personnel, include all personnel necessary to maintain the viability and competitiveness of the Divestment Business ("**Key Personnel**"). Please refer to **Annex 11 Key Personnel** for a list of all Key Personnel of the European Divestment Business.
- 5.44 Most Key Personnel employed by the European Divestment Business have [CONFIDENTIAL] confirmed their availability to stay with the European Divestment Business. These include [CONFIDENTIAL] Key Personnel in the UK [CONFIDENTIAL].
- 5.45 [CONFIDENTIAL].
- 5.46 [CONFIDENTIAL].
- 5.47 [CONFIDENTIAL]
- (a) [CONFIDENTIAL].
 - (b) [CONFIDENTIAL].

6. R&D

R&D sites

- 6.1 MBCC Group's R&D organisation consists of a global R&D Centre in Trostberg and Regional Development Centres⁵⁸ in Treviso⁵⁹ (full scope), Beachwood (full scope), Dubai (limited scope) and Shanghai (limited scope) each focused on their respective regions. The Divestment Business include all polymer and chemical admixtures R&D facilities necessary to operate in the EEA, Switzerland, UK, U.S., Canada, Australia and New Zealand, since the Trostberg, Treviso and Beachwood R&D centres will be part of the Divestment Business.
- 6.2 Local product adaptation is conducted in local technical centres and R&D laboratories. The Divestment Business will include not only Trostberg, Treviso and Beachwood, but also all of these local EBA facilities in each of the production plants within the EEA, Switzerland, UK, U.S., Canada, Australia and New Zealand.

Trostberg and Treviso

- 6.3 There are two R&D sites in Europe. Basic research activities of the Divestment Business take place only in Trostberg, Germany. In addition to global development activities at Trostberg, development activities for the EEA, Switzerland and UK take place only in Treviso, Italy.
- 6.4 The R&D activities and EBA business of the European Divestment Business are not dependent on the Regional Development Centres in Beachwood, Dubai or Shanghai.⁶⁰ Beachwood is exclusively focused on North America (and, in any event, will transfer to the Purchaser as part of the Divestment Business). Dubai and Shanghai are Regional Development Centers that [CONFIDENTIAL]. They are neither related to nor contribute to the European Divestment Business. They initiate projects for their specific regions and many of their activities serve to optimise cost by utilising the most economical raw materials available locally. Synthesis of new chemistry and new formulations are not carried out in Regional Development Centers.⁶¹
- 6.5 **Table 2** below sets out the main R&D activities currently carried out at Trostberg and Treviso respectively (including the EBC-related R&D activities taking place at Trostberg which will be carved-out and be part of the Retained Business). As can be seen, the Trostberg centre carries out basic/fundamental research and global development whereas Treviso's activities are limited to regional development.

Table 2 – R&D activities at Trostberg and Treviso

⁵⁸ There are also development centres / local extensions at [CONFIDENTIAL] but these are exclusively focused on areas, which are not part of the Divestment Business. Indeed, each of these centres focuses on the EBC business - [CONFIDENTIAL]. These centres are not included in the global R&D organisation of the Divestment Business but will transfer to the Retained Business.

⁵⁹ A small amount of research is carried out at Treviso.

⁶⁰ In rare cases, there is some knowledge sharing between these centres.

⁶¹ Although the Beachwood facility is equipped to carry out fundamental research.

Site	Type of Site	Main Activities
Trostberg	Global R&D Centre	[CONFIDENTIAL] ⁶² ; [CONFIDENTIAL].
Treviso	Regional Development Centre	[CONFIDENTIAL].

6.6 The Treviso R&D site will remain with the Divestment Business; whereas the Trostberg site will be split to separate the R&D activities related carried out by the Divestment Business (EBA) from those carried out by the Retained Business (EBC).

6.7 To illustrate how the split will be implemented, please see **Figure 7** for an illustration of the configuration of the site before and after the sale of the Divestment Business completes; as well as detailed floorplans for all buildings at the Trostberg site attached as **Annex 12 Trostberg and Beachwood plans**.

6.8 Building Z03 is a shared building, currently hosting both the R&D activities related to the EBA business and to the EBC business. Building Z03 will form part of the Retained Business. It is completely separate and disconnected from the chemistry park, located on the other side of the railway line that runs through the Trostberg site (see **Figure 7**).

6.9 [CONFIDENTIAL]:

(a) [CONFIDENTIAL].

Figure 4 – [CONFIDENTIAL].

(b) [CONFIDENTIAL].

Figure 5 – [CONFIDENTIAL].

(c) [CONFIDENTIAL].

Figure 6 – [CONFIDENTIAL].⁶³

6.10 [CONFIDENTIAL].

6.11 **Figure 7** below contains a comparison between the current configuration and the proposed separation approach for Trostberg. On the left hand side (Trostberg today), there is an overview of the current buildings at Trostberg with an indication of the allocation (EBA / EBC / shared),

⁶² Tunnel Boring Machine <https://www.master-builders-solutions.com/en-us/products/mining-and-tunneling/tunnel-boring-machine>

⁶³ [CONFIDENTIAL].

while the right hand side (Trostberg separation approach) provides an overview of how the site will be organised after the sale of the Divestment Business completes.

Figure 7 – Trostberg today vs Trostberg separation approach

Figure 1 - Trostberg Today



Figure 2 - Trostberg Separation approach



- Overview of **current Trostberg facilities**:
 - B01 – Office / administrative
 - B08 – Labs: fully equipped labs
 - B09 – Concrete technical center
 - C14 – Labs: fully equipped labs units
 - Z03 – Labs: fully equipped labs units

Beachwood (U.S.)

- 6.12 **Annex 12 Trostberg and Beachwood plans** also sets out the site plan for the Beachwood site in the U.S.
- 6.13 As can be seen, the Beachwood facility at present is used predominantly for R&D activities of the Divestment Business, but does host some limited shared back-office functions. The facility is divided into three buildings:
- (a) office building (referred to as "Main Building"), is a three floor building that includes office space, meeting areas and hosts shared back office functions such as finance, IT, HR, etc.
 - (b) Tech Center, which is connected to the office building through a single concourse/hallways and is predominantly used for product development and testing for the Divestment Business;
 - (c) Building 3, which is used for technicians' training, office space and customer demonstrations, and which is also shared between Divestment Business and the Retained Business.
- 6.14 Ownership of the site (all three buildings) will transfer to the Purchaser of the Divestment Business. The Tech Center and Main Building will be dedicated to the operations of the Divestment Business, whereas Building 3 will be leased to Sika for use of the Retained Business.⁶⁴
- 6.15 There is a clear separation plan in place. The Main Building and the Tech Center—*i.e.*, the two interconnected buildings—will be used exclusively by the Purchaser. Building 3, that will be leased to Sika for its exclusive use with the Retained Business for a limited period,⁶⁵ is separated from the Main Building and the Tech Center by a roadway, and has a separate parking lot. The movement of activities and employees will also be straightforward, with the entire process

⁶⁴ [CONFIDENTIAL].

⁶⁵ [CONFIDENTIAL].

taking approximately [CONFIDENTIAL], and will conclude before the sale to the Purchaser closes. Specifically, all Retained Business employees and activities will relocate to Building 3, giving the Retained Business a discrete and entirely separate space. The Divestment Business will relocate its current training and customer demonstration activities to the Tech Center.

R&D Personnel in Trostberg and Treviso

6.16 **Annex 13 R&D personnel** contains a list of personnel at each of the Treviso and Trostberg sites, together with an indication of their role [CONFIDENTIAL]. In addition, **Table 3** below provides the R&D FTEs currently allocated to each building in Trostberg.

Table 3 – [CONFIDENTIAL]

6.17 All R&D FTEs of MBCC's European EBA business (i.e., those personnel who contribute to R&D for the European Divestment Business [CONFIDENTIAL]) will remain with the European Divestment Business (see **Appendix**, section 6).⁶⁶ [CONFIDENTIAL].

6.18 This principle of allocation has ensured that the European Divestment Business receives all R&D FTEs required to satisfy the development needs and innovation projects for the business without the need for any contribution, support or assistance from other Regional Development Centres located outside the EEA - including [CONFIDENTIAL]. There are in any event only limited instances of collaboration [CONFIDENTIAL], which are described further in **Appendix**, section 11.

7. PATENTS, R&D PROJECTS, BILLS OF MATERIALS AND INTERNET DOMAINS

7.1 Under the Proposed Remedy, the Purchaser will not only own all registered patents and trademarks that are needed by and contribute to the Divestment Business, but will acquire also all registered patents and trademarks pertaining to EBA products in countries in the rest of the world.

7.2 **Annex 17 List of Patents** lists the EBA and EBC patents that will remain with the Divestment Business and the EBC patents that will transfer to the Orange Retained EBC Business. **Annex 19 Overview of EBA BOMs of the Divestment Business** lists the EBA Bills of Materials ("BOMs") of the Divestment Business, and **Annex 20 List of Internet Domains of the Divestment Business and the Retained Business** lists the Internet Domains of the Divestment Business and the Retained Business. In summary, the Purchaser of the Divestment Business will have the ownership of:

- (a) c. [CONFIDENTIAL] EBA patent families and [CONFIDENTIAL] nationalised EBC patents in AUS/NZ;⁶⁷
- (b) [CONFIDENTIAL] internet domains.
- (c) [CONFIDENTIAL] BOMs.

Patents

7.3 Patent rights can be clearly allocated to either the EBA business or the EBC businesses by reference to the nature of the product and the underlying research projects (EBA or EBC-

⁶⁶ [CONFIDENTIAL].

