NON-CONFIDENTIAL VERSION

ANTICIPATED ACQUISITION BY SIKA AG OF MBCC GROUP

CASE ME/6984/22

RESPONSE TO NOTICE OF POSSIBLE REMEDIES DATED 25 OCTOBER 2022

SUBMITTED ON 01 NOVEMBER 2022

[Sika confidential]

[MBCC Group confidential]

[Both Parties' confidential]

1. INTRODUCTION

1.1 This submission is made by Sika AG ("**Sika**") and MBCC Group (together, the "**Parties**") in response to the CMA's Notice of Possible Remedies dated 25 October 2022 (the "**Notice**")[1] in relation to the anticipated acquisition by Sika of MBCC Group (the "**Merger**").

1.2 Following their consideration of the CMA's initial views on possible remedies raised in the Notice, the Parties set out below why they consider that:

(a) a prohibition of the Merger would be an unnecessary, unreasonable and disproportionate remedy for the Provisional SLC identified by the CMA ***(Section 3)***;

(b) a divestiture of a broader divestiture package is not required to address the Provisional SLC and would be an entirely disproportionate and impractical solution. In particular, Sika considers that a requirement for a global divestment of MBCC Group's chemical admixtures business would not be more effective in addressing the Provisional SLC than the Parties' Remedy Proposal while presenting additional implementation challenges that could delay (and create complexity in) the divestment process ***(Section 4)***; and

(c) the CMA can be highly confident that the Parties' Remedy Proposal does not result in any composition, purchaser or asset risks, including those raised in paragraphs 44-49 of the Notice. The Parties address in detail below the CMA's request for views on (i) the scope of the divestiture package; (ii) the identification and availability of a suitable purchaser for the Divestment Business; and (iii) ensuring an effective divestiture process for the Divestment Business. ***(Section 2 and 5)***

1.3 In short, the Parties consider that they have carefully - and with significant regard to the CMA's feedback received to date - designed a remedy that is capable of effectively addressing the Provisional SLC and its resulting adverse effects and achieves a comprehensive, reasonable and practicable solution. The Parties remain committed to finalising the Proposed Remedy to the satisfaction of the CMA.

2. THE PARTIES' REMEDY PROPOSAL IS EFFECTIVE AND PROPORTIONATE[2]

2.1 The Parties' Remedy Proposal is both effective in terms of addressing the Provisional SLC and proportionate to the scope of the Provisional SLC. In summary:

(a) ***The Parties' Remedy Proposal comprehensively addresses the SLC.*** The sale of the Divestment Business is configured as structural divestment and therefore complies with the CMA's view, set out in paragraph 16 of the Notice, that a behavioural remedy is very unlikely to be effective in remedying the Provisional SLC. The Remedy Proposal entirely eliminates the overlap between the Parties in the supply of chemical admixtures in the UK (i.e., the scope of the Provisional SLC identified by the CMA in the Provisional Findings), thereby comprehensively addressing the Provisional SLC.

(b) ***The Divestment Business will have sufficient scale and resilience to effectively compete with chemical admixture suppliers across three major regions of the world.*** Indeed, the Proposed

[1] Unless stated otherwise, this submission refers to the definitions adopted in the Notice.
[2] This section addresses the CMA's invitation to submit views set out in paragraph 44, 49(a) and 50(b) of the Notice.

Remedy extends further than the scope of the UK operation by divesting the MBCC Group's entire EBA business (i.e., the entire Admixture Systems division) in the EEA, UK, Switzerland, United States, Canada, Australia and New Zealand to a single purchaser ("**Purchaser**"). The Purchaser will therefore own all assets located outside the UK that provide the necessary support for the UK chemical admixtures business, and the chemical admixtures business in the other countries within the Divestment Business perimeter. In particular, as set out in greater detail in the Parties' Remedies Proposal, this includes the R&D centres and R&D personnel in Trostberg, Treviso and Beachwood, [CONFIDENTIAL] the senior executive management of the Mannheim HQ and the benefit of a secure supply (and means of production for) raw materials (including polymers).

