Cinven

Competition & Markets Authority

By email: Sika.MBCC@cma.gov.uk

4 November 2022

Sika / MBCC Group Merger: Comments on notice of possible remedies

Dear Sirs

1. Introduction

1.1 We are writing in response to the Competition and Market Authority's (***CMA***) invitation for comments on its notice of possible remedies (the ***Remedies Notice***) in the Sika / MBCC Group merger (the ***Merger***) [confidential].

1.2 [confidential], we believe that the remedy package proposed by Sika and MBCC Group (the ***Parties***), namely the partial divestiture to a single purchaser of (a) MBCC Group's global EBA business (excluding the EBA businesses in all countries outside Australia, Canada, the countries of the European Economic Area, New Zealand, Switzerland, the UK and the United States), and (b) MBCC Group's EBC business in Australia and New Zealand (the ***Divestment Business***) (the ***Parties' Remedy Proposal***) represents an effective remedy to the provisional SLC.

1.3 Our [confidential] submissions [confidential] are based on the information we have been provided with to date.

2. Background on Cinven

2.1 Established in 1977, Cinven[1] is one of Europe's largest private equity firms. Cinven seeks to generate strong, stable and consistent returns for its investors by investing primarily in European private equity buyouts that capitalise on its sector, regional and functional expertise. Cinven's investment team focuses on six sectors: business services, consumer, financial services, healthcare, industrials, and technology, media & telecommunications.

2.2 Cinven previously owned Chryso, one of the leading players globally in concrete admixtures. Chryso is headquartered in France and is active in more than 100 countries across Europe, North America and Asia. Chryso grew significantly during Cinven's ownership, and Cinven also invested substantially to develop the business. We are pleased that the CMA recognised in its provisional findings that the Saint-Gobain chemical admixtures business, of which Chryso forms the core, would be an effective competitor to the merged

[1] [confidential]

Sika/MBCC entity. As the recent owner, this makes Cinven particularly well-placed to comment on the effectiveness of the Parties' Remedy Proposal.

2.3 Cinven also has significant experience in completing carve-outs from large corporate groups, across a number of different industries. It has experience in executing carve-outs in the chemical industry in particular, including Arxada (carve-out of specialty chemicals unit of Lonza AG in 2021) and Envu (carve-out of Bayer Environmental Science from Bayer AG in 2022). Cinven has drawn upon this experience in assessing the carve-out and separation aspects of the Parties' Remedy Proposal.

3. Effectiveness of the remedy in addressing the provisional SLC

3.1 We believe the Parties' Remedy Proposal effectively addresses the provisional SLC as it completely removes the overlap between the Parties in the UK for the supply of chemical admixtures. In this regard, the fact that the Divestment Business comprises MBCC Group's entire EBA business in Europe indicates that any competition concerns arising from the merger will be fully addressed as this business will operate entirely separately from Sika.

4. Scope of the divestiture package

4.1 Based on our experience in owning a successful chemical admixtures business, we believe that the Divestment Business will be a viable business, capable of competing in the chemical admixtures market on a standalone basis and that the proposed scope of the Divestment Business is therefore appropriately configured.

4.2 In this regard, we are of the view that the Divestment Business has sufficient scale to operate as an effective competitor. Notwithstanding the fact that the Divestment Business does not include all geographies in which MBCC's EBA business currently operates, we believe the perimeter of the Divestment Business is viable. In particular, we do not believe that the UK and European Divestment Business will be materially affected by the carve-out from the Middle East and Asia EBA business.

4.3 We are also of the view that the combination of assets included in the divestiture package is sufficient as it includes all relevant production sites, warehouses, offices, R&D sites, trademarks, IP, personnel and customer/supplier relationships needed to support the Divestment Business.

5. Other possible elements to be divested

5.1 We have reviewed the non-confidential version of the Parties' Phase 2 Remedies Submission, dated 24 October 2022 (***Remedies Submission***), and for the reasons set out in this submission, do not believe that any other elements need to be added to the divestment package in order to remedy the provisional SLC.

6. R&D

6.1 Based on our review of the Remedies Submission, it appears that all of the relevant know-how, R&D and innovation capabilities of the Divestment Business (particularly, the European Divestment Business) have been comprehensively identified and included in the remedy package.

6.2 Due to the fact that the remedy package includes all IP, facilities, staff and projects which are responsible for / attributable to the R&D aspects of the EBA business, it seems unlikely that the Parties' Remedy Proposal poses any risks to the R&D and innovation capabilities of the Divestment Business.

7. Branding

7.1 We do not have any material concerns with the Parties' approach to branding. The "Master Builders Solution" brand is very well-recognised and the inclusion of all IP for this brand worldwide significantly contributes to the viability of the Divestment Business.

