

Anticipated acquisition by Sika AG of MBCC Group

Final Report

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The Competition and Markets Authority has excluded from this published version of this report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

Contents

Page

Summary	4
Findings.....	10
1. The reference	10
2. The Parties, transaction, and rationale	11
The Parties	11
Sika	11
MBCC	11
The transaction	12
The rationale	12
3. Concession of SLC identified at phase 1	13
4. Jurisdiction	14
Introduction	14
Enterprises ceasing to be distinct	14
Enterprises	14
Ceasing to be distinct	15
The turnover test and share of supply test.....	15
The turnover test	15
Share of supply test.....	15
Conclusion on jurisdiction	16
5. Counterfactual.....	16
Introduction	16
Counterfactual analysis.....	16
6. Nature of competition in the supply of chemical admixtures	17
Background on chemical admixtures	18
Suppliers of chemical admixtures	19
Production of chemical admixtures.....	20
Product development and innovation	21
Distribution of chemical admixtures	23
Customers of chemical admixtures	24
Importance of chemical admixtures	25
Factors affecting customers' choice of a chemical admixture supplier	26
Sourcing models for chemical admixtures used by customers	27
Negotiations, tenders, and supply agreements for chemical admixtures	29
Technical trials and product development	29
Tenders and supply agreements	30
Switching process for customers	31
Summary	34
7. Market definition.....	35
Product market.....	35
Chemical admixtures for cement	35
Chemical admixtures for mortar.....	36
Conclusion on product market	37
Geographic market	38
Conclusion on geographic market	39
Conclusion on market definition	39
8. Competitive assessment.....	40
Market shares	40
Closeness of competition between the Parties	43

Shares of supply of the Parties.....	44
Evidence from the Parties' competitors	44
Evidence from the Parties' customers	45
The Parties' product development, R&D, and innovation activities.....	47
The Parties' internal documents	51
Conclusion on closeness of competition between the Parties	52
Competitive constraints from other suppliers of chemical admixtures.....	52
The merged Saint-Gobain/GCP.....	52
Oscrete.....	55
Mapei.....	57
Cemex	59
Other suppliers	61
Conclusion on competitive constraints from alternative suppliers of chemical admixtures.....	62
Countervailing constraints.....	63
Barriers to entry and expansion.....	63
Countervailing buyer power	66
Conclusion on countervailing constraints	69
Conclusion	69
9. Remedies.....	69
Introduction	69
Nature of the SLC and its resulting adverse effects	71
CMA framework for assessing remedies	71
Overview of the possible remedy options we have considered;.....	73
Possible remedy options set out in our Remedies Notice.....	73
Assessment of the effectiveness of a prohibition remedy	75
Remedy description.....	75
Parties' and third parties' views	76
Assessment and conclusions on effectiveness of prohibition	76
Assessment of the effectiveness of a divestiture remedy	76
Remedy description.....	77
Overview of the Parties' Remedy Proposal	77
Parties' submission on the effectiveness of the Parties' Remedy Proposal... 81	
Assessment of effectiveness of a divestiture remedy	82
Scope of the divestiture package.....	83
Conclusions on effectiveness of a divestiture remedy	185
Conclusions on effective remedies	186
Assessment of relevant customer benefits	186
Submissions on RCBs.....	187
Assessment of the proportionality of our preferred remedies.....	187
Proportionality assessment framework.....	187
Submissions on proportionality.....	188
Our assessment of proportionality	189
Conclusions on proportionality.....	190
Remedy implementation issues	190
Final decision on remedies	191

Appendices

A: Terms of reference

Glossary

Summary

Overview of our findings

1. The Competition and Markets Authority (**CMA**) has found that the anticipated acquisition by Sika AG (**Sika**) of LSF11 Skyscraper Holdco S.à.r.l., the ultimate parent company of MBCC Group (**MBCC**) (the **Merger**) may be expected to result in a substantial lessening of competition (**SLC**) in the supply of chemical admixtures for cement, concrete and wet mortar in the United Kingdom (**UK**).
2. Sika and MBCC (together referred to as the **Parties**, or for statements referring to the future, the **Merged Entity**) requested to concede the SLC identified in the CMA's phase 1 decision (**Phase 1 Decision**) for the purposes of the phase 2 investigation, accepting that the Merger may be expected to result in an SLC in the supply of chemical admixtures for cement, concrete and wet mortar in the UK. We accepted the Parties' request.
3. In our inquiry we used evidence and information gathered in phase 1. Having had regard to that evidence, we found that the Merger may not be expected to result in an SLC within any other market in the UK. In relation to the market in which the Parties conceded the SLC, we undertook targeted additional information gathering, including publishing an Issues Statement and making a limited number of requests for information.
4. We then considered what action should be taken to remedy, mitigate or prevent the SLC and the resulting adverse effects. This included an assessment of a partial divestiture remedy proposed by the Parties. In addition to evidence provided by the Parties, we have had regard to a range of third party evidence and have consulted closely with other interested competition authorities in other jurisdictions in our assessment.
5. We conclude that the remedy proposed by the Parties would be both effective and proportionate to address the SLC and resulting adverse effects. We published our notice of provisional findings, notice of possible remedies and the Parties' remedy proposal on the 25 October 2022. We have applied a 'balance of probabilities' standard when assessing the evidence before us.