(c) ***The package contains all the necessary assets for the Divestment Business to operate successfully.*** The divesture package has been carefully configured with a conservative approach to include all assets (including assets related to R&D, trademarks, patents and other IP – including even registered IP outside of the geographic perimeter of the Divestment Business) and employees to ensure the Divestment Business will be an effective independent competitor. The package is comprehensive and includes everything needed for and that contributes to the Divestment Business to operate as a significant, standalone competitive and resilient organisation from Day 1, able to compete successfully on an ongoing basis. Covering 36 countries, the Divestment Business will have total sales of EUR [CONFIDENTIAL] with an expected EBITDA margin of approximately [CONFIDENTIAL] in 2022, approximately 1,600 employees, over 30 production sites and other real estate such as offices and warehouses; all the necessary R&D and innovation capabilities; and all necessary IP.[3]

(d) ***The Remedy Proposal is practical in its structure and design and gives rise to no implementation risks***. The EBA business already operates effectively as a standalone, independent business division. Moreover, the reverse carve-out structure proposed by the Parties ensures that there is no risk of "asset loss" as a result of the separation of the Retained EBC Business. Any risks remain with Sika. This reverse carve-out of the Retained EBC Business is a clear-cut solution that will be implemented quickly in accordance with a defined step plan designed to minimise the gap between the signing and closing of the sale of the Divestment Business. There is therefore a high level of certainty of achieving a successful divestiture.

(e) ***The Divestment Business is an attractive package, which has already attracted many suitable purchasers.*** The Divestment Business is exceptionally well positioned to attract many suitable (and committed) potential purchasers. As noted above, the Divestment Business comprises a significant international operation with considerable scale and resource, and robust financials that offer the winning bidder a secure return on investment. The attractiveness and sufficiency of the package has been tested and affirmed by the significant interest expressed by a number of committed bidders. Specifically, a total of [CONFIDENTIAL] potential purchasers (comprised of [CONFIDENTIAL] buyers) requested and received a process letter in the ongoing sales process. [CONFIDENTIAL] have invested significant resources to date in evaluating the Divestment Business and [CONFIDENTIAL]. [CONFIDENTIAL]. The

[3] The CMA's specific questions on R&D, branding and IP set out in the Notice are addressed in Section 5.

currently envisaged divestment process will allow prospective purchasers to make an appropriate informed acquisition decision.

3. PROHIBITION WOULD BE AN ENTIRELY DISPROPORTIONATE REMEDY

3.1 A prohibition of the Merger is not required to address the Provisional SLC identified by the CMA, nor is it a reasonable remedy because, as demonstrated above, the Parties' Remedy Proposal already comprehensively addresses the Provisional SLC. (see Section 2 above).

3.2 Paragraph 57 of the Notice (consistent with the CMA's guidance)[4] states that the CMA will "*ensure that no remedy is disproportionate in relation to the SLC and its adverse effects*." The Parties submit that it would be manifestly disproportionate for the CMA to conclude at the end of Phase 2 that prohibition of the Merger is an appropriate remedy:

(a) The Parties' Proposed Remedy is a comprehensive solution which completely addresses the Provisional SLC identified by the CMA by effectively removing any overlap between the Merged Entity and the Divestment Business in chemical admixtures in the UK (EEA, Switzerland, U.S., Canada, Australia and New Zealand).

(b) The Parties' Remedy Proposal does not give rise to any composition, purchaser or asset risks that would impair the effectiveness of the Remedy Proposal. In particular, the Parties have committed to giving the Divestment Business all assets and inputs required to be an effective, standalone and resilient competitor and viable and successful business from Day 1 onwards.

(c) The Provisional SLC relates to just one segment within MBCC Group's overall business (the supply of chemical admixtures in the UK, where MBCC Group's revenues were just [CONFIDENTIAL] in 2021). A prohibition would prevent Sika from acquiring the entirety of the Retained Business globally, valued multiple times that. There are no competition concerns in respect of EBC (or with respect to the Retained ROW EBA Business). Given the availability of a fully effective divestment remedy in the Parties' Remedy Proposal, prohibition of this part of the Merger would therefore be manifestly disproportionate.

4. A DIVESTITURE OF A BROADER PACKAGE WOULD BE A DISPROPORTIONATE AND IMPRACTICAL.

4.1 At paragraph 32 (and 50) of the Notice, the CMA invites views on whether it should consider a broader or differently configured divestiture package to the Parties' Remedy Proposal, and in particular a divestiture of MBCC Group's entire EBA business worldwide.