⁶⁷ This includes [CONFIDENTIAL] published EBA patent families and [CONFIDENTIAL] unpublished EBA patent families. Data as of May 2022.

focused). The Parties have proposed a simple and comprehensive approach to the Proposed Remedy which ensures that the Purchaser obtains all patents required for the functioning of the Divestment Business, including any future global expansion.

7.4 The Parties will commit as follows:

(a) For EBA related patents:

- (i) All patents pertaining to EBA products globally will remain with the Divestment Business for the benefit of the Purchaser;
- (ii) Sika will obtain a sole licence from the Purchaser to use the patents until the end of their life for the Retained ROW EBA Business.

(b) For EBC related patents, all patents worldwide will transfer to Sika, with the exception of [CONFIDENTIAL] nationalised EBC patents in Australia and New Zealand, which will be included in the Divestment Business.

7.5 The reverse carve-out structure ensures that no patents are lost as a result of the Divestment. [CONFIDENTIAL]⁶⁸ currently owns all patents required by the Divestment Business.⁶⁹ Following the carve-out of the Divestment Business, the shares in [CONFIDENTIAL] will transfer to the Purchaser as part of the sale of the Divestment Business.

7.6 **Annex 17 List of Patents** itemises the EBA and EBC patents that will remain with the Divestment Business and the EBC patents that will transfer to the Orange Retained EBC Business.

R&D Development Projects

7.7 **Annex 18 List of R&D Projects** provides a list and description of each of the EBA and EBC related R&D projects at each of Trostberg, Treviso and Beachwood.

7.8 The Purchaser will retain all know-how relating to ongoing R&D projects relevant for the Divestment Business operations. In particular:

- (a) There are [CONFIDENTIAL] ongoing⁷⁰ EBA R&D projects related to the Divestment Business will remain with the Divestment Business. These relate to [CONFIDENTIAL] R&D projects at the [CONFIDENTIAL] and [CONFIDENTIAL] at [CONFIDENTIAL]. The full know-how and information relating to these projects will remain with the Divestment Business.
- (b) In relation to EBC, there are [CONFIDENTIAL] R&D projects ongoing at the [CONFIDENTIAL] plant. These projects will transfer to Sika post-closing.

7.9 Due to the different underlying technologies involved, there is absolutely no crossover between the R&D projects relating to the EBA and EBC businesses and as such the carve out of such EBC R&D projects is very simple.

⁶⁸ [CONFIDENTIAL].

⁶⁹ Please refer to **Annex 17** for a list of the patents of the Divestment Business. This includes all EBA patents worldwide and [CONFIDENTIAL] nationalised EBC patents in Australia and New Zealand.

⁷⁰ As of April 2022, subject to fluctuations in the normal course of business.

BOMs and Internet Domains

- 7.10 **Annex 19 Overview of EBA BOMs of the Divestment Business** sets out the number of BOMs of the Divestment Business and **Annex 20 List of Internet Domains of the Divestment Business and the Retained Business** lists the Internet Domains of the Divestment Business and the Retained Business. The Retained Business will not be able to use the BOMs/internet domains allocated to the Divestment Business, and vice versa.
- 7.11 None of the BOMs or Internet Domains transferred to the Retained Business are relevant to the Divestment Business:
- (a) Each MBCC Group plant holds its own list of BOMs, covering material composition information for products as well as variation by production site. BOMs can be clearly allocated to either the EBA business or the EBC businesses by reference to the nature of the product and raw materials involved.
 - (b) The Divestment Business will retain EBA-related BOMs for each of its 36 production sites within the EEA, UK, Switzerland, U.S., Canada, Australia and New Zealand. In particular, the European Divestment Business will retain EBA-related BOMs for each of its 17 production sites within the EEA, Switzerland and UK (including all the BOMs in Swinton) - regardless of whether the BOMs were in fact recently used or not. The only EBA-related BOMs owned by Sika will be those of the Retained ROW EBA Business relating to production sites located outside the EEA, UK, Switzerland, U.S., Canada, Australia and New Zealand.
 - (c) With respect to internet domains, these are typically shared between the EBA and EBC business since they cover a country and refer to the shared "masterbuilders" brand (e.g., "master-builders-solutions.ch"). The Divestment Business will retain all "masterbuilders" internet domains worldwide. The Retained Business will only retain those internet domains that exclusively relate to the EBC business. Internet domains which will be part of the Divestment Business will include a link to internet domains of the Retained Business for a period of time.

8. BRANDING AND TRADEMARKS

MBCC Group's approach to branding

- 8.1 The "MBCC" name or logo is not used as a trademark in product branding in any MBCC Group business division.⁷¹ Products are instead branded under various group brands (e.g. Master Builders Solutions, PCI, Wolman, Thermotek, TPH etc.).
- 8.2 MBCC's EBA and EBC products are branded under the "Master Builders Solutions" umbrella brand the ("**MBS Brand**"). This was created in 2013 by MBCC's former parent, BASF, and took approximately [CONFIDENTIAL] to develop. The brand essentially established a naming protocol by establishing the prefix "Master" on the EBA/EBC products on top of existing brand names (e.g., BASF's Pozzoloth brand became "MasterPozzoloth").⁷² The intention behind this

⁷¹ In contrast, Sika uses a "branded house" strategy, which means that the Sika corporate brand is used for its products. [CONFIDENTIAL]. However, while a Sika brand endorsement (i.e. marking the products with the Sika triangle) is a relatively simple step, the complete replacement of the current brands by new (Sika) brands is a more complex and time consuming process, taking much longer to not lose customers. As a result, reasonable transitional periods are foreseen to allow for a diligent and prudent change of brands.

⁷² In 2020, after the carve-out of MBCC Group from BASF, no new group brand was developed. MBCC Group

naming protocol was to consolidate around 30 smaller brands which had made up the business division.

- 8.3 However, this naming protocol has had limited market impact, and contrary to the initial brand strategy, the "Master" prefix is of limited importance to customer buying practices. Whilst the Master prefix is used across EBA and EBC products, it is the suffix that denotes the end use of the product, and as such it is these brands (e.g. "Glenium" or "Emaco" brands) which are recognised by customers and determine purchasing choices. As a result, a clear commercial focus has developed in favour of the brand suffixes. Indeed, this is where the real value of the IP lies, albeit the relevant trademark applicable to the product covers both the prefix and suffix brands, due to requirements in IP law.⁷³
- 8.4 There is very limited crossover between products at the suffix brand level, for example, EBA and EBC products are branded under distinct suffix brands (e.g. "MasterGlenium" is only used for EBA, while "MasterEmaco" is only used for EBC). The only exception is one brand "MasterKure".⁷⁴ The MasterKure series is a comprehensive range of curing agents which comprise both EBA and EBC products.⁷⁵ The overlap between the EBA and EBC products does not occur in the European Divestment Business perimeter (for the avoidance of doubt, or in the UK).⁷⁶

The Proposed Remedy and approach to trademarks

Umbrella MBS Brand:

- 8.5 The Divestment Business will retain all trademarks for the MBS Brand worldwide.
- 8.6 In relation to EBA products, Sika will obtain an exclusive royalty-free licence to use the MBS Brand trademarks for the benefit of the Retained ROW EBA Business for a period of [CONFIDENTIAL] years.
- 8.7 In relation to EBC products, Sika will obtain an exclusive royalty-free licence to use the MBS Brand:
- (a) for a period of [CONFIDENTIAL] in relation to the EEA, Switzerland and the UK;
 - (b) for a period of [CONFIDENTIAL] years in relation to the U.S. and Canada;⁷⁷ and
 - (c) for a period of [CONFIDENTIAL] years in relation to other countries.
- 8.8 The terms of these licences will be submitted to the CMA for approval as part of the Phase 2 review process. Preparation of illustrative licence terms is currently underway and is expected

simply changed the corporate / endorsement logo from BASF to MBCC Group and made certain small packaging adjustments. This was achieved in around a year.

⁷³ For example, "MasterSeal" is a registered trademark, "Master" and "Seal" are not registered separately.

⁷⁴ Total sales of MasterKure in 2021 were approximately [CONFIDENTIAL], comprising [CONFIDENTIAL] sales of EBA products and [CONFIDENTIAL] sales of EBC products. This equated to [CONFIDENTIAL] of total Divestment Business sales. Moreover, approximately [CONFIDENTIAL] of these sales occurred in countries within the Americas region.

⁷⁵ <https://www.master-builders-solutions.com/en-gb/products/masterkure>

⁷⁶ There is also an overlap within MasterSeal, whereby only one product, MasterSeal345 is an EBA product, and the remaining MasterSeal series is EBC. MasterSeal345 will be re-branded [CONFIDENTIAL].

⁷⁷

[CONFIDENTIAL].

to be completed in the coming weeks - albeit any terms will also need to be agreed by the Purchaser.

Product related trademarks

8.9 In relation to EBA related product trademarks:

- (a) The Divestment Business will retain all MBCC Group registered product trademarks pertaining to EBA products globally, with the exception of "Pozzolith" in Japan.⁷⁸
- (b) Sika will obtain an exclusive royalty-free licence to use these trademarks for a period of [CONFIDENTIAL] years (except for Pozzolith where Sika keeps the ownership for EBA in Japan).

