

ANTICIPATED ACQUISITION BY SIKA AG OF MBCC GROUP

Directions issued on 25 November 2022 pursuant to paragraph 12 of the Interim Order made by the Competition and Markets Authority on 25 November 2022 pursuant to section 81 of the Enterprise Act 2002 (the Act)

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**).

On 25 November 2022 the Competition and Markets Authority (**CMA**) made an Interim Order (the **Order**) addressed to MBCC in accordance with section 81 of the Act to prevent pre-emptive action.

The CMA now issues written directions under paragraph 12 of the Order that, for the purpose of securing compliance with the Order, MBCC must appoint a monitoring trustee in accordance with the terms provided for in this Annex and must comply with the obligations set out in the Annex.

Signed,

Richard Feasey
Group Chair
25 November 2022

Annex

Directions to appoint a monitoring trustee

Interpretation

In these directions:

‘the Act’	means the Enterprise Act 2002;
‘an 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, unless otherwise stated, given by section 129(1) and (3) of the Act;
‘CMA’	means the Competition and Markets Authority;
‘Derogations’	means any derogations granted whether before or after the appointment of the MT by the CMA by which MBCC may undertake certain actions that derogate from the Order;
‘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) business in the countries of the European Economic Area (EEA), Switzerland, UK, Canada, United States, Australia and New Zealand; and b) The Constructions 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;
‘MT’	means the monitoring trustee appointed in accordance with this Annex;
‘Order’	means the Interim Order made by the CMA on 25 November 2022 and addressed to MBCC;
‘Reference’	is defined in the Order
‘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;
‘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;
‘subsidiary’	has the meaning, unless otherwise stated, given by section 1159 of the Companies Act 2006 (and ‘subsidiaries’ shall be construed accordingly).

Terms and expressions defined in the Order have the same meaning in these directions unless the context requires otherwise.

Appointment

1. MBCC must appoint a MT in order to ensure compliance with the Order, in particular to:
 - a. monitor and report to the CMA on compliance by MBCC with the Order; and
 - b. support the CMA taking any remedial action which may be required to maintain the MBCC business as a going concern.
2. The MT must act on behalf of the CMA and be under an obligation and duty of care to the CMA to carry out its functions to the best of its abilities.
3. MBCC must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of MBCC as set out in these directions.

General

4. The MT must possess appropriate qualifications and experience to carry out its functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs its objectivity and independence in discharging its duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. MBCC shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out its functions.
7. MBCC must appoint the MT as soon as is reasonably practicable and in any event by **2 December 2022** (or such longer period as the CMA may reasonably agree in writing) and the MT will continue to act either until the CMA reaches a decision to clear the Transaction or until the CMA directs that the MT is no longer required.
8. The appointment of a MT by MBCC is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
 - a. the name of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm**

29 November 2022 (or such longer period as the CMA may reasonably agree in writing);

- b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on 1 December 2022** (or such longer period as the CMA may reasonably agree in writing); and
- c. once the MT has been approved by the CMA and appointed, MBCC must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

- 9. Until the final determination of the Reference under section 79 of the Act or until such other time as the CMA requires, the functions of the MT will be limited to:
 - a. ascertaining and reporting to the CMA in relation to the current level of compliance by MBCC and their subsidiaries with paragraphs [X] of the Order;
 - b. confirming the accuracy and providing more information it considers necessary, including in relation to:
 - i. details of [X] any staff employed by the MBCC business, including an explanation of whether these are Key Staff;
 - ii. any steps taken by the MBCC business to encourage all Key Staff of the MBCC business to remain with the MBCC business
 - iii. 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
 - iv. any material developments which fall within the scope of paragraph [X] of the Order.
 - c. assisting the CMA with the consideration of any risks in relation to [X] the MBCC business, based on the information above and any other information it may reasonably consider necessary;
 - d. advising the CMA on any necessary actions to address [X] in relation to the MBCC business, and if necessary, taking the necessary actions to address those issues following the CMA's directions.
 - e. receiving information from MBCC about any preparatory steps in relation to the Remedy Proposal, and in particular the separation plan, in order to

ascertain whether these are necessary preparatory steps under paragraphs 5 (c), (e), (f), and (l) of the Order.

- f. without prejudice to the right of MBCC to directly contact the CMA, responding to any questions which MBCC may have in relation to compliance with the Order, in consultation with the CMA.
10. The MT must take such steps as it reasonably considers necessary in order to carry out its functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Sika business and the MBCC business, such as written and electronic communications, telephone conversations and meetings as may be required.
 11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by MBCC with the Order.

Obligations of MBCC

12. MBCC and their respective affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge its functions, including but not limited to:
 - a. the provision of full and complete access to all personnel, books, records, documents and information of the MBCC business as the MT may reasonably require; and
 - b. the provision of such office and supporting facilities as the MT may reasonably require.
13. If MBCC is in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.
14. If MBCC has any reason to suspect that the Order may have been breached, it must notify the MT and the CMA immediately.

Reporting functions

15. The MT is required to provide an initial report to the CMA no later than **two weeks** following their appointment (or such longer period as the CMA may reasonably agree in writing), giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order.
16. In addition to providing the initial report the MT must provide a statement to the CMA every four weeks thereafter (or otherwise as required by the CMA) stating whether or not, in its view, MBCC has complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:

- a. details of [REDACTED] of any staff employed by the MBCC business, including an explanation of whether these are Key Staff;
 - b. any steps taken by the MBCC business to encourage all Key Staff of the MBCC business to remain with the MBCC business
 - c. 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;
 - d. details of all communications in relation to the Merger between the MBCC business and [REDACTED]
 - e. details of the implementation of [REDACTED] plans by the MBCC business and any changes to those [REDACTED] plans;
 - f. any material developments which fall within the scope of paragraph [REDACTED] of the Order;
 - g. any risks anticipated in relation to [REDACTED] of the MBCC business; and
 - h. the information it used to compile the report.
17. When providing reports to the CMA, the MT must ensure that it does not disclose any information or documents to the CMA which Sika and/or MBCC would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Sika or MBCC to produce any information or documents to the MT which are privileged.
18. The MT must immediately notify the CMA in writing if it forms a reasonable suspicion that the Order has been breached, or if it considers that it is no longer in a position to effectively carry out its functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 16 above).
19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 are confidential and should not be disclosed to Sika and MBCC, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.