4.2 A divestiture of MBCC Group's entire EBA business worldwide would be a disproportionate and impractical remedy to address the Provisional SLC. The Notice states that "*the CMA's assessment is focused on whether the remedy is capable of remedying, mitigating or preventing the Provisional SLC identified in the UK and any resulting adverse effect*".[5] The CMA's guidance on Merger Remedies also notes that an alternative divestment proposal (i.e., a more extensive and marketable proposal than Sika's preferred divestiture) may be appropriate if: (i) there is doubt as to the marketability of a proposed remedy; and/or (ii) asset risk that makes speed of divestment a critical requirement. Sika considers that

[4] *Merger Remedies*, CMA87, paragraph 3.4 and 3.6
[5] Paragraph 27 of the Notice.

neither of these conditions are present in this case. In particular, the number and variety of identified potential purchasers of the Divestment Business highlights the strength of marketability of the Remedy Proposal and the ability of the package to operate as a viable business from Day 1. It is not evident how materially expanding the scope of the Proposed Remedy would provide any additional protection against asset risk or enhance its marketability.

4.3 Furthermore, at paragraph 27 of the Notice (consistent with the CMA's guidance)[6], it is stated that, "*in order to be reasonable and proportionate, the CMA will seek to select the least costly remedy (…) that it considers effective"* and at paragraph 37, *"in defining the scope of a divestiture package that will address any SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.*" The Remedy Proposal includes all relevant operations pertinent to MBCC Group's business in the area of competitive overlap - the manufacture and supply of chemical admixtures in the UK. Indeed, the Remedy Proposal already goes further than addressing the Provisional SLC by providing the divestment of the MBCC Group's entire EBA business in the UK (as well as the EEA, Switzerland, U.S., Canada, Australia and New Zealand) in order to ensure a viable, competitive, resilient and stand-alone business from Day 1 onwards, as well as the global patents and trademarks of the EBA business.

4.4 In any event, Sika considers that a wider divestment perimeter could present additional implementation risks that would mitigate against the timely marketability of the divestment and make this an entirely impractical remedy option. As stated, one reason for the effectiveness and ease of the Remedy Proposal is that the European Divestment Business (including the UK) currently operates as largely a standalone business division within the MBCC Group. Adding the EBA businesses in other countries (e.g., Africa) would make the divestiture less clear-cut and could result in a longer due diligence procedure and an extended divestment process. This approach would therefore not make sense if the CMA, like the Parties, is looking for the most effective remedy and the divestment of the smallest viable and standalone competitive business, which the scope of the Remedy Proposal represents. Further, as noted above, there has been considerable purchaser interest in the currently marketed package as well as enthusiasm among MBCC Group senior management about running the Divestment Business as a successful, independent operation.

5. PARTIES' RESPONSES TO THE CMA'S INVITATION FOR VIEWS SET OUT IN THE NOTICE

5.1 This section addresses the CMA's invitation for views as set out in paragraphs 45-56 of the Notice regarding:

(a) the scope of the divestiture package needed to address the Provisional SLC;

(b) the identification and availability of suitable purchasers; and

(c) ensuring an effective divestiture process for the Divestment Business.

[6] *Merger Remedies*, CMA87, paragraph 3.4.

The scope of the divestiture package needed to address the Provisional SLC

R&D

5.2 In response to paragraph 45 of the Notice, the Parties submit that there are ***no risks to the R&D and innovation capabilities of the Divestment Business*** (particularly in relation to chemical admixtures) and that ***all of the actual know-how and the R&D and innovation capabilities can be comprehensively identified and are within the scope of the Divestment Business***.

5.3 The Divestment Business will include all relevant R&D assets:

(a) The Divestment Business will own the MBCC Group's Regional Development Centres in Treviso (Italy) and Beachwood (U.S.), which focus on development activities (including those related to chemical admixtures and polymers) for the European and North American regions, respectively. In addition, the Divestment Business will also own part of the Global R&D centre in Trostberg, which carries out fundamental research (that is also of relevance to chemical admixtures and polymers) for the EBA business. The Trostberg site will be re-organised and split to separate the R&D activities related carried out by the Divestment Business (EBA) from those carried out for the EBC business by the Retained Business (see Parties' submission on the Parties' Remedy Proposal, Appendix section 6, for a more detailed description of these R&D sites, as well as the specific separation steps in Trostberg).

