

## **PROJECT ORANGE**

### **RESPONSE TO CMA NOTICE OF POSSIBLE REMEDIES - [CONFIDENTIAL]**

**4 NOVEMBER 2022**

On 25 October 2022, the CMA published a Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups in relation to the anticipated acquisition by Sika AG of MBCC Group (the "**Transaction**") (the "**Remedies Notice**").

[CONFIDENTIAL], sets out its responses to the Remedies Notice below, organised as follows:<sup>1</sup>

- Part 1 sets out [CONFIDENTIAL] views on the sufficient scope of the divestment package.
- Part 2 summarises [CONFIDENTIAL] views on the purchaser risk.
- Part 3 sets out [CONFIDENTIAL] considerations regarding the asset risk.

#### **1. The scope of the divestment package (composition risk)**

[CONFIDENTIAL] considers the Divestment Business to be a viable standalone business and an attractive divestment package. With the benefit of [CONFIDENTIAL] significant experience in the sector where the Divestment Business operates, it considers that:

- **The Divestment Business is very attractive to potential purchasers.** Based on its experience in the sector and evaluating the suitability of potential carve-outs and diligence on the Divestment Business to date, [CONFIDENTIAL] considers the Divestment Business to comprise a viable and attractive standalone business with the potential to profitably and sustainably grow. [CONFIDENTIAL] does not consider the carve-out nature of the Divestment Business to negatively impact the attractiveness of the Divestment Business, noting in particular the proposal to implement the Transaction as a reverse carve-out. More specifically, [CONFIDENTIAL] views the EBA arm of MBCC as already comprising an established and well-regarded business, including a quality product portfolio, strong R&D capability and a broad set of robust customer relationships in the major markets around the world. As such, subject to further diligence, [CONFIDENTIAL] considers the scope of the divestment package to be sufficient for the continuation of the EBA business on a standalone basis. In addition, [CONFIDENTIAL] understands the scope of the Divestment Business to go beyond the SLC identified by the CMA in the UK by including the EBA business globally, as well as the EBC business in Australia and New Zealand. The broad scope of the Divestment Business therefore provides an attractive combination of business units and geographic exposure, with significant growth opportunity. The inclusion of Australia, Canada, EEA, New

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<sup>1</sup> For the purpose of this response, all capitalised terms share the same definition as set out in the Remedies Notice.

Zealand, Switzerland, the UK and the United States in the perimeter of the Divestment Business provides exposure to different underlying market growth drivers, competitive dynamics and macroeconomic conditions, providing a helpful diversification which adds to the stability of the Divestment Business and to its viability as a successful, growing business in the future. The scope of the Divestment Business further positions it as a strong global player in the chemical admixtures sector, allowing it to serve customers of all sizes leveraging a broad product portfolio and geographic presence, increasing its attractiveness as a supplier and thus supporting its competitive position in the future as well.

- **The Divestment Business will be able to operate as a robust independent competitor with significant growth potential.** Based on its diligence to date, [CONFIDENTIAL] considers the divestment package to include the critical assets and know-how to enable future growth, innovation and expansion. In this regard, [CONFIDENTIAL] understands that the Divestment Business includes all 35 production sites, each of the three fully-equipped R&D centers working on a high volume (c. 90) of different projects, and all relevant registered IP (including over 139 patent families and trademarks). It also understands that the Divestment Business includes all employees, technical labs and sites relevant to R&D projects ongoing around the world, as well as the worldwide ‘Master Builders’ Solutions’ umbrella brand, and all relevant trademarks and patents (for both the admixtures business globally, and the construction materials business in Australia/New Zealand). In [CONFIDENTIAL] opinion, this combination of assets will allow a suitable purchaser with the necessary experience and resources to drive growth and effectively compete in existing and new geographic markets.
- **Under the right ownership, the Divestment Business will be resilient.** Based on information received and evaluated to date, [CONFIDENTIAL] considers that the scope of the divestment package will allow an experienced purchaser with the necessary financial and operational resources to improve competitiveness and profitability of the company in the long-term, including through operational enhancements, further development of the competitive offering (maximizing the potential of the Divestment Business’s technology), and benefiting from significant expected economies of scale. Each of these opportunities will enable and incentivize a suitable purchaser to position the Divestment Business to successfully compete in the market for chemical admixtures for cement, concrete and wet mortar in the UK (and elsewhere) in the near and longer term.