Background to these findings

The Parties and the Merger

6. Sika is the Swiss-based parent-company of a global group that manufactures and supplies a broad range of products sold under the Sika brand and other group brands.
7. MBCC is a global group of companies headquartered in Germany that manufactures and supplies a broad range of products under brands including Master Builders Solutions.
8. Both Parties overlap in the supply of products used in the construction industry, including chemical admixtures.
9. On 10 November 2021, Sika agreed to acquire 100% of the shares in MBCC for approximately CHF 5.5 billion (approximately £4.5 billion).

The relevant merger situation

10. We have decided that the Merger constitutes a relevant merger situation as it would result in Sika and MBCC ceasing to be distinct enterprises and because the share of supply test is met.

Findings

Market outcome if the Merger did not take place

11. To determine the impact that the Merger may have on competition, we have considered what would have happened had the Merger not taken place. This is known as the counterfactual.
12. We conclude that the counterfactual is the prevailing conditions of competition in this case. This means that the impact of the Merger is compared against the current conditions of competition, and takes into account the recently completed acquisition by Compagnie de Saint-Gobain S.A. of GCP Applied Technologies Inc (the **Saint-Gobain/GCP Merger**), both of which also supply of chemical admixtures in the UK. We have considered the impact of this and other developments in the market in our competitive assessment.

The market

13. We have assessed the relevant market in which to examine the competitive effects of the Merger and conclude that the relevant market is the supply of chemical admixtures for cement, concrete and wet mortar in the UK.

Nature of competition in the supply of chemical admixtures

14. Chemical admixtures are specially formulated chemicals added to cementitious products (concrete, cement and mortar) to modify their properties in various ways, for example to slow their setting rate so they can be transported over longer distances. Chemical admixtures also enable concrete producers to reduce the amount of cement required to produce concrete, which not only cuts the overall cost of concrete production, but also reduces its environmental impact.
15. The specific chemical admixtures required by a customer depend on the desired properties of the ultimate cementitious product, the other raw materials used by the customer and their production technique. Suppliers typically offer a broad range of chemical admixtures and often customise existing formulations to meet a customer's specific requirements.
16. Suppliers of chemical admixtures compete over a range of parameters, including product performance, security of supply, price, technical expertise, product development and innovation. There is significant differentiation between chemical admixtures themselves, and between suppliers and their ability to compete across these parameters.

Competitive assessment

17. We have looked at whether the Merger would lead to a significant reduction in competition between the Parties by removing an important competitor and, in doing so, whether the Merged Entity would be likely to worsen its offering compared to the situation if the Merger did not take place. This is a horizontal, unilateral effects theory of harm.
18. Sika and MBCC are the two largest suppliers of chemical admixtures in the UK, together accounting for over half of the UK's supply.
19. We have found that the Parties compete closely across a range of parameters considered important by customers. The majority of market participants viewed the Parties as the strongest suppliers active in the UK. Customers identified the Parties' range of products, their size and scale, and their ability to support product development and innovation as important competitive

strengths for both Parties. Some customers also identified the Parties as two of a small number of suppliers that have the scale and infrastructure to meet their requirements given the volumes of admixtures they require and the need for product to be delivered to their large network of production sites.

20. We considered the current competitive constraint exerted by other suppliers and found that other than the newly merged Saint-Gobain/GCP, all other existing suppliers would exert only a limited constraint on the merged Parties.

Barriers to entry and expansion

21. We conclude that entry or expansion will not be timely, likely and sufficient to prevent any SLC arising from the Merger in relation to the supply of chemical admixtures in the UK.