8.10 In relation to EBC related product trademarks:

- (a) All trademark registrations will transfer to the Retained Business (with the exception of EBC related trademarks in Australia and New Zealand) as part of the carve-out. The Purchaser would retain ownership of the EBC related trademarks in Australia and New Zealand reflecting the fact that the EBC business in those countries is part of the ANZ Divestment Business.
- (b) In line with the MBS Brand licence set out above, Sika will discontinue the use of the word "Master" in relevant EBC product branding after [CONFIDENTIAL] in the EEA, Switzerland and the UK; after [CONFIDENTIAL] in the U.S. and Canada, and after [CONFIDENTIAL] in relation to other countries.⁷⁹
- (c) In addition, Sika will obtain a licence to use the trademarks in relation to the "MasterKure" brand (which is used for EBA and EBC products in North America) for EBC products for a period of [CONFIDENTIAL] years in relation to the U.S. and Canada.

8.11 The Parties are confident that this arrangement, although requiring a split of the MBS Brand between Sika and the Purchaser under a licensing agreement, will not lead to customer confusion in the market. This is due to the following reasons:

- (a) **There is limited crossover between EBA and EBC customers:** Customers of EBC products do not routinely purchase EBA products as the end uses are different. As such, there is limited scope for customer confusion during the period before Sika rebrands its EBC products (see (c) below) as the customer procurement teams are mostly separate. Any cross-selling that occurs happens on a purely opportunistic basis.⁸⁰
- (b) **There is very limited crossover between EBA customers inside and outside of the European Divestment Business perimeter:** EBA products are bought on a national basis, by local purchasing teams (please refer to Appendix, section 5 and the organisational charts in **Annexes 7 and 8** to illustrate the predominantly local nature of the sales teams). Regional or global buying by central procurement teams is not a feature of the industry, largely driven by the local nature of the product and aggregates

⁷⁸ Pozzolith is an umbrella brand in Japan which covers both EBA and EBC products. Since Sika will retain the EBA and EBC business in Japan, the brand will transfer to Sika.

⁷⁹ [CONFIDENTIAL] is answered here, as Sika is now committing to the divestment of the MBS Brand in its entirety.

⁸⁰ Within the European Divestment Business perimeter, there are [CONFIDENTIAL] shared customers.

used. MBCC Group operates [CONFIDENTIAL] active global contracts which cross between the Divestment Business and Retained Business, which can be easily separated.⁸¹ As such, there can be no customer confusion between, for example, purchasers of EBA products within the Retained Business perimeter and purchasers of EBA products within the Retained ROW EBA Business perimeter, as there is limited interaction between the two. To further demonstrate this, please refer to **Annex 21 Total volumes of EBA products sold into and out of the Divestment Business perimeter**.⁸² As shown by this Annex, only [CONFIDENTIAL] kg EBA products sold to third parties under the MBS Brand were produced in the Divestment Business' perimeter and sold into the Retained ROW EBA Business perimeter, which represented only [CONFIDENTIAL] of total MBS EBA volumes produced by the MBCC Group and [CONFIDENTIAL] of the Divestment Business' output.⁸³

- (c) **Sika has committed to discontinue the use of the word "Master" in relevant EBC product branding** within the Retained Business perimeter within a period of [CONFIDENTIAL] ([CONFIDENTIAL] in the EEA, Switzerland and the UK and [CONFIDENTIAL] in the U.S. and Canada and [CONFIDENTIAL] in other countries).
- (d) **There is no confusion with any current sub-licensing arrangements operated by MBCC Group:** MBCC Group has not sub-licensed the MBS Brand within the European Divestment Business perimeter.⁸⁴ Outside of the European Divestment Business perimeter, MBCC Group has sub-licensed the MBS Brand to [CONFIDENTIAL]. These third parties operate as local partners in their respective jurisdictions. The commercial relationships are historic⁸⁵ and were established to allow MBCC Group to enter the respective markets without any prior presence or significant local investment. The sub-licence agreements are coupled to sale and purchase agreements with the local partners, and allow the partners to package the product and sell locally.

9. CUSTOMER CONTRACTS

- 9.1 All customer contracts, customer orders and customer records that belong to the EBA business of MBCC Group in the EEA, Switzerland, UK, U.S., Canada, Australia and New Zealand (with the exception of those belonging to the Retained Business), will be part of the Divestment Business. The remainder of this section focuses on describing the customer contracts that will be part of the European Divestment Business.

⁸¹ [CONFIDENTIAL] global contract regards the supply of EBA products covering both the Divestment and Retained Business perimeters. [CONFIDENTIAL] can be easily split. [CONFIDENTIAL] global contract relates to the supply of EBA and EBC products within the European Divestment Business perimeter. The EBC supply can be easily carved out [CONFIDENTIAL].

⁸² "Orange" perimeter = EEA, Switzerland, UK, U.S., Canada, Australia, New Zealand. "Blue perimeter" = EEA, Switzerland, UK.

⁸³ In reverse, the Retained ROW EBA Business produced [CONFIDENTIAL] of EBA products under the MBS Brand which were sold in the Divestment Business perimeter to third parties, which represented only [CONFIDENTIAL] of total MBS EBA volumes produced by the MBCC Group and [CONFIDENTIAL] of the Retained ROW EBA Business' output.

⁸⁴ [CONFIDENTIAL].

⁸⁵ All contracts were established more than [CONFIDENTIAL].

The European Divestment Business will retain all EBA customer contracts in the EEA, Switzerland and UK

- 9.2 The European Divestment Business includes all customer contracts, orders, records, lists and history that contribute to its current operation and which are necessary to ensure the viability and competitiveness of the European Divestment Business. There are a limited number of customer contracts within the EEA, Switzerland and the UK as customers of the European Divestment Business generally place individual purchase orders (i.e., without a fixed contract)..
- 9.3 The Parties anticipate that a limited number of customer contracts relating to the European Divestment Business (including within the UK) specifically contain change of control provisions that will be addressed, based on current contract review exercises.
- 9.4 For the purposes of this section, the following explanations refer to “shared” customers as any MBCC customer whose total annual purchases from MBCC are at least EUR 1,000 in value in 2021 and who make at least 10% of their purchases in each of EBA and EBC.

The UK

- 9.5 There are only [CONFIDENTIAL] customer groups that purchase on the basis of individual written EBA customer contracts in place in the UK as can be seen from **Annex 22 - Customers List of the UK Divestment Business**, with the remainder purchasing on a purchase order (not contract) basis . Of these [CONFIDENTIAL] are EBA-dedicated, and [CONFIDENTIAL] ([CONFIDENTIAL], discussed below) makes both EBA and EBC purchases. All [CONFIDENTIAL] of these customers are based in the UK and are served from the Swinton production site. There is therefore no risk of the Swinton facility being under-utilised after the sale of the European Divestment Business.
- 9.6 In total there are [CONFIDENTIAL] shared customers in the UK (i.e., common to both the EBA business and EBC business, with at least 10% of their purchases made in each, with total purchases in 2021 of at least EUR 1,000).⁸⁶ Each of these customers is described in **Table 4** below. For context, total revenues generated from purchases by these customers (even including both EBA and EBC purchases) represent less than [CONFIDENTIAL] compared to total revenues of the EBA business in the UK. This percentage would be even lower if only taking the shared customers' EBA purchases as a percentage of total EBA purchases in the UK.
- 9.7 Of the [CONFIDENTIAL] UK-based shared customers, only [CONFIDENTIAL], [CONFIDENTIAL], operates under a written contract, which covers EBA product. [CONFIDENTIAL].
- 9.8 Each of the [CONFIDENTIAL] shared UK customers is managed by the strategic business unit team with more sales to that customer (i.e., the EBA team if the customer mostly makes EBA purchases).

Table 4 - Details of [CONFIDENTIAL] shared UK customers

Shared Customer (UK)	Total purchases 2021	% split of revenue from purchases made by customer	Customer management	Customer background

⁸⁶ Including the global contract referenced at footnote 84.

[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL] ⁸⁷ [CONFIDENTIAL]
[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]

9.9 Please refer to **Annex 22 - Customers List of the UK Divestment Business** which includes these customers and the value of their respective 2021 EBA purchases. Please also refer to **Annex 23 Shared Customers of the European Divestment Business** for further background on shared customers in the UK including annual expenditures, as well as further details on shared customers throughout the EEA, Switzerland and the UK, discussed further below.

There are limited customers shared between the European Divestment Business and the Orange Retained EBC Business in the EEA, Switzerland and the UK

- 9.10 Throughout all of the EEA, Switzerland and the UK, [CONFIDENTIAL] shared customers⁸⁸ of the European Divestment Business have been identified, whether on a contract or spot purchase basis, representing approximately [CONFIDENTIAL] of the total number of customers throughout the region. Total revenues generated from purchases by these customers represent a limited percentage of total revenues of the European Divestment Business, especially if only the EBA (not EBC) purchases of these customers are taken into account.
- 9.11 Most of these shared customers are precast producers, ready mix distributors or general contractors,⁸⁹ the type of customer profiles associated with typically buying a relatively broad portfolio of products and at best convenience as there is no other benefit in the relevant applications (product use) to buying multiple products from the same supplier.
- 9.12 Of the [CONFIDENTIAL] shared customers noted above, approximately [CONFIDENTIAL] have been identified as having a contract (this may be one or more of a contract covering EBA product only, a contract covering EBC product only, or a contract covering both EBA and EBC product.).⁹⁰

⁸⁷ Tunnel Boring Machine <https://www.master-builders-solutions.com/en-us/products/mining-and-tunneling/tunnel-boring-machine>

⁸⁸ Again, based on customers with a minimum expenditure of EUR 1,000 in 2021 with at least 10% of their spend in each of EBA and EBC.

⁸⁹ Collectively representing approximately [CONFIDENTIAL] of the number of shared customers in the region and [CONFIDENTIAL] of revenue generated from sales to shared customers in the region.