(b) All R&D staff who contribute to R&D for the European Divestment Business [CONFIDENTIAL] will remain with the European Divestment Business (see Parties' submission on the Parties' Remedy Proposal, Appendix section 6, and **Annex 13 R&D Personnel**).[7] This includes [CONFIDENTIAL]. The Divestment Business will also have the benefit of R&D personnel [CONFIDENTIAL] that contribute to the Divestment Business. The Purchaser will therefore be equipped with sufficient staff, assets and innovation capabilities to continue MBCC Group's R&D activities relating to chemical admixtures.

(c) The Divestment Business will include all know-how relating to the [CONFIDENTIAL] ongoing EBA R&D projects relevant for the Divestment Business (see Parties' submission on the Parties' Remedy Proposal, Appendix, section 6 and **Annex 18 List of R&D Projects**).

5.4 ***All relevant R&D projects can be easily and comprehensively identified and will be divested to the Purchaser.*** Due to the different underlying technologies involved, there is no crossover at all between the R&D projects relating to the EBA business on the one hand and the EBC on the other. The carve-out of the EBC R&D projects is therefore very simple. This is evident when considering the detailed descriptions of the individual projects provided in **Annex 18 List of R&D Projects**. The projects relating to chemical admixtures can be clearly identified, as they refer to aspects such as changing the properties of concrete or adapting the performance of existing admixtures. By contrast, project descriptions in **Annex 18** that relate to EBC projects refer to other building materials as the focus of the research (e.g., [CONFIDENTIAL]).

Branding

[7] [CONFIDENTIAL].

5.5 In response to paragraph 46 of the Notice of Possible Remedies, the Parties submit that there are ***no composition risks arising from the Parties' approach to branding nor does the Parties' proposal hamper the expansion by the Divestment Business into any country in the Retained Business' geographic perimeter during the Rebranding Transitional Period or affect the viability of the Divestment Business.***

5.6 The Divestment Business will own:

(a) all trademarks for the Master Builders Solutions ("**MBS**") brand, globally;

(b) all EBA-related registered product trademarks, globally (with the exception of Pozzolith in Japan).[8]

(c) all EBC-related registered product trademarks in Australia and New Zealand.

5.7 The Merged Entity will own all other EBC-related registered product trademarks globally.

5.8 There will be a (temporary) Rebranding Transitional Period during which the Merged Entity will obtain an exclusive royalty-free licence from the Purchaser permitting the Merged Entity to use

(a) the MBS brand in relation to EBA products for the benefit of the Retained ROW EBA Business ([CONFIDENTIAL]);

(b) the MBS brand in relation to EBC products ([CONFIDENTIAL] in the EEA, Switzerland and the UK; [CONFIDENTIAL] in the U.S. and Canada, and in ROW countries after [CONFIDENTIAL]).

(c) EBA-related product trademarks for the benefit of the Retained ROW EBA Business ([CONFIDENTIAL]), except for Pozzolith where Sika keeps the ownership for EBA in Japan;

(d) EBC-related product trademarks in relation to the "MasterKure" brand (which is used for both EBA and EBC products in U.S. and Canada) for EBC products in relation to the U.S. and Canada ([CONFIDENTIAL])

5.9 After the expiry of the applicable licence periods, Sika will no longer have the right to use the MBS brand and the relevant product trademarks referred to above and the Merged Entity will re-brand the relevant products to a Sika brand. Sika will also commit not to use the word "Master" in its 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, in line with the terms of the MBS brand licence above.

5.10 The Parties consider that the re-branding commitment is not strictly speaking necessary to address the Provisional SLC, since the supply of chemical admixtures in the UK is a local business with very limited imports (consistent with the CMA's findings in the Provisional Findings report).[9] Nonetheless the Parties have included a commitment to re-brand [CONFIDENTIAL].

[8] As explained in the Parties submission on the Parties' Remedy Proposal (Appendix, section 8) one exception is Pozzolith in Japan.
[9] Provisional Findings Report, paragraphs 7.16-21.

5.11 In the context of a re-brand, a Rebranding Transitional Period is a standard feature of the arrangement. The Merged Entity cannot cease using the trademarks "overnight" and will need time to rebrand (e.g., by adjusting packaging, marketing materials, training staff etc). Otherwise, continuity of supply for the Merged Entity's customers on Day 1 would be disrupted.