## **2. Identification and availability of a single purchaser (purchaser risk)**

Based on its diligence to date, [CONFIDENTIAL] considers it important that a suitable purchaser has the appropriate experience, as well as the operational and financial resources to support the global footprint of the Divestment Business to ensure effective competition and growth post-divestment. These considerations are discussed in further detail below.

### **Necessary capability and commitment to competing in the relevant markets**

In relation to suitable purchasers’ necessary capability and commitment to competing in the relevant markets, the CMA has invited views on whether there are any specific types of purchaser

which should be ruled out as potentially suitable purchasers, including financial buyers (e.g. private equity funds) in particular.<sup>2</sup>

[CONFIDENTIAL] is of the view that a financial buyer with the relevant sector expertise and the financial and global operational capabilities to support the Divestment Business would in fact be particularly suitable for the following reasons:

- **Industry experience will help to secure future competitiveness, growth and innovation of the Divestment Business.** As the Divestment Business is focused on a particular part of the market, straddling both building materials and chemical products, a suitable purchaser in [CONFIDENTIAL] opinion should ideally have broad industry experience to match the divestiture package. The experience requirements are particularly pronounced considering the context of a difficult economic climate. The challenges ahead will require an owner that is ready to prepare the Divestment Business to be resilient in case of downturns in the relevant markets.
- **Global operational and financial resources are necessary to support the Divestment Business and facilitate future growth and expansion.** According to the Proposed Remedy Option and the CIM made available to bidders, the Divestment Business spans a number of geographies - Australia, Canada, EEA, New Zealand, Switzerland, the UK and the United States. Importantly, the Divestment Business also includes global ownership of all EBA patents and trademarks, enabling the Divestment Business to expand beyond the existing geographies in the future. [CONFIDENTIAL] considers it important that a suitable purchaser has the geographic, operational and financial depth to support the Divestment Business in both existing and new geographies. In particular, global support capability will (A) help maintain performance, quality, security of supply, attractive pricing and reputation and (B) unlock further economies of scale through geographic and product expansion in the future.
- **Commitment is critical to ensure future profitability and competitiveness of the Divestment Business.** [CONFIDENTIAL] believes it is important that any suitable purchaser is strongly committed to maintaining and growing the Divestment Business's position in the relevant markets in which it operates. In [CONFIDENTIAL] opinion a suitable purchaser will be able to demonstrate this commitment through (A) in-depth knowledge of the sector where the Divestment Business operates and (B) a business plan identifying relevant growth opportunities ensuring near- and long-term success and competitiveness of the standalone company.

#### No further competition concerns

Considering the scope and nature of the Proposed Remedy and the global regulatory timetable made available during the initial due diligence phase, [CONFIDENTIAL] is of the view that a

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<sup>2</sup> Remedies Notice, paragraph 53.

suitable purchaser should have sufficient industry experience, while at the same time obviously not creating new competition concerns in the UK or elsewhere.