⁹⁰For completeness, there are a number of customers that benefit only from a discount letter or similar document with no overarching supply contract in place. Such customers have not been flagged as having a “contract” in Annex 23.

- 9.13 Please refer to **Annex 23 Shared Customers of the European Divestment Business** for details of shared customers of the European Divestment Business and the Orange Retained EBC Business in the EEA, Switzerland and the UK, including identification of those customers that have a contract, as well as a breakdown of each customer's EBA and EBC purchases in 2021. Earlier revenue data for purchases by these customers is not readily available as this dates back prior to the carve-out of MBCC from BASF.

10. PROCUREMENT AND RAW MATERIALS

- 10.1 All supply contracts, orders and records that belong to the EBA business of MBCC Group in the EEA, Switzerland, UK, U.S., Canada, Australia and New Zealand (with the exception of those belonging to the Retained Business), will be part of the Divestment Business. The remainder of this section focuses primarily on describing the procurement contracts that will be part of the European Divestment Business.

The European Divestment Business will have access to all relevant inputs and raw materials (such as polymers used to manufacture chemical admixtures)

- 10.2 Please refer to **Annex 24 Procurement Agreements**, which includes a list of all agreements for the procurement of all inputs currently sourced by the European Divestment Business from third parties (applying a materiality threshold of spend over EUR 1,000).⁹¹ For completeness, "agreements" listed in this annex include not only written contracts but also individual purchase orders (for which there is no written agreement but which are one-off purchases based on the current price from the supplier at the time of purchase; anyone on the market can make such purchases from the suppliers with no limitation on individual entities to order from the same supplier).⁹²
- 10.3 Currently, MBCC Group's direct procurement is generally [CONFIDENTIAL]. [CONFIDENTIAL].
- 10.4 Of the written agreements⁹³ there are contracts with [CONFIDENTIAL] suppliers that are "shared" (i.e., relating to both EBA and EBC) for direct inputs entered into by other MBCC legal entities in the EEA, Switzerland and the UK.⁹⁴ These will be allocated between EBA and EBC as follows, thereby ensuring the supplies remain available to EBA going forward:
- (a) Contract with [CONFIDENTIAL] (annual volume procured in 2021 [CONFIDENTIAL] and a Belgian MBCC entity, in relation to a trading product ([CONFIDENTIAL]) with an [CONFIDENTIAL]. Approximately [CONFIDENTIAL] of this contract relates to EBA and [CONFIDENTIAL] to EBC. Although the EBA portion of this contract is the smaller portion, the contract will remain in the MBCC entity and within the perimeter of the EBA Divestment Business. MBCC Group will then negotiate with [CONFIDENTIAL] to separate the contract into an EBA contract and an EBC contract. Sika and MBCC are confident that the separation will be agreed without difficulty because the separation is economically beneficial for

⁹¹ This list includes direct inputs (raw materials) and excludes "indirect" spend (e.g., on utilities, services).

⁹² Regarding the allocation of EBA versus EBC split for spend, this differentiation has been made for contracts. For purchase orders, the split between EBA and EBC is only a rough estimate based on the supplied plant..

⁹³ i.e., excluding the individual (one-off) purchase orders..

⁹⁴ The abovementioned annex can be filtered to identify these three agreements by selecting only "Shared" in the Dedicated/Shared column and de-selecting all "n/a (Purchase Order) entries in the Contract Name column.

all parties involved, including [CONFIDENTIAL] which has an interest in maintaining MBCC and Sika as customers.

- (b) Contract with [CONFIDENTIAL] (annual volume procured in 2021 approximately [CONFIDENTIAL]), in relation to a trading product ([CONFIDENTIAL]). [CONFIDENTIAL] of this contract relates to EBA and the intention is also to separate this contract in the same manner. The contract is due for renewal on [CONFIDENTIAL].
 - (c) Contracts with [CONFIDENTIAL] (annual volume procured in 2021 over [CONFIDENTIAL]) and MBCC Group's German entities, relating to an arrangement for supply of dispersions. Under this arrangement, only [CONFIDENTIAL] of the volume relates to EBA and [CONFIDENTIAL] to EBC. As the volume relating to EBA is very small, Sika will transfer these contracts out of the MBCC legal entity as part of the carve-out of the Orange Retained EBC Business. In order to assure continued supply to the European Divestment Business of the EBA-related products, Sika will negotiate with [CONFIDENTIAL] to enter into separate supply agreements with the relevant MBCC Group entity (that will transfer to the Purchaser) for the supply of the EBA related products. The Parties are very confident that such new agreements will be concluded because this is economically the most beneficial proposition for all parties involved, including [CONFIDENTIAL] which has an interest in maintaining both the Purchaser and Sika as customers.⁹⁵
- 10.5 The Parties do not foresee that any of the three suppliers noted above would have any commercial motivation to refuse to agree to a split in the event that the divestment proceeds. In order to ensure continued supply to the Divestment Business, in the unlikely event that any of these suppliers is unwilling to split the applicable contract, the contract(s) will be allocated between the Divestment Business and the Retained Business and volumes will be supplied by one business to the other via a supply agreement for the duration of the applicable contract..
- 10.6 The European Divestment Business includes polymer production capability at Treviso in order to ensure it has a supply of polymers to support its various production sites.
- 10.7 The Swinton plant receives [CONFIDENTIAL] polymers via [CONFIDENTIAL] in Trostberg for the purposes of incorporation into chemical admixtures and/or supplying together with chemical admixtures in the UK. [CONFIDENTIAL] of polymers procured by Swinton derive from this supply arrangement (with the remaining [CONFIDENTIAL] obtained from Treviso, which will remain with the Divestment Business). As such, supply will continue as of today post-Closing.
- 10.8 For completeness, there is also a shared framework agreement held specifically by the MBCC UK entity for the provision of services relating to warehousing in Preston (see **Appendix**, section 4).

⁹⁵ For completeness, in addition to the abovementioned "shared" contracts (i.e., relating to both EBA and EBC in Europe) with [CONFIDENTIAL], there is: (a) a contract with [CONFIDENTIAL] under which the Divestment Business and Retained Business (mainly the Retained ROW Business) currently source [CONFIDENTIAL]; and (b) [CONFIDENTIAL] from which the Divestment Business and Retained Business currently source (i) [CONFIDENTIAL], and (iii) [CONFIDENTIAL]. For these contracts, the Parties plan to separate the contracts into a supply for the Divestment Business and supply for the Retained Business. 768

11. LIMITED ONGOING LINKS OR DEPENDENCIES BETWEEN THE DIVESTMENT BUSINESS AND THE RETAINED BUSINESS

- 11.1 Annex 14 List of transitional agreements for the supply of products and services to the Divestment Business lists the limited transitional arrangements for the supply of products and services, to be provided by the Retained Business to the Divestment Business from the date of closing of the sale to the Purchaser. These comprise mainly:
- (a) TSAs relating to Finance, HR and IT services, and limited requirements for fleet management in North America specifically; and
 - (b) Temporary supply of certain UGC products.
- 11.2 The TSAs will ensure that the Purchaser will have a functioning stand-alone business, with all necessary back-office support to facilitate the transition to the Purchaser's own systems, from completion of the sale of the Divestment Business. In addition, the temporary supply of UGC products will ensure that the Purchaser will have access to all necessary inputs required for the Divestment Business. At the same time, the duration of the arrangements is short enough (in relation to the TSAs [CONFIDENTIAL]) for the UGC products) to be temporary and not create lasting links and dependencies between the Divestment Business and the Retained Business.
- 11.3 **Annex 25 List of transitional agreements for the supply of products and services to the Retained Business** lists the limited transitional arrangements for the supply of products and services, to be provided by the Divestment Business to the Retained Business from the date of closing of the sale to the Purchaser. These cover:
- (a) Contract manufacturing of EBC powders in [CONFIDENTIAL]; and
 - (b) Temporary supply of certain polymers and admixture/finished EBA products.
- 11.4 The supply arrangements to the Retained Business will also be in place for a temporary period (up to [CONFIDENTIAL]), [CONFIDENTIAL], and therefore will not create lasting links and dependencies between the Divestment Business and the Retained Business.
- 11.5 The precise terms of each of the agreements remain to be negotiated with the Purchaser and the CMA will review and sign off on the final form agreements prior to the signing of the SPA with the Purchaser. As is customary, final form agreements will be appended to the SPA and will be concluded simultaneously with the closing of the sale of Divestment Business.

Provision of goods/services by the Retained Business to the Divestment Business

- 11.6 After completion of the sale of the Divestment Business, the Retained Business will supply a very limited set of products and services to the Divestment Business for a short period of time, pursuant to the agreements listed in **Annex 14 List of transitional agreements for the supply of products and services to the Divestment Business** . Most importantly:
- (a) **TSAs:** There will be 3 temporary TSAs between the Retained Business and the Divestment Business relating to back-office functions (Finance, HR, IT). The TSAs will be in place for a limited period of [CONFIDENTIAL] until the Purchaser can organise its own provision or migrated the data to its own systems. The [CONFIDENTIAL] transition period is [CONFIDENTIAL]. Additionally, one TSA for a period of [CONFIDENTIAL] will enable the Divestment Business to continue to access fleet management services in North America.

- (b) **Supply of UGC Products:** The Retained Business will supply the Divestment Business with certain products used for the UGC business [CONFIDENTIAL], for a period of up to [CONFIDENTIAL] ([CONFIDENTIAL]). The Divestment Business currently sources the above UGC products from [CONFIDENTIAL], which will transfer to Orange Retained EBC Business. The supply agreement will provide that [CONFIDENTIAL]. There are numerous alternative suppliers of [CONFIDENTIAL] for UGC applications in Europe, which include Evonik Operations, BYK-Chemie, Brenntag, Huntsman, LANXESS, BCD Chemie, and Wacker.