5.12 ***The timescales in the Rebranding Transitional Period are appropriate*** and reflect the necessary amount of time required for Sika, based on past practice and practical supply chain management considerations, to re-brand the relevant products in different regions. The time required to implement a re-brand is not standard but varies depending on a number of factors.

(a) Firstly, the duration of any re-branding period is driven, to a large extent, by the shelf life of the products, which for construction products tends to be 12-18 months.

(b) Secondly, route to market factors are also important - e.g., the relative importance or strength of the brand in the local market or the locally used sales channel. For instance, if business is conducted primarily via indirect channels/distribution, re-branding takes longer given the lack of direct access to the end-customers. In such cases it may be necessary to follow a dual branding approach (where both the old and new brands are visible alongside one another for a period of time) to build customer awareness of the new brand over a longer period of time.

(c) Thirdly, the type of product also plays a role, since more technical products rely less on branding, with performance being the key driver of customer awareness and recognition.

(d) In addition, once the re-brand is complete, the certifications, specifications and third party test certificates need to be re-issued for the newly branded product (even if the formulation stays the same).

5.13 The individual timelines [CONFIDENTIAL] proposed by Sika are appropriate, as explained below:

(a) ***Exclusive licences for use of the MBS brand on EBC products.*** The exclusive licence to use the MBS brand trademarks for the EBC business is [CONFIDENTIAL].

(b) ***Exclusive licences for use of the MBS brand and EBA product trademarks for the benefit of the Retained ROW EBA Business.*** [CONFIDENTIAL].

5.14 ***The Divestment Business will have all necessary trademarks and the ability to expand in future.*** There is no risk to the viability of the Divestment Business. The Purchaser will have clear ownership and control of all the EBA-related trademarks globally beyond the scope of the Divestment Business (i.e., the MBS umbrella brand trademarks and registered product trademarks pertaining to EBA products). This arrangement means the Purchaser will own all trademarks required to carry on the EBA business within the EEA, Switzerland, UK, U.S., Canada, Australia and New Zealand. It is a very attractive proposal which also allows the Purchaser to expand beyond the current geographic perimeter of the Divestment Business using the acquired trademarks, after the expiry of the relevant timescale in the Rebranding Transitional Period.

5.15 During the timescales in the Rebranding Transitional Period, the Divestment Business will not be permitted to use the relevant trademarks in a country and for the specified use covered by the exclusive licence granted to the Merged Entity. For example, the Purchaser will not be permitted to use the MBS Brand or EBA-related product trademarks in a country within the ROW Retained EBA Business.

However, this temporary licensing restriction will not affect the overall viability of the Divestment Business:

(a) As explained above, the timescales in the Rebranding Transitional Period are limited to the time which is appropriate to allow for Sika to re-brand based on past experience and supply chain factors, and are not set to grant the Merged Entity any particular commercial advantage or head start over the Divestment Business as a potential new entrant.

(b) Importantly, the licences do not prevent the expansion or entry by the Divestment Business, particularly since the Divestment Business will also retain all patents pertaining to EBA products globally.

Patents/other IPR

5.16 In response to paragraph 47 of the Notice, the Parties submit that there are ***no composition risks arising from the Parties' approach to patents and IP.***

5.17 The Parties have developed a simple and comprehensive approach with regards to patents and other IPR for the Divestment Business (see Parties' submission on the Parties' Remedy Proposal, Appendix, section 7).

(a) The Divestment Business will own all patents pertaining to EBA products globally – beyond the scope of the Divestment Business. For the avoidance of doubt, this means that all EBA-related patents which are relevant to both the European Divestment Business and the Retained ROW EBA Business will be owned by the Purchaser. The Merged Entity will obtain a sole licence from the Purchaser to use the EBA-related patents until the end of their life for the Retained ROW EBA Business. This means that both the Merged Entity and the Divestment Purchaser - but not third parties - will be able to use the technology covered by the patents.

(b) The Merged Entity will own all EBC-related patents globally (with the exception of [CONFIDENTIAL] nationalised EBC patents in Australia and New Zealand, which will be owned by the Divestment Business).

(c) With respect to other IPR, the Divestment Business will own all Bills of Materials that relate to the EBA business for each of the 36 production sites within the EEA, UK, Switzerland, U.S., Canada, Australia and New Zealand, regardless of whether the BOMS were in fact recently used or not.

