

ANTICIPATED ACQUISITION BY SIKA AG OF MBCC GROUP

Interim Order made by the Competition and Markets Authority pursuant to section 81 of the Enterprise Act 2002

Whereas:

- A. On 10 August 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act (the **Act**), referred the anticipated transaction by Sika AG (**Sika**) of LSF11 Skyscraper Holdco S.à.r.l., the ultimate parent company of MBCC Group (**MBCC**) (the **Merger**) for further investigation and report (the **Reference**) by a group of CMA panel members.
- B. On 2 September 2022 Sika and MBCC made a request to the CMA to concede the significant lessening of competition (**SLC**) in the supply of chemical admixtures for cement, concrete and wet mortar in the United Kingdom (**UK**). On 6 September 2022 the CMA accepted Sika and MBCC's request.
- C. On 25 October 2022 the CMA published provisional findings (**Provisional Findings**) on the statutory questions it has to decide pursuant to section 36(1) of the Act:
 - a) Whether a relevant merger situation has been created; and
 - b) If so, whether the creation of that situation has resulted, or may be expected to result, in a SLC in the market for the supply of chemical admixtures for cement, concrete and wet mortar in the UK.
- D. The CMA wishes to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the Reference.
- E. The Reference has not been finally determined in accordance with section 79 of the Act.

Now, for the purpose of preventing pre-emptive action in accordance with section 81 of the Act, the CMA makes the following order (**Order**) addressed to MBCC.

Commencement, application and scope

1. This Order commences on the Commencement Date: 25 November 2022.
2. This Order applies to MBCC.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Sika or MBCC to reverse any act or omission, in each case to the extent that it occurred, or was completed, prior to the Commencement Date.

Management of the MBCC business until determination of the Reference

4. Except with the prior written consent of the CMA, MBCC shall not, during the Specified Period, take any action which might prejudice the Reference or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on the Reference, including any action which might:
 - (i) lead to the integration of the MBCC business with the Sika business;
 - (ii) transfer the ownership or control of the MBCC business or any of its subsidiaries to Sika except in compliance with this Order; or
 - (iii) otherwise impair the ability of the MBCC business and the Sika business to compete independently in any of the markets affected by the Merger.
5. Further and without prejudice to the generality of paragraph 4, and subject to paragraph 3, MBCC shall at all times during the Specified Period procure that, except with the prior written consent of the CMA or where necessary as preparatory steps in relation to the Remedy Proposal in respect of paragraphs 5(c), (e), (f) and (l):
 - (a) the MBCC business is carried on separately from the Sika business and the MBCC business's separate sales or brand identity is maintained;
 - (b) the MBCC business is maintained as a going concern and sufficient resources are made available for the development of the MBCC business, on the basis of its pre-Merger business plans;

- (c) except in the Ordinary Course of Business, no substantive changes are made to the organisational structure of, or the management responsibilities within the MBCC business;
- (d) the nature, description, range and quality of goods and/or services supplied in the UK by the MBCC business are maintained and preserved;
- (e) except in the Ordinary Course of Business:
 - (i) all of the assets of the MBCC business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the MBCC business are disposed of; and
 - (iii) no interest in the assets of the MBCC business is created or disposed of;
- (f) there is no integration of the information technology of the MBCC business and the Sika business, and the software and hardware platforms of the MBCC business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the MBCC business and the Sika business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the MBCC business will be carried out by the MBCC business alone and for the avoidance of doubt the Sika business will not negotiate on behalf of the MBCC business (and vice versa) or enter into any joint agreements with the MBCC business (and vice versa);
- (h) all existing contracts of the MBCC business continue to be serviced by it;
- (i) no changes are made to Key Staff of the MBCC business;
- (j) no Key Staff are transferred between the MBCC business and the Sika business;
- (k) all reasonable steps are taken to encourage all Key Staff of the MBCC business to remain with the MBCC business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the MBCC business or the Sika business shall pass, directly or indirectly, from the MBCC business on the one hand (or any of its employees, directors, agents or affiliates) to the Sika business on the other hand (or any of its employees, directors,

agents or affiliates), or vice versa, except where strictly necessary in the Ordinary Course of Business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, should the Merger be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

6. All directions and derogations issued in relation to or pursuant to the Order shall continue in force until final determination of the Reference unless cancelled or revoked by the CMA.

Compliance

7. MBCC shall procure that each of its subsidiaries complies with this Order as if the Order had been issued to each of them.
8. MBCC shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by MBCC and its subsidiaries with this Order. In particular, on 12 December 2022 and subsequently every two weeks thereafter (or, where this does not fall on a working day, the first working day thereafter) the Chief Compliance Officer of MBCC or other persons of MBCC as agreed with the CMA shall, on behalf of MBCC provide a statement to the CMA in the form set out in Schedule 1 to this Order confirming compliance with this Order.
9. At all times, MBCC shall actively keep the CMA informed of any material developments relating to the MBCC business, which includes but is not limited to:
 - (a) details of ~~any~~ any staff employed by the MBCC business, including an explanation of whether these are Key Staff;
 - (b) all substantial customer volumes won or lost or substantial changes to the customer contracts for the MBCC business including any substantial changes in customers' demand; and
 - (c) any preparatory steps taken in relation to the Remedy Proposal;
 - (d) any material developments which falls within the scope of paragraph 5(c), 5(d), 5(e), 5(j) and 5(k).
10. If MBCC has any reason to suspect that this Order might have been breached, it shall immediately notify the CMA and any Monitoring Trustee that MBCC may be directed to appoint under paragraph 12.