Provision of goods/services by the Divestment Business to the Retained Business

11.7 After completion of the sale of the Divestment Business, the Divestment Business will supply a very limited set of products and services to the Retained Business for a short period of time, pursuant to the agreements listed in **Annex 25 List of transitional agreements for the supply of products and services to the Retained Business**. Most importantly:

- (a) **Contract manufacturing of EBC powders:** The three shared sites in [CONFIDENTIAL], which will be part of the Divestment Business, currently supply the Orange Retained EBC Business in the EEA with EBC powders. The Divestment Business will contract manufacture these EBC powders at the [CONFIDENTIAL] sites [CONFIDENTIAL].
- (b) **Supply of polymers and finished EBA products:** The Divestment Business currently supplies certain types of polymers ([CONFIDENTIAL]) and finished EBA products⁹⁶ ([CONFIDENTIAL]) to the Retained ROW Business. The Divestment Business will continue to supply the Retained ROW Business until [CONFIDENTIAL].

11.8 For completeness, no toll or contract manufacturing arrangement will be required to be in place from closing at Swinton. Sika will make plans to produce the *de minimis* Swinton EBC powder production at [CONFIDENTIAL] instead of Swinton immediately following completion of the sale of the Divestment Business.

No meaningful links between the European Divestment Business and the Retained Business outside the EEA, Switzerland and the UK

11.9 There are no meaningful international links between the European Divestment Business and the Retained Business outside Europe, as explained below.

No supplies and services to the European Divestment Business

11.10 The European Divestment Business is standalone and independent from countries outside the EEA, Switzerland and UK. With one exception (as detailed below), it does not source any goods or services from outside these countries. In particular:

11.11 **There are no international linkages regarding input supplies.** Raw materials required by the European Divestment Business are sourced regionally, i.e., the suppliers of all raw materials required by the European Divestment Business are located in the geographical perimeter of the European Divestment Business.

11.12 **Hence, no polymers used by the European Divestment Business are sourced outside the EEA, Switzerland and UK.** By way of example, a portion of the polymers used by the

⁹⁶ Mainly for export to smaller markets within the Retained ROW EBA Business perimeter, such as Israel, Serbia, Albania.

European Divestment Business are sourced by the European Divestment Business at Trostberg [CONFIDENTIAL]. Trostberg will transfer to the Purchaser as part of the European Divestment Business. The remainder of the polymers used by the European Divestment Business are produced by the European Divestment Business in [CONFIDENTIAL] which will also transfer as part of the European Divestment Business to the Purchaser.

- 11.13 There are no international linkages with regard to R&D from outside the EEA, Switzerland and UK into the European Divestment Business. The R&D requirements of the European Divestment Business are met through the chemical admixtures R&D activities at Trostberg.
- 11.14 By way of exception, certain UGC materials (e.g., greases, foams) are supplied from the Orange Retained EBC Business in Turkey to the European Divestment Business in a few countries (mainly Bulgaria). However due to [CONFIDENTIAL], the European Divestment Business has recently begun sourcing these materials instead from [CONFIDENTIAL]. The European Divestment Business will retain the benefit of this new sourcing arrangement, which is described in **Appendix**, section 10 above.

Limited supply needs from the European Divestment Business to the Retained ROW EBA Business

- 11.15 As noted in **Annex 25 List of transitional agreements for the supply of products and services to the Retained Business** there are very few supply arrangements will be required from the European Divestment Business to the Retained ROW EBA Business.

Internal links between the European Divestment Business, the N. American Divestment Business and/or the ANZ Divestment Business

- 11.16 The sale of the Divestment Business as a single package to the same purchaser removes any possible composition risk that may have arisen from the (already limited) links between the European Divestment Business and the other parts of the Divestment Business.
- 11.17 The only such links relate to R&D, and specifically the collaboration between [CONFIDENTIAL] (an R&D centre in the U.S. [CONFIDENTIAL]).
- (a) The N. American EBA business is independent and standalone when it comes to R&D capabilities as it has a dedicated R&D centre at Beachwood. Beachwood includes state-of-the-art facilities, a strong leadership team, and a fulsome team of R&D employees at the Beachwood facility that today is managing a broad range of R&D projects for geographies, customers, and applications in the United States and Canada.
- (b) The collaboration between [CONFIDENTIAL] is quite limited. There are [CONFIDENTIAL] active EBA-focused R&D projects relevant to the United States or Canada.⁹⁷ The R&D team at [CONFIDENTIAL] today manages [CONFIDENTIAL] of these projects entirely on their own, one received limited support from [CONFIDENTIAL] and [CONFIDENTIAL] is meanwhile closed.
- 11.18 In any event, the purchaser of the Divestment Business will own all [CONFIDENTIAL] of these R&D projects and therefore the precise location at which they are carried out ([CONFIDENTIAL]) is irrelevant to the assessment of the suitability the divestment package.

⁹⁷ Based on ongoing R&D projects in April 2022.

12. MINIMAL LOSS OF ECONOMIES OF SCALE

- 12.1 There are limited diseconomies of scale with respect to the Divestment Business. This is because, and as outlined further below, the Divestment Business is a profitable, viable, competitive, and largely standalone business. As a result, there are only small economies of scale and synergies that might be lost as part of the Divestment Business' separation from the wider MBCC Group.
- 12.2 Indeed, the Parties estimate that on a standalone basis the Divestment Business would have operated an EBITDA margin of approximately [CONFIDENTIAL] on sales of [CONFIDENTIAL] in FY2022⁹⁸ and expect that similar levels of sales and profitability will be achievable by the Divestment Business post-divestment. This standalone business will be viable and attractive to a purchaser, as reflected by the strong interest already shown by prospective purchasers (see section 13 below) and will be able to effectively compete throughout the EEA, Switzerland, UK, U.S., Canada, Australia, and New Zealand. Moreover, the inclusion of a highly experienced management team, along with access to the global portfolio of EBA trademarks and patents, will allow the Purchaser to expand into countries outside the perimeter of the Divestment Business. To the extent that this occurs, many of the reduced economies of scale detailed in this section, will be able to be recaptured.
- 12.3 The Parties have undertaken a detailed and comprehensive review of the FY2022RF financial data of the Divestment Business to identify any areas where the Divestment Business currently benefits from economies of scale from being part of the wider MBCC Group. Based on this review, there are six areas where there may be reductions in economies of scale.
- (a) Costs for global and regional staff and services:
 - (i) Management overheads in central support functions currently shared across the entire MBCC Group;
 - (ii) Non-staff costs associated with providing global support and compliance currently shared across the entire MBCC Group;
 - (iii) Business process outsourcing and IT outsourcing costs currently shared across the entire MBCC Group.
 - (b) Costs for local staff and services:
 - (iv) Staff costs in the local operating entities associated with FTEs currently performing services for both EBA and non-EBA functions;
 - (v) Non-staff costs in the local operating entities associated with services shared by EBA functions with non-EBA functions; and

⁹⁸ The previous analysis of economies of scale submitted to the CMA as part of Sika's Phase 1 divestment proposal was based on FY2021 actual figures and for the European Divestment Business only. The current economies of scale analysis relies on more updated figures contained in the FY2022 reforecast figures (FY2022RF; RF stands for rolling forecast) and presents the analysis on the overall Divestment Business. As the European Divestment Business will now be completely contained within the broader Divestment Business, the assessment of the overall changes in economies of scale on EBITDA margins and unit costs is appropriate only on the broader Divestment Business, as any assessment of the narrower European Divestment Business would not capture central costs that will be shared by the Divestment Business overall.

- (c) R&D costs currently shared by the Divestment Business with MBCC Group more broadly and associated with providing services to the EBA business outside of the geographical perimeter of the Divestment Business.

12.4 In the remainder of this section, the Parties set out their best estimate of the reductions in these economies of scale,⁹⁹ and highlight that even with these reductions, the Divestment Business will be a profitable, viable, competitor in the market for EBA products in the EEA, Switzerland, UK, U.S., Canada, Australia and New Zealand.

Costs for global and regional staff and services

12.5 There are a number of global and regional services required for the Divestment Business to be a standalone business. The costs for these services are currently represented in MBCC Group's central cost centre, with a portion of the costs being allocated back to the businesses that will form the Divestment Business. These services are currently shared across the entire MBCC Group business, however, post-divestment, they will be the responsibility of the Divestment Business alone.

- (a) **Management overheads.** Currently, a number of the central support and governance functions in the Divestment Business also provide services to MBCC Group outside the perimeter of the Divestment Business. There are [CONFIDENTIAL] FTEs with central and regional governance and support roles that are currently a shared cost across MBCC that will be part of the Divestment Business. These include regional business unit management employees, central back-office functions (e.g., finance, HR, strategic marketing, internal audit, IT etc), and the global executive [CONFIDENTIAL]. These costs are currently represented in MBCC Group's central cost centre with a portion of their costs recharged to the Divestment Business. The Parties estimate that the total cost of providing these services to the Divestment Business is [CONFIDENTIAL]. [CONFIDENTIAL] relates to the global executive management, [CONFIDENTIAL] relates to IT, and €[CONFIDENTIAL] million relates to all other central support functions.
- (b) **Non-staff costs associated with providing global support.** Certain global non-staff costs required for the Divestment Business to be a standalone business are currently represented in MBCC Group's central cost centre with a portion of their costs recharged to the Divestment Business. These include costs associated with global tax support, environmental health and safety consulting, compliance costs and certain functional IT licenses.¹⁰⁰ The Parties estimate that the total cost of providing these services to the Divestment Business is [CONFIDENTIAL] in FY2022RF.