5.18 The Parties submit that there can be no composition risk arising from the Parties' approach to patents and IP because, quite simply, there is nothing further to include.

5.19 ***All relevant patents and other IPR can be easily and comprehensively identified and will be divested to the Purchaser.*** Patents can be clearly differentiated between MBCC Group's EBA or EBC business. The two categories are completely differentiated, with different product end-uses, patented technologies and, generally, customer procurement teams. Patent rights are, by nature, highly technical and specific in nature. A patent is specific to the relevant product and underlying technology. Therefore, and as stated at paragraph 7.3 of the Parties' submission on the Parties' Remedy Proposal, patents can be clearly allocated to either MBCC Group's EBA business or EBC businesses by reference to the nature of the product and the underlying research project. This can be illustrated even when considering the high

level patent descriptions provided as **Annex 17** to the Parties' submission on the Parties' Remedy Proposal. EBA-related patents explicitly refer to admixtures, concrete/cement properties or similar; whereas EBC-related patents refer to other types of materials falling within the EBC category (such as grouts, sealants etc.). There is therefore no risk that any EBC patents transferring to Sika would be relevant to the Divestment Business and lost as part of the divestment.

5.20 Similarly, BOMs covering material composition information for products as well as variation by production site 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.

5.21 Prospective Purchasers will be able to reassure themselves that this is the case in the same manner as a buyer in any typical transaction would. Buyers will (with the help of an internal/external team of technicians and technical IP specialists who are familiar with the market and can therefore assess and evaluate the benchmarks for the sufficiency of the IP rights) review the IP and patent ownership information during the due diligence process in the data room and rely on contractual warranties that the business has all the IP rights required to operate following completion. Given the reverse carve-out structure of the Proposed Remedy, the [CONFIDENTIAL] will remain with the Divestment Business further reducing the risk that IP which is needed by the Divestment Business is not included.

Separation of Assets

5.22 In response to paragraph 48 of the Notice, the Parties submit that there are ***no composition nor implementation risks arising from the Parties' approach to the separation of shared assets under the Remedy Proposal***.

5.23 Any separation risks associated with a divestment depend to a large extent on the current operations of the wider business from which the divestment derives. For example, the extent to which the divestment business is integrated with the wider retained business will determine any asset separation risk. As such, the Parties respectfully submit that they are better placed than third parties to comment on any separation risks involved with the Proposed Remedy, and the ease of the divestment process.

5.24 As covered in detail in the Parties' submission on the Parties' Remedy Proposal (as summarised in paragraph 4.5), the European Divestment Business already largely operates as a separate and independent operating business from the Retained EBC Business and the Retained ROW EBA Business. As there are limited shared assets to begin with, separation is entirely manageable and low-risk. For the allocation of shared assets (and staff), the Parties have applied a very conservative approach to ensure the Divestment Business a fully functional, competitive, stand-alone viable business. In particular:

(a) The chemical admixtures business is localised in nature, due to the specifics of the local aggregates used in the final products. Indeed, the customer-facing function of the European Divestment Business is already managed almost entirely separately from the Retained EBC Business (see paragraph 8.11 and Appendix section 5 of the Parties' submission on the Parties' Remedies Proposal).

(b) There are only three shared production sites within the Divestment Business perimeter, and all will remain within the full ownership the Divestment Business, subject to only temporary contract manufacturing arrangements in favour of the Retained EBC Business. There will be no

co-location in warehouses and offices. Site re-organisation will only occur at the R&D centres in Trostberg and Beachwood.

(c) A clear approach has been developed to ensure that the Divestment Business has all the personnel it needs. [CONFIDENTIAL].

Economies of Scale

5.25 In response to paragraph 49 of the Notice, the Divestment Business comprises a profitable, financially resilient and viable business with sufficient scale to compete effectively.

5.26 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 FY2022 and expect that similar levels of sales and profitability will be achievable by the Divestment Business post-divestment. The future management of the Divestment Business is motivated to grow the profitability of the Divestment Business and expects this margin to [CONFIDENTIAL]. The Divestment Business as it is run today within MBCC Group has an EBITDA margin of [CONFIDENTIAL] and the future management expects that [CONFIDENTIAL].