7.2 While we think it is important for the merged entity to transition away from the "Master Builders Solution" brand and EBA-related product trademarks as soon as possible, we understand the need for a rebranding transitional period.

7.3 We see no reason for the rebranding transitional period to vary by location. While the Divestment Business will be permitted to expand into the countries in the retained business' geographic perimeter during the rebranding transitional period, we do not think the merged entity's use of the EBA-related product trademarks during this period will materially adversely affect the viability of the Divestment Business.

8. Patents and intellectual property

8.1 The Divestment Business' global ownership of all EBA patents also significantly contributes to the viability of the business.

8.2 Based on our review of the Remedies Submission, we do not think that the patent and/or other IP rights relevant to the EBC business are also relevant to the EBA business. This is supported by MBCC Group's separate operation of the EBA business from the EBC business.

8.3 We understand that MBCC Group's patents rights can be clearly allocated to either the EBA business or the EBC business by reference to the nature of the product and underlying research projects. In light of this allocation, the separate operation of the EBA and EBC businesses and the reverse carve-out structure proposed by the Parties, it appears that all of the patents and IP relevant to chemical admixtures have been included within the perimeter of the Divestment Business. This could also be confirmed through due diligence, as suggested by the CMA.

9. Separation of assets

9.1 We do not anticipate any material risks arising from the separation of assets and carve-out of the Divestment Business at this stage. Our preliminary view of the approach proposed by the Parties' is that it appears reasonable based on the following:

(a) First, MBCC Group's chemical admixtures business (the EBA business) already operates separately from its construction systems business (the EBC business).

(b) Second, the reverse carve-out ensures that the Divestment Business will be standalone, clear-cut and viable. This structure ensures business continuity and reduces the effect of any separation measures on the Divestment Business.

9.2 We understand that even for the legal entities which carry on activities related to both the Divestment Business and the retained business, these entities will be transferred to the purchaser (and the non-applicable assets will be carved-out in order to be retained by the merged entity). None of these legal entities pertain to the European business, and accordingly there does not appear to be any concern of complications arising at least in Europe and the UK. In addition, we understand the UK manufacturing site at Swinton will remain with the Divestment Business in its entirety (even though it manufactures some EBC products) – this also appears to address any UK manufacturing carve-out concerns.

10. Economies of scale

10.1 Based on Cinven's experience in the industry, the scope of the Divestment Business will provide the purchaser with sufficient scale to compete effectively with the merged entity. Indeed, the Divestment Business is more than twice the size that Chryso was at the time Cinven exited its investment, demonstrating its significant scale.

11. Composition

11.1 We believe that the Parties' Remedy Proposal effectively addresses the provisional SLC and provides the purchaser with a viable, standalone business, capable of competing effectively in the chemical admixtures market in the UK. Accordingly, we do not think it is necessary for the CMA to consider a broader or differently configured divestiture package to the Parties' Remedy Proposal.

12. Purchaser suitability

12.1 We believe that a private equity firm could certainly be a suitable purchaser of the Divestment Business, so long as it is one that is prepared to invest to strengthen the business even further. A private equity firm with experience of success in the sector would be even more clearly suitable, given their understanding of what it takes to compete successfully and to grow a business in these markets.

13. Effective divestiture process

13.1 The appropriate timescale for achieving the divestiture would largely depend on the regulatory and other approvals required for the transaction. We do not see any material risks of the competitive capability of the divestiture package deteriorating before completion, but understand that it is the CMA's usual practice to require the appointment of a Monitoring Trustee.

13.2 A sale of shares appears to be the most appropriate transaction structure for the divestment, in order to ensure the Divestment Business has all necessary assets required to effectively compete as a supplier of chemical admixtures in the UK.

14. Costs and proportionality

14.1 We do not have any immediate views on the costs likely to arise in implementing each remedy option. Importantly, we do not see any deterrents or impediments to a successful divestiture transaction.

15. Employees

15.1 In our view, the Divestment Business will also be appropriately staffed. In particular, the fact that the Divestment Business will be transferred with all staff currently employed by the Divestment Business, staff seconded to the Divestment Business, shared personnel and other key personnel, as well as all R&D FTEs of the EBA business, gives us confidence that the Divestment Business will be supported by the correct people.

16. Conclusion

16.1 We are of the view that the Divestment Business represents a viable, standalone business, capable of effectively competing in the chemical admixtures market and are comfortable with the carve-out process envisaged by the Parties.

16.2 Thank you for this opportunity.

16.3 Please do not hesitate to contact us should you have any questions.

Yours faithfully,

Pontus Pettersson & Anthony Cardona

For and on behalf of Cinven [confidential]