⁹⁹ Actual lost economies of scale will, in part, depend on the identity of the purchaser and the extent to which the purchaser has the ability to share certain costs arising from the Divestment Business across other businesses it may already own. The Parties have undertaken the analysis of potential lost economies of scale based on a financial buyer with no existing footprint, who therefore requires a full standalone organisation. To the extent that the Divestment Business are sold to a strategic buyer with pre-existing support functions that could be leveraged, the resulting lost economies of scale could be partially or fully recaptured.

¹⁰⁰ The Parties have, on a conservative basis, included a number of costs that have previously been accounted for as special items, and therefore not part of EBITDA, into the calculation of potential lost economies of scale associated with non-staff costs for global support. These include, for example, costs associated with certain functional IT licenses where the project is not currently active but will be active and required by the Divestment Business in the future. .

- (c) **Business process outsourcing and IT outsourcing costs.** Certain global and regional business process outsourcing (e.g., HR and Finance outsourcing), IT outsourcing services, and outsourced IP handling¹⁰¹ required for the Divestment Business to be standalone are currently represented in MBCC Group's central cost centre with a portion of the associated costs recharged to the Divestment business. The Parties estimate that the total cost to the Divestment Business of re-procuring these services is [CONFIDENTIAL] in FY2022RF.

12.6 Post-divestment, the Parties estimate, based on FY2022RF figures, that the Divestment Business will have total costs for the provision of global and regional support services of [CONFIDENTIAL] million. For FY2022RF, MBCC Group estimates that it will allocate [CONFIDENTIAL] million in global and regional costs to the Divestment Business, and so fully internalising global and regional support services will lead to an estimated increase in costs for the Divestment Business of [CONFIDENTIAL] of FY2022RF EBITDA margin.

Costs for local staff and services

12.7 **Staff costs in the local operating entities related to non-divestment perimeter (non-R&D people).** As previously explained, the Parties have taken a conservative approach to the assignment of FTEs to the Divestment Business, ensuring that all relevant skills and support functions that are required to run a stand-alone business are included. [CONFIDENTIAL].¹⁰² As the costs of these employees will now be fully accounted for within the Divestment Business, there are limited losses of economies of scale. Based on FY2022RF figures, the Parties estimate that the internalisation of these costs would equate to an increased cost to the Divestment Business of approximately €3.7 million in FY2022RF or 0.4 percentage points of FY2022RF EBITDA margin.

12.8 **Non-staff costs in the local operating entities related to non-divestment perimeter.** Certain local non-staff costs that will be incurred by the Divestment Business are currently shared with the wider MBCC Group including the Orange Retained EBC Business. These include costs associated with local insurance contracts, local audit and tax support, local warehouse costs and local production facility costs.¹⁰³ The Parties estimate that the internalisation of these shared overheads into the Divestment Business would equate to an increased cost to the Divestment Business of approximately [CONFIDENTIAL].

- (a) **Insurance costs:** A number of insurance contracts held by MBCC Group at the country level cover both the EBA and EBC businesses and are able to obtain beneficial pricing due to the scope of coverage. Based on a review of current insurance contracts, the Parties estimate that post-divestment the Divestment Business will face an increase in insurance costs of [CONFIDENTIAL].
- (b) **Local functional support:** A number of local functional external support services (e.g., local audit, tax, and legal services) are currently a shared cost for the Divestment Business and the Orange Retained EBC Business. The Parties estimate that fully

¹⁰¹ Third-party IP handling includes fees paid by MBCC Group to [CONFIDENTIAL].

¹⁰² R&D related staff costs are excluded from this estimate as they are dealt with separately in paragraph 12.10 below.

¹⁰³ Leases for local offices are a non-EBITDA item per IFRS16 and therefore do not affect EBITDA. However, as noted further below, there are minimal reductions in economies of scale associated with the Divestment Business taking full responsibility for shared office space.

internalising these costs will lead to an increase in non-staff costs to the Divestment Business of [CONFIDENTIAL].

- (c) **Warehouse costs:** As discussed further below, there are minimal economies of scale losses associated with shared warehouses. Of the 91 warehouses that will be operated by the Divestment Business,¹⁰⁴ only 23 warehouses are currently shared with the Orange Retained EBC Business consisting of 8 on-site warehouses¹⁰⁵ and 15 standalone warehouses.¹⁰⁶ For the 8 on-site warehouses, the Parties estimate that the reduction in volumes associated with [CONFIDENTIAL],¹⁰⁷ will lead to an increase in the allocation of fixed warehouse costs to the Divestment Business of approximately [CONFIDENTIAL] margin. For standalone warehouses, the Parties have analysed all relevant contracts for third-party warehouses, and none contain pricing provisions that are related to the volume of materials handled (e.g., there are no minimum volume requirements or volume-based discounts). As such, there will be no lost economies of scale in relation to currently shared standalone warehouses.
- (d) **Costs at shared production facilities:** As discussed in section 3 only three of the EBA production sites are currently shared with EBC production to more than a *de minimis extent*.¹⁰⁸ Post-divestment, these facilities will continue to operate at a similar scale to the other current EBA production sites, and will continue to be economic to operate. On a conservative basis, the Parties estimate that there may be up to [CONFIDENTIAL] that are currently spread across EBA and EBC production that will need to be fully incorporated into the Divestment Business.¹⁰⁹
- (e) **Procurement costs:** The Parties have identified very limited current synergies relating to procurement costs for raw or intermediate inputs. All of the inputs required to operate the Divestment Business are sourced within the geographical perimeter of the Divestment Business and these contracts do not benefit from any economies of scale due to MBCC Group's global EBA footprint or from economies of scale associated with the Orange Retained EBC Business. Based on the review of current procurement contracts, the Parties have not identified any contracts that will be held by the Divestment Business that currently benefit from cost synergies by virtue of being negotiated as part of the wider MBCC Group. Indeed, a review of the relevant contracts shows that they are currently [CONFIDENTIAL]. Therefore, the Parties' expectation is that the Purchaser will be able to secure equivalent pricing on key inputs into production. Notwithstanding this, the Parties have conservatively estimated that there

¹⁰⁴ Of these 91 warehouses, 36 are within the perimeter of the European Divestment Business, and 55 are outside.

¹⁰⁵ All 8 of the on-site warehouses that are currently shared across EBA and EBC are located within the European Divestment Business perimeter.

¹⁰⁶ All of the 15 standalone warehouses that are currently shared between MBCC's EBA and EBC business are operated by third-party logistics companies. Of these 15, 10 are located within the perimeter of the European Divestment Business, while 5 are located within the perimeter of the N. American Divestment Business.

¹⁰⁷ For completeness, the warehouse in Evry-Lisses is currently also performing minor EBC-related [CONFIDENTIAL]. This will however cease as soon as the [CONFIDENTIAL] equipment has been moved out of the warehouse, which will happen before closing, and as such it has been designated as a warehouse dedicated to the European Divestment Business.

¹⁰⁸ All shared production sites are contained within the European Divestment Business perimeter.

¹⁰⁹ Approximately [CONFIDENTIAL] of these costs are associated with the Rødøkro site, where all production of EBC products will cease prior to the divestment, however, the Parties consider that there will be some moderate reduction in economies of scale from the removal of production of EBC powders from Rødøkro.

may be [CONFIDENTIAL] associated with regional procurement of inputs [CONFIDENTIAL].

12.9 **R&D expenditure currently shared with the rest of MBCC Group related to the non-divestment perimeter.** MBCC's R&D facilities included in the Divestment Business provide limited R&D services to the Retained ROW EBA Business. The costs of providing these limited services are currently shared across MBCC; post-divestment they will be incurred by the Divestment Business alone and thus could represent a lost economy of scale. The Parties estimate that the costs associated with these services were approximately [CONFIDENTIAL]. These services include:

- (a) *Services provided by the projects group.* The projects group is primarily focused on the development of products for use within the geographical perimeter of the Divestment Business and there is limited cost associated with support provided to the Retained ROW EBA Business.
- (b) *Services provided by the technology group.* The research performed by the technology group is shared across MBCC Group for use in patented products produced and sold globally¹¹⁰ and therefore, post-divestment, ongoing research will be supported by the smaller sales base of the Divestment Business.¹¹¹
- (c) *Services provided by non-R&D teams.* The members of the IP protection and project management teams who will be part of the Divestment Business have no shared activities with the Retained Business, and therefore there are no lost economies of scale with respect to the non-R&D functions provided.
- (d) Based on this analysis, the Parties estimate that the lost economies of scale from the services provided by the projects group, the technologies group, and the non-R&D teams would have accounted for approximately [CONFIDENTIAL].
- (e) *Non-personnel services.* A small portion of the overhead costs associated with running the R&D facilities (e.g., the cost of managing the R&D facilities, costs associated with external research contracts, etc.) are currently a shared cost for the MBCC Group. Post-divestment, these costs will be fully incurred by the Divestment Business and the internalisation of these costs could represent a reduction in economies of scale. The Parties estimate that the lost economies of scale associated with operating the R&D facilities for only the Divestment Business are minimal, accounting for approximately [CONFIDENTIAL].

12.10 In total, the estimated additional cost incurred by the Divestment Business that is currently shared with the wider MBCC Group organisation is small at only [CONFIDENTIAL]. Even accounting for these lost economies of scale, many of which may be recoverable depending on the Purchaser, the Divestment Business, on a standalone basis, will be highly competitive with a total FY2022RF EBITDA margin of [CONFIDENTIAL]. Furthermore, the Parties estimate

¹¹⁰ The research group is primarily focused on [CONFIDENTIAL].