5.27 Each of the countries/regions within the geographic perimeter of the Divestment Business currently accounts for a significant proportion of MBCC Group's global sales and significantly contributes to MBCC Group's profitability. This further demonstrates that the scale of the Divestment Business is more than sufficient for it to be viable and financially attractive to a range of potential purchasers and to effectively compete throughout the EEA, Switzerland, UK, U.S., Canada, Australia, and New Zealand.

5.28 Further, 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 (see Parties' submission on the Parties' Remedy Proposal, Appendix, section 12 for a detailed analysis).

5.29 In any event, there is no "typical" industry-wide EBITDA margin for a standalone chemical admixtures business in the UK and Europe since competitors do not have homogenous business activities. In any event, the EBITDA of [CONFIDENTIAL] of the Divestment Business is highly competitive (see Parties' submission on the Parties' Remedy Proposal, Appendix, section 12) and the Divestment Business has generated interest from a large number of suitable purchasers.

The identification and availability of a suitable purchaser for the Divestment Business

The CMA's standard purchaser criteria are appropriate and there are no other specific factors or requirements which the CMA should be taking into account in its assessment.

5.30 In response to paragraph 51 of the Notice of Possible Remedies, the Parties consider that the CMA's standard purchaser criteria are appropriate in the assessment of proposed purchaser and no modification is required.

5.31 Importantly, prior exposure to the industry should not be considered decisive in the context of the Proposed Remedy. As noted above, the Divestment Business will have all the support of a significant number of MBCC Group senior management and staff engaged in the operation of the Divestment Business and in R&D (in excess of 1600 FTEs in total), and include all other assets and capabilities

required for its operation as a viable, standalone and competitive supplier of chemical admixtures. Therefore, it will not be critical for the Purchaser to have prior expertise in chemical admixtures (or the industry generally) in order to demonstrate the necessary capability to compete, since the Purchaser will be able to utilise the skills and knowledge of existing senior and competent personnel in this sector.

There is no basis for pre-judging the suitability of any potential purchasers

5.32 The pool of potential purchasers who [CONFIDENTIAL] includes various categories of purchaser such as:

(a) [CONFIDENTIAL];

(b) [CONFIDENTIAL]

(c) [CONFIDENTIAL] listed in paragraph 13.7 of the Parties' submission on the Parties' Remedy Proposal).

5.33 Whilst each of the prospective buyers will likely make more detailed representations to the CMA about their individual case, the Parties consider that in principle each of the categories of buyer listed in paragraphs 52-53 of the Notice of Possible Remedies is capable of meeting the CMA's standard purchaser suitability criteria.

Financial buyers

5.34 As the CMA is aware, the investment strategy, profile of existing investments and relevant expertise of financial buyers vary from case to case. There are a large number of private equity players who [CONFIDENTIAL] could easily demonstrate their suitability by invoking evidence such as:

(a) a track record of investing for the long-term, including in the UK and Europe;

(b) easy access to financing and liquidity to continue investing in and developing the Divestment Business;

(c) experience with carve-out and divestiture transactions on a significant scale;

(d) experience in managing a wide variety of businesses across multiple industries;

(e) in many cases, relevant industry experience of owning and developing chemical admixture or similar businesses (e.g., chemicals or construction-related business), and ability to create credible business plans for the Divestment Business; and

(f) the lack of further competition concerns in the context of the Proposed Remedy.

5.35 It would therefore be inappropriate to rule out financial buyers as an entire class of purchaser (particularly that MBCC Group is current owned by Lone Star). Rather, the suitability of any financial buyer should be considered on the merits against the CMA's purchaser criteria, on a case-by-case basis.

Downstream customers and other companies active in the chemical admixtures supply chain

5.36 Cement and ready-mix companies, and other manufacturers of heavy building materials have an in-depth understanding of what customers of chemical admixtures need, given their activities downstream.

There would therefore be little doubt as to their capability to compete. Similarly, other companies active in the chemical admixtures supply chain will also have a pre-existing understanding of the markets in which the Divestment Business will operate.