- **Smaller downstream customers (and their owners) are suitable purchasers with relevant experience.** The CMA has invited views on whether any downstream customer that purchases chemical admixtures for cement, concrete and wet mortar (a) could and/or would effectively compete to supply chemical admixtures to its downstream competitors; and (b) would raise any other concerns which should cause this type of purchaser to be ruled out as potentially suitable.<sup>3</sup> [CONFIDENTIAL] submits that a distinction arises between larger and smaller downstream customers. As noted in the Provisional Findings, the universe of customers of chemical admixtures is broad and very diverse, including large, mid-sized and smaller ready-mix and pre-cast concrete producers and construction companies, each with varying geographic footprint. Within this universe of customers, according to the Provisional Findings, Large Customers (including five large ready-mix and/or pre-cast concrete suppliers) account for at least 40-50 % of the chemical admixtures sold in the UK (by value) in 2021. By contrast, “[o]ther customers, includ[ing] suppliers of ready-mix and/or pre-cast concrete and suppliers that produce concrete for specific applications [...] purchase significantly smaller volumes of admixtures.”<sup>4</sup> [CONFIDENTIAL] agrees there are several other, smaller downstream customers, focused on certain specific applications and/or geographies ([CONFIDENTIAL]), which account for a very small portion of overall demand for chemical admixtures for cement, concrete and wet mortar in Europe and/or the UK. Considering (a) smaller downstream customers’ limited importance as customers; (b) upstream suppliers’ access to a broad universe of alternative customers of different sizes; and (c) the intentional multi-sourcing strategies of downstream customers, smaller downstream customers have neither the ability nor incentive to engage in a customer foreclosure strategy. It would therefore not be appropriate to rule out smaller downstream customers (or their owners) with relevant experience as potentially suitable. [CONFIDENTIAL]

### **3. Preservation of the competitive capability of the divestiture business before completion (asset risk)**

Pursuant to the CMA’s guidance on remedies, asset risk arises if the competitive capability of the divestiture business deteriorates before completion of the divestiture.<sup>5</sup> In this regard, the CMA invites views on the risks that the competitive capability of the divestiture package will deteriorate before completion.<sup>6</sup>

- A suitable purchaser with recent complex carve-out experience will be able to preserve the competitive capability of the Divestment Business by being able to move quickly on

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<sup>3</sup> Remedies Notice, paragraph 52.

<sup>4</sup> CMA Provisional findings report, Anticipated acquisition by Sika AG of MBCC Group, 26 October 2022, available at [https://assets.publishing.service.gov.uk/media/6359185b8fa8f557d9a2d57e/FULL\\_TEXT\\_03.pdf](https://assets.publishing.service.gov.uk/media/6359185b8fa8f557d9a2d57e/FULL_TEXT_03.pdf).

<sup>5</sup> Merger Remedies (CMA87) (13 December 2018), paragraph 5.3.

<sup>6</sup> Remedies Notice, paragraph 56.

negotiating and implementing the divestiture. [CONFIDENTIAL] considers that, taking into account the scope and proposed implementation of the divestiture,<sup>7</sup> to avoid deterioration in the interim period, it is critical that a suitable purchaser has significant relevant experience in successfully completing complex carve-outs. This will enable swift resolution of negotiations with regards to the appropriate details for the carve-out and transitional arrangements. [CONFIDENTIAL] further considers that a suitable purchaser should have significant recent carve-out experience in the sector where the Divestment Business operates to avoid business disruption or migration issues that could affect the Divestment Business's competitive capability and reputation. A suitable potential purchaser should also be ready to execute the divestiture plans with a team that has recently delivered successful carve-outs out of large corporates involving global targets, in particular within the industrial sector. In the context of carve-outs in the chemicals sector, in [CONFIDENTIAL] experience it is further critical to focus on the approach to key active supply contracts, transfers of R&D sites, reverse-tolling agreements as well as licenses and transfer agreements related to brands, trademarks and patents to ensure the competitive strength of the business in the future. In addition, experience in structuring the standalone organization, managing supply agreements and TSAs of a company in the chemicals sector in particular allows for a swift completion of the carve-out and limits disruption to the business.

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<sup>7</sup> Parties' non-confidential proposed remedy option submission, available at [https://assets.publishing.service.gov.uk/media/6357b7d3e90e0777b2066d94/0.1\\_Parties\\_non-confidential\\_proposed\\_remedy\\_option\\_submission.pdf](https://assets.publishing.service.gov.uk/media/6357b7d3e90e0777b2066d94/0.1_Parties_non-confidential_proposed_remedy_option_submission.pdf).