¹¹¹ The Parties conservatively assume that the sales base post-divestment of the Divestment Business will be the same as the current Divestment Business sales base. To the extent that the purchaser is already active in EBA, then it is possible that purchaser may have existing sales of products that could benefit from the research performed by the technology group. In such a case, the associated reduction in the economies of scale may be reduced or eliminated.

that the impact on total unit costs from the reduced economies of scale will be small, at only [CONFIDENTIAL].¹¹²

- 12.11 This level of profitability is comparable to other EBA businesses operating in Europe and the UK. As such, the Parties do not consider that the loss of any economies of scale will reduce the viability of the Divestment Business to be an effective competitor in the EEA, Switzerland, UK, USA, Canada, Australia, and New Zealand.
- 12.12 In addition, the CMA specifically asked the Parties for economies of scale analyses with respect to the cost impact on the European Divestment Business of retaining: (i) shared production sites; (ii) shared warehouses; and (iii) all shared offices.

Shared Production Sites

- 12.13 There are no concerns that the Purchaser of the European Divestment Business will be left with underutilised production assets, and all production facilities will continue to operate at a scale that is profitable. As explained above, only three of the 17 production facilities within the European Divestment Business (and indeed only three of the 36 production sites in the Divestment Business overall) currently operate as shared facilities.¹¹³ As previously explained to the CMA, the equipment and machinery used in the production processes for EBA and EBC products are different and the European Divestment Business will only retain equipment and machinery associated with the production of EBA products. Furthermore, the level of production of EBA products at currently shared sites is in line with the level of production at EBA dedicated sites. Notably the EBA production volumes (in kt) at the three shared sites in 2021 were: [CONFIDENTIAL] ([CONFIDENTIAL] including [CONFIDENTIAL] production); [CONFIDENTIAL] [CONFIDENTIAL]); and [CONFIDENTIAL] ([CONFIDENTIAL]). These volumes are well within the range of production volumes of EBA products ([CONFIDENTIAL] including polymer production) at EBA dedicated sites in Europe. As such, post-divestment the three shared facilities will still be operating at a viable scale to produce EBA products and will remain economically viable and competitive.
- 12.14 Furthermore, as discussed above, the increased allocation of fixed costs to EBA products produced at shared sites from the reduction in volumes of EBC products produced is minimal and is estimated to be only [CONFIDENTIAL].

Shared Warehouses

- 12.15 The European Divestment Business will contain 36 warehouses used to ship EBA products to end customers and to store raw materials associated with the production process. The Parties consider that there will be no material lost economies of scale or impact on the competitive position of the European Divestment Business arising from the separation the European Divestment Business and Orange Retained EBC Business in the EEA, Switzerland and the UK for two reasons.

¹¹² Total unit sales of EBA products within the Divestment Business perimeter are expected to be [CONFIDENTIAL]. Total current costs for the Divestment Business are [CONFIDENTIAL] and based on the Parties analysis set out above, these are estimated to increase to [CONFIDENTIAL] post-divestment. As such, total unit costs are expected to increase from [CONFIDENTIAL] to [CONFIDENTIAL], an increase of [CONFIDENTIAL].

¹¹³ Swinton and Rødekro are essentially dedicated to the EBA business, as they only have a *de minimis* amount of EBC production. Please see section 3.

- 12.16 First, warehouse costs are a very small component of total costs of EBA products. Based on the Parties' analysis of FY2021 input costs for the European Divestment Business perimeter, warehouse costs comprised an estimated [CONFIDENTIAL] of total product costs and less than [CONFIDENTIAL] of total sales. As such, even if total warehouse costs were to increase substantially for the European Divestment Business (which, as explained further below they will not), the impact on the competitive position of the European Divestment Business would be minimal.
- 12.17 Second, based on the Parties' analysis of the warehouses that will be included in the European Divestment Business, the costs incurred by the European Divestment Business are not likely to increase, and there are minimal lost economies of scale associated with the European Divestment Business operating warehouses that had been shared with the Orange Retained EBC Business in the EEA, Switzerland and the UK. The warehouses that will be contained in the European Divestment Business consist of two types: warehouses located at production facilities and standalone warehouses, and neither will face material losses of economies of scale.
- 12.18 **On-site warehouses.** There are 17 warehouses co-located at production facilities that are part of the European Divestment Business. Of these 17 warehouses, 9 are dedicated to the European Divestment Business including the warehouse located in Swinton UK¹¹⁴ and 8 are currently shared with the Orange Retained EBC Business in the EEA, Switzerland and the UK.¹¹⁵ Of these 8 on-site shared warehouses, 3 perform some basic warehousing services for the Orange Retained EBC Business in the EEA, Switzerland and the UK while 5 perform some basic warehousing services and some additional services for the Orange Retained EBC Business in the EEA, Switzerland and the UK (including in the shared site in [CONFIDENTIAL]).¹¹⁶
- 12.19 As part of the separation process, the machinery and employees used to provide warehousing and additional services to the Orange Retained EBC Business in the EEA, Switzerland and the UK will be transferred from the shared European Divestment Business on-site warehouses prior to the end of the divestiture period. As such, there will be no change in the variable costs associated with storing and handling EBA materials at shared warehouses contained within the European Divestment Business.
- 12.20 While the volume of materials handled by these shared warehouses will decrease with the transfer of EBC products, and therefore the utilisation of the facilities will decrease, this will not lead to any competitive disadvantage for the European Divestment Business. The fixed costs associated with operating warehouses (e.g., electricity and heating costs) are minimal.

¹¹⁴ For completeness, the warehouse in Evry-Lisses is currently also performing minor EBC-related [CONFIDENTIAL]. This will however cease as soon as the [CONFIDENTIAL] equipment has been moved out of the warehouse, which will happen before closing, and as such it has been designated as a warehouse dedicated to the European Divestment Business.

¹¹⁵ For completeness, the warehouse at Swinton handles a very small amount of powders (pre-mix mortars) that primarily relates to [CONFIDENTIAL]. These powders account for a negligible amount of the material handled by the warehouse at Swinton ([CONFIDENTIAL] of a total [CONFIDENTIAL] per annum or [CONFIDENTIAL]). Furthermore, over [CONFIDENTIAL] of the production of these powders will remain at Swinton. The remaining powder production comprises EBA powder production which will remain with the UK Divestment Business at Swinton and EBC powder production, which will be re-located to [CONFIDENTIAL]. Therefore, less than [CONFIDENTIAL] of total warehoused material will be moved to the [CONFIDENTIAL] facility before the end of the divestiture period. As such, there will be no material change in the operation of the warehouse at Swinton, and therefore no lost economies of scale.

¹¹⁶ These additional services largely consist of [CONFIDENTIAL] for EBC customers. Such [CONFIDENTIAL] typically occurs close to the customer location as compared to at the EBC production facility as it allows for the [CONFIDENTIAL] to be performed once customer orders are confirmed (e.g., for [CONFIDENTIAL]).

Based on an analysis of FY2021 warehouse costs in the European Divestment Business perimeter by the Parties, fixed costs represent approximately [CONFIDENTIAL] of total warehouse costs, with variable costs representing the balance. Given the small proportion of total costs associated with warehouse costs ([CONFIDENTIAL] of total costs or [CONFIDENTIAL] of total sales), the fixed cost component to warehouses is very small at [CONFIDENTIAL] of total costs or just [CONFIDENTIAL]% of total sales. Therefore, even with a decrease in the volume of sales supporting the fixed costs associated with warehousing, there will be minimal lost economies of scale.

- 12.21 **Standalone warehouses.** There are 19 standalone warehouses that will form part of the European Divestment Business. Of these, 9 are currently exclusively used to support the European Divestment Business. For the 10 standalone warehouses where there is some shared EBA/EBC warehousing, including at the standalone warehouse in Preston, UK, there will be no reductions in economies of scale and the facilities will not be underutilised. All standalone warehouses that are currently shared between EBA and EBC products are operated by third-party companies on [CONFIDENTIAL]. The Parties have analysed all relevant contracts for third-party warehouses, and none [CONFIDENTIAL]. As such, the European Divestment Business will only incur costs for the actual volume of EBA materials handled and will not face any increased pricing for EBA products handled. Therefore, there are no lost economies of scale related to third-party operated standalone warehouses and the level of utilisation of these facilities is not a factor in the competitive success of the European Divestment Business.
- 12.22 Therefore, the European Divestment Business will face no increase in variable costs associated with the handling of EBA products at either standalone or on-site warehouses and the fixed costs per unit of volume will only increase at 8 of 17 shared on-site warehouses (which are currently MBCC Group operated), and even at these facilities the increase in fixed costs per unit of volume will be minimal. Indeed, as discussed above, the Parties estimate that the reduction in economies of scale for warehouses in the Divestment Business will be only [CONFIDENTIAL] or less than [CONFIDENTIAL] of the Divestment Business' FY2022RF EBITDA margin. As such, the European Divestment Business will at most face minimal lost economies of scale with respect to a small proportion of warehouses and the overall competitiveness of the European Divestment Business will not be affected.