5.37 Although downstream customers and other companies active in the chemical admixtures supply chain would be in a vertical relationship vis-à-vis the chemical admixtures supply of the Divestment Business, this fact alone is not sufficient to rule them out as a class of suitable purchaser. A vertical relationship does not in itself demonstrate a lack of incentive and commitment to operate and further develop the Divestment Business. In order to execute a foreclosure strategy, a customer would need to have significant market power in the downstream/upstream markets in which they are active (since the Divestment Business lacks market power in any market in which it operates, including in the UK) and the strategy would have to be profitable. Given the wide scope of the Divestment Business and its attractive profitability, the Parties anticipate that a number of downstream customers active in the UK would be in a position to conclusively demonstrate both a lack of ability and a lack of incentive to pursue such strategies. Put simply, cement buyers will have every incentive to continue to operate the Divestment Business as a competitive and viable force in the market because there are sufficient alternatives at both levels in the supply chain and because chemical admixtures represent a very small fraction of the costs of downstream cement.

5.38 On this basis, the CMA should consider downstream customers (or indeed any supplier of raw materials or other elements of the chemical admixtures supply chain) as a class of suitable purchaser. The suitability of such companies should be considered on the merits against the CMA's purchaser criteria, on a case-by-case basis. There is no reason to pre-judge their suitability on a wholesale basis in the CMA's Final Report.

No incentive to divest to a weak or inappropriate Purchaser

5.39 In response to paragraph 55 of the Notice, 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.

5.40 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.

5.41 Given the broad range of interest expressed in the Divestment Business by prospective purchasers, the Parties are confident one or more purchasers that will be acceptable to all six regulators will be identified in the coming months.

Effective divestiture process

5.42 In response to paragraph 56(a) of the Notice, the Parties have developed a dedicated timetable which ensures a carefully planned and appropriate timescale for achieving the divestiture (Annex 16, Global Timeline, Parties' submission on the Parties' Remedy Proposal). In particular, the timeline has been developed specifically in order to align the regulatory processes in the six jurisdictions and with significant regard to the feedback received from the CMA in paragraph 30 of the Decision to Refer and subsequent discussions to date. As set out in Appendix, section 13 of the Parties' submission on the

Parties' Remedy Proposal, the Parties' suggestion is that the CMA's formal purchaser approval process occurs simultaneously with that of the European Commission and also overlaps with similar processes taking place in other jurisdictions. The Parties' divestiture timeline fits comfortably within the six month maximum initial divestiture period that is acceptable to the CMA.[10]

5.43 In response to paragraph 56(b) of the Notice, the Parties submit that there is no risk that the competitive capability of a divestiture package will deteriorate before completion of the divestiture. The period between the approval of the Purchaser and the closing of the sale of the Divestment Business will not be very 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 of the Parties' submission on the Parties' Remedy Proposal, there will not be a prolonged period between signing and closing of the sale of the Divestment Business (which in any event has to take place within three months of the European Commission approving the Purchaser). Moreover, [CONFIDENTIAL] (see Appendix, section 5, Parties' submission on the Parties' Remedy Proposal) [CONFIDENTIAL]. The Parties will appoint a Hold Separate Manager and a monitoring trustee to ensure the preservation of the Divestment Business globally (i.e. including the UK) in accordance with the European Commission's standard template commitments. The monitoring trustee would be in place throughout the CMA's initial divestiture period. The Parties would be happy to arrange that the reports of the monitoring trustee are also provided to the CMA.

5.44 Similarly, in response to paragraph 56 (c) of the Notice, there can be no doubt that the Parties have selected the most appropriate transaction structure for the divestment to ensure that the Divestment Business has all the necessary assets required to effectively compete as a supplier of chemical admixtures in the UK, meaning there are no composition or asset risks. As explained at paragraph 2.9 of the Parties' submission on the Parties' Remedy Proposal, the structure involving a reverse carve-out of the Retained EBC Business has been specifically 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 and loss of assets of the Divestment Business. Indeed the separation risk is no higher (and is in fact, lower as a result of the reverse carve-out of the Retained EBC Business), than a typical acquisition occurring under "normal" market conditions.

6. CONCLUSION

6.1 The Parties' Remedy Proposal is an effective and proportionate remedy that will comprehensively address the Provisional SLC and its adverse effects. The CMA can be highly confident that there are no composition, purchaser and asset risks associated with the Remedy Proposal. In light of this, it would be disproportionate, unreasonable and entirely unnecessary and inappropriate given the scope of the SLC identified in the Provisional Findings for the CMA to require any remedy other than the Parties' Remedy Proposal.

Baker McKenzie LLP

[10] CMA87, paragraph 5.41