11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke the Monitoring Trustee Directions and any other such directions so given.
12. MBCC shall comply in so far as they are able to with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. For the purposes of this Order:

'Act' means the Enterprise Act 2002;

'affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

'business' has the meaning given by section 129(1) and (3) of the Act;

'CMA' means the Competition and Markets Authority;

'Commencement Date' means the date on which this Order is made;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'Key Staff' means staff in positions of executive or managerial responsibility, [X] and/or staff whose performance affects the viability of the MBCC business;

'MBCC' means LSF11 Skyscraper Holdco S.a.r.l , a subsidiary of LSF11 Skyscraper Midco 2 S.a.r.l, a private limited liability company registered with the Luxembourg Trade and Companies Register number B239994, whose

registered office is at 33, rue du Puits Romain, L – 8070 Bertrange Grand Duchy of Luxembourg.

'MBCC business' means;

- (a) the Admixtures Systems (EBA) businesses in the countries of the European Economic Area (**EEA**), Switzerland, UK, Canada, United States, Australia and New Zealand; and
- (b) the Construction Systems (EBC) business in Australia and New Zealand.

'Merger' means the anticipated acquisition by Sika indirectly via its wholly-owned subsidiary Sika International AG of 100 per cent of the shares in LSF11 Skyscraper Holdco S.a.r.l., the ultimate parent company of MBCC Group;

'Monitoring Trustee' means any monitoring trustee appointed by MBCC pursuant to the directions issued by the CMA under paragraph 12 of the Order;

'the Monitoring Trustee Mandate' means the mandate containing the terms of appointment of the Monitoring Trustee, including any subsequent amendments;

'Ordinary Course of Business' means matters connected to the day-to-day supply of goods and/or services by the Sika business or the MBCC business, and does not include matters involving significant changes to the organisational structure or related to the post-Merger integration of Sika and MBCC;

'Remedy Proposal' is defined in the CMA's Notice of Possible Remedies relating to the Merger, subject to any changes agreed with the CMA and without prejudice to the CMA's final decision on the necessary remedial action;

'Provisional Findings' means the report of the CMA entitled '*Anticipated acquisition by Sika AG of MBCC Group. Provisional Findings Report*', notified 25 October 2022, published 26 October 2022;

'Sika' means Sika AG, a stock corporation incorporated in Switzerland (registered number CHE-106.919.184), whose registered office is at Zugstrasse 50, 6340 Baar, Switzerland;

'Sika business' means the business conducted by Sika and its subsidiaries, carried on as at the Commencement Date;

'Specified Period' means the period between the Commencement Date and the date that this Order ceases to be in force in accordance with section 81 of the Act;

'SLC' means a substantial lessening of competition;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the two businesses' means the MBCC business and the Sika business;

'UK' means the United Kingdom of Great Britain and Northern Ireland;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Richard Feasey
CMA Inquiry Chair
25 November 2022

Compliance statement for MBCC

I [insert name] confirm on behalf of MBCC that:

Compliance in the Relevant Period

1. In the period from [●] to [●] (the Relevant Period):
 - (a) MBCC has complied with the Order made by the CMA in relation to the Merger on [●] (the Order).
 - (b) MBCC's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA or where necessary as preparatory steps in relation to the Remedy Proposal in respect of paragraphs 5(c), (e), and (f), and (l) of the Order:
 - (a) No action has been taken by MBCC that might prejudice the Reference or impede the taking of any action by the CMA which may be justified by its decision on the Reference, including any action which might:
 - (i) lead to the integration of the MBCC business with the Sika business;
 - (ii) transfer the ownership or control of the MBCC business or any of their subsidiaries to Sika; or
 - (iii) otherwise impair the ability of the MBCC business or the Sika business to compete independently in any of the markets affected by the Merger.
 - (b) The MBCC business has been carried on separately from the Sika business and the MBCC business' separate sales or brand identity has been maintained.
 - (c) The MBCC business has been maintained as a going concern and sufficient resources have been made available for the development of the MBCC business on the basis of its pre-merger business plan.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the MBCC business, except in the Ordinary Course of Business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the MBCC business have been maintained and preserved.
- (f) Except in the Ordinary Course of Business:
 - (i) all of the assets of the MBCC business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the MBCC business have been disposed of; and
 - (iii) no interest in the assets of the MBCC business has been created or disposed of.
- (g) There has been no integration of the information technology of the MBCC or Sika businesses, and the software and hardware platforms of the MBCC business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the MBCC business have been carried out by the MBCC business alone and, for the avoidance of doubt, the Sika business has not negotiated on behalf of the MBCC business (and vice versa) or entered into any joint agreements with the MBCC business (and vice versa).
- (i) All existing contracts of the MBCC business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to Key Staff of the MBCC business.
- (k) No Key Staff have been transferred between the MBCC business and the Sika business.
- (l) All reasonable steps have been taken to encourage all Key Staff to remain with the MBCC business.
- (m) The CMA has been provided with details of all [X]staff employed by the MBCC business, including an explanation of whether these are Key Staff.
- (n) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other

information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the MBCC business (or any of its employees, directors, agents or affiliates) to the Sika business (or any of its employees, directors, agents or affiliates), or vice versa.

- (o) Except as listed in paragraph (p) below, there have been no:
 - (i) Key Staff that have left or joined the MBCC business;
 - (ii) substantial customer volumes won or lost or substantial changes to the customer contracts for the MBCC business; or
- (p) *[list of material developments]*
- (q) *[list any preparatory steps taken in relation to the Remedy Proposal]*;

- 3. MBCC and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the MBCC business in accordance with paragraph [9] of the Order.

Interpretation

- 4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

- 5. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)
- 6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF LSF11 Skyscraper Holdco S.a.r.l

Signature

Name

Title

Date