Shared Offices

- 12.23 MBCC currently operates 28 offices within the perimeter of the European Divestment Business that have some level of shared usage with the Orange Retained EBC Business in the EEA, Switzerland and the UK. Of these, six shared offices will transfer to the European EBC Retained Business, while 22 will continue to be operated by the European Divestment Business. These 22 shared offices consist of 12 offices located at production sites, and 10 offices that are standalone or connected with warehouses or labs.
- 12.24 The Parties have undertaken a detailed review of the total costs associated with each of the shared offices that will be operated by the European Divestment Business. Currently the 22 shared offices have total annual operating costs of [CONFIDENTIAL], consisting of [CONFIDENTIAL] in annual lease costs and [CONFIDENTIAL] in annual operating costs. Of the [CONFIDENTIAL] in total office costs, [CONFIDENTIAL] relate to the lease and operating costs at the Mannheim headquarters ([CONFIDENTIAL] in annual lease costs and [CONFIDENTIAL] of annual operating costs).

- 12.25 Post-divestment, these offices will be less utilised [CONFIDENTIAL].¹¹⁷ The Parties have undertaken a detailed review of each shared office and have estimated the current share of costs that are accounted for by EBC employees. Based on this analysis, the Parties estimate that the reductions in economies of scale from spreading the fixed costs of leasing and operating the offices over a smaller employee base would account for approximately [CONFIDENTIAL] consisting of [CONFIDENTIAL] of lease costs and [CONFIDENTIAL] of operating costs. Of these, the Mannheim headquarters accounts for €[CONFIDENTIAL] consisting of [CONFIDENTIAL] of lease costs and [CONFIDENTIAL] of operating costs. Therefore, the total estimated reduction in economies to scale from shared offices is small, at only €[CONFIDENTIAL] of FY2022RF revenues for the European Divestment Business.^{118,119}
- 12.26 The Parties note that this is a conservative estimate of the reduction in economies of scale that will arise from the European Divestment Business assuming full responsibility for the shared offices as it does not account for a number of steps that a Purchaser could take in order to mitigate any reduction in economies to scale.
- (a) A number of the shared offices either have [CONFIDENTIAL] or have [CONFIDENTIAL].¹²⁰ If desired, the Purchaser could [CONFIDENTIAL], instead securing smaller spaces, thereby avoiding approximately [CONFIDENTIAL] in reduced economies of scale ([CONFIDENTIAL] of the total estimated reduction in the economies of scale).
- (b) The current lease at Mannheim, is in force until [CONFIDENTIAL]. The cost of the lease and its associated operating costs account for over [CONFIDENTIAL] of the total estimated reduction in economies of scale. However, [CONFIDENTIAL]. Moreover, to the extent that the Purchaser is not able to [CONFIDENTIAL], Sika will [CONFIDENTIAL]. In this way, the lost economies of scale arising from the Mannheim office will be completely mitigated, thereby avoiding approximately [CONFIDENTIAL] in reduced economies of scale.
- 12.27 Implementing both mitigations, described above, would allow the Purchaser to avoid approximately [CONFIDENTIAL] in reduced economies of scale ([CONFIDENTIAL] of the total estimated reduction in the economies of scale). Therefore, the total reduction in the economies of scale from shared offices will be just €[CONFIDENTIAL] revenues for the European Divestment Business.
- 12.28 As such, the European Divestment Business will at most face minimal lost economies of scale, some of which can be recaptured within a short time, and the overall competitiveness of the European Divestment Business will not be affected.

13. POTENTIAL PURCHASERS AND DIVESTMENT TIMELINE

Sales process to date

- 13.1 There is no risk that a suitable purchaser will not be available or that the Parties will divest to a weak or otherwise inappropriate purchaser.

¹¹⁷ [CONFIDENTIAL] See **Annex 6 Offices**.

¹¹⁸ As lease and operating costs for shared offices are accounted for below EBITDA level, the lost economies of scale are presented as a proportion of total revenue and not in terms of EBITDA margin.

¹¹⁹ The European Divestment Business has a FY2022RF revenue of [CONFIDENTIAL].

¹²⁰ The offices in [CONFIDENTIAL] both have [CONFIDENTIAL] break clauses. The lease on the office in [CONFIDENTIAL] while the lease on the office in [CONFIDENTIAL] expires on [CONFIDENTIAL].

- 13.2 Sika has instructed BofA to market the Divestment Business as a single package to prospective purchasers. The sales process will proceed as a modified 2-stage controlled auction:
- (a) **Preliminary stage (current stage).** Since [CONFIDENTIAL], [CONFIDENTIAL] has sent process letters¹²¹ to the following [CONFIDENTIAL] **potential purchasers:** [CONFIDENTIAL].¹²² In the weeks since then, the prospective management team of the Divestment Business has been engaging in “fireside chats” with [CONFIDENTIAL]. During these conversations, the high level of interest already indicated by potential purchasers has been confirmed.
 - (b) **First stage ([CONFIDENTIAL]).** The sale process commenced on [CONFIDENTIAL], when the Confidential Information Memorandum (“CIM”)¹²³ for the Divestment Business (including selected financial information) was sent out to each of the [CONFIDENTIAL] potential purchasers who received the process letter.¹²⁴ The input data used for the calculation of the forecast concerning the Divestment Business' financial information in the CIM is attached as **Annex 26 Financial**. Potential purchasers have been asked to provide their non-binding offers on the Divestment Business by the [CONFIDENTIAL].
 - (c) **Second stage ([CONFIDENTIAL]).** Shortly after receiving the responses provided by the potential purchasers, Sika, together with its advisers, will decide on a selection of no more than [CONFIDENTIAL] to take into a second phase of the sale process. A near final draft of a sale and purchase agreement will be negotiated by the [CONFIDENTIAL]. The second phase is scheduled to complete no later than [CONFIDENTIAL].
- 13.3 The reason for limiting the numbers of purchasers advanced to the second stage to [CONFIDENTIAL] is that the second phase of the sale process will involve more detailed due diligence and it will only be practical to satisfy the information needs of up to [CONFIDENTIAL]. In the second stage, potential purchasers will be provided with:
- (a) a virtual data room with customary disclosure and “Clean Team” procedures where these are deemed appropriate;
 - (b) a commercial vendor due diligence report prepared by [CONFIDENTIAL];
 - (c) financial and separation vendor due diligence reports prepared by [CONFIDENTIAL];
 - (d) a tax factbook prepared by [CONFIDENTIAL];
 - (e) a legal factbook prepared by Sika's legal advisors;
 - (f) a management presentation and a number of expert sessions on specific topics at the request of the potential purchasers;
 - (g) Phase I environmental reports prepared by [CONFIDENTIAL]; and

¹²¹ The process letters were submitted to the European Commission in response to EU RFI21, as Annexes Q1.2A/B. This has been shared with the CMA.

¹²² [CONFIDENTIAL].

¹²³ The CIM was shared with the CMA.

¹²⁴ The presentation used during the “fireside chats” was submitted to the European Commission in response to EU RFI21, as Annex Q1.1. This has been shared with the CMA.

- (h) a draft of the transaction documentation including a sale and purchase agreement.
- 13.4 The sale process is being conducted on a transparent basis and all potential purchasers are being provided with the same information on the process and the regulatory requirements. The existence of the process is in the public domain.
- 13.5 The interested parties have been selected using the following initial criteria:
- (a) [CONFIDENTIAL].

Interest from potential purchasers

- 13.6 The nature of this package (with an EBITDA margin of [CONFIDENTIAL] and sales of approximately [CONFIDENTIAL] forecasted for FY22) has attracted substantial interest from numerous potential purchasers. A list of all current potential purchasers together with the status of negotiations with each buyer is set out at **Annex 15 Potential Purchasers**.
- 13.7 As evidenced by the high number of interested parties, the Divestment Business have attracted substantial interest. Potential purchasers include not only those buyers that had previously expressed an interest ([CONFIDENTIAL]), but also other [CONFIDENTIAL] players and [CONFIDENTIAL], including those with experience in the sector. As noted above, since 1 October 2022, [CONFIDENTIAL] has sent process letters to [CONFIDENTIAL] **potential purchasers**: [CONFIDENTIAL],¹²⁵ [CONFIDENTIAL],¹²⁶ [CONFIDENTIAL],¹²⁷ [CONFIDENTIAL],¹²⁸ [CONFIDENTIAL].¹²⁹
- 13.8 A number of these potential purchasers have expressed an interest in engaging with the CMA (and regulators in the EU, U.S., Canada, Australia and New Zealand) with a view to providing the CMA and those other regulators with evidence as to their suitability as a potential purchaser. We expect their first representations to the CMA to be in response to the Notice of Potential Remedies.
- 13.9 Given the level of interest from such a wide variety of potential buyers, it is expected that all of the purchasers advanced to the second stage of the auction will meet the purchaser approval criteria of each of the six competition regulators. Indeed, this will be one of the criteria against which the initial submissions will be evaluated. It is not plausible that out of this wide pool of interested buyers, not a single one would be found suitable by all regulators - particularly seeing as, under the Parties' proposed timetable (discussed below), the potential purchasers will be engaging with all six regulators at the same time to offer the evidence required for all six regulators to reach a collective view.

Divestment Timeline

- 13.10 **Annex 16 Global Timeline** sets out the timetable the Parties are currently working towards to complete the divestiture. The timeline has been developed specifically in order to align the regulatory processes in the six jurisdictions.

¹²⁵ PE house with significant investments in the chemical sector.

¹²⁶ [CONFIDENTIAL].

¹²⁷ [CONFIDENTIAL] have owned chemical admixtures businesses in the past.

¹²⁸ Specialist investor in chemicals and specialist in carve-outs.

¹²⁹ [CONFIDENTIAL].

- 13.11 As can be seen, all six regulators will be assessing the purchaser or purchasers put forward by the Parties at approximately the same time.
- 13.12 For the timing of the carve-out steps, please refer to **Annex 2 Implementation Plan**.