Conclusion

22. We have found that the anticipated acquisition by Sika of MBCC may be expected to result in a SLC as a result of horizontal unilateral effects in the supply of chemical admixtures for cement, concrete and wet mortar in the UK.

Remedies

23. Having decided that the Merger may be expected to result in an SLC, we considered what action should be taken to remedy, mitigate or prevent the SLC and the resulting adverse effects.
24. The Parties have proposed a partial divestiture remedy comprising the divestiture of the following MBCC businesses to a single purchaser:
 - (a) the 'admixture systems' business division (including chemical admixtures and associated products such as fibres and underground construction products, together referred to as the **EBA Business**) in the countries of the European Economic Area (**EEA**), Switzerland, UK, Canada, United States, Australia and New Zealand; and
 - (b) the 'construction systems' business division (including all remaining MBCC product lines other than EBA products such as industrial flooring, waterproofing etc, referred to as the **EBC business**) in Australia and New Zealand,(together, the **Divestment Business**).

25. The Merged Entity will retain the MBCC businesses which are outside the scope of the Divestment Business, namely:
- (a) The EBA business outside the EEA, Switzerland, UK Canada, United States, Australia and New Zealand (the **Retained EBA Business**); and
 - (b) The global EBC business except in Australia and New Zealand (the **Retained EBC Business**),
- (together, the **Retained Business**)
26. The Parties have proposed to carve-out the Retained Business from MBCC, such that all assets, staff and resources of the Divestment Business would remain with MBCC (**reverse carve-out**). The Divestment Business will be sold by selling 100% of the shares in the MBCC entities that will hold the Divestment Business at closing to a purchaser (the **Parties' Remedy Proposal**). The eventual purchaser, final transaction documents and any transitional services and supply agreements would be subject to CMA approval.
27. In addition to evidence provided by the Parties, we have had regard to a range of third party evidence and have consulted closely with other interested competition authorities in other jurisdictions in our assessment of the Parties' Remedy Proposal.
28. We conclude that the Parties' Remedy Proposal would be effective. This is on the basis of our assessment that:
- (a) the scope of the package addresses the SLC we have identified as it eliminates the Parties' overlap in the supply of chemical admixtures in the UK and includes all assets necessary to ensure the ongoing viability of the Divestment Business;
 - (b) any carve-out risks are limited, given the broadly standalone nature of the Divestment Business and will be further mitigated by the reverse-carve structure of the divestment;
 - (c) the links between the Divestment Business and the Merged Entity will be limited to transitional service and supply agreement that are strictly necessary to ensure the competitiveness of the Divestment Business immediately after the Merger and, after a short transitional period, the purchaser may be able to compete on a standalone basis
 - (d) it is likely that a suitable purchaser can be found; and
 - (e) the divestiture can be completed within an acceptable time period.

29. We conclude that the Parties' Remedy Proposal would be proportionate as it would allow the Merger to proceed in relation to those aspects of the Parties' operations where we have not found competition concerns and would be less onerous than the alternative possible remedy, which would be prohibition of the Merger.
30. We conclude that the Parties' Remedy Proposal would be both effective and proportionate to address the SLC and resulting adverse effects we have found.

Findings

1. The reference

- 1.1 On 10 August 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1)¹ of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition (the **Merger**) by Sika AG (**Sika**) of LSF11 Skyscraper Holdco S.à.r.l., the ultimate parent company of MBCC Group (**MBCC**) (together, the **Parties**, or for statements referring to the future, the **Merged Entity**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). We are required to prepare and publish a final report by 24 January 2023.
- 1.2 In exercise of its duty under section 36(1)² of the Act, the Inquiry Group is to investigate and report on the following questions:
- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation (**RMS**); and
 - (b) if so, whether the creation of the RMS may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
- 1.3 In answering these questions, we have applied the ‘balance of probabilities’ threshold to our analysis. That is, we have considered whether it is more likely than not that the Merger will result in an SLC.
- 1.4 This document, along with its appendices, constitutes the Inquiry Group’s findings, published and notified to the Parties in line with the CMA’s rules of procedure.³ Further information, including the Phase 1 Decision,⁴ can be found on the Inquiry case page.⁵

¹ [Section 33\(1\)](#) of the Act.

² [Section 36\(1\)](#) of the Act.

³ [Rules of procedure for merger, market and special reference groups: CMA17](#), paragraphs 11.1-11.7.

⁴ [Phase 1 Decision](#).

⁵ [Sika AG / MBCC Group case page](#).

2. The Parties, transaction, and rationale

The Parties

Sika

- 2.1 Sika is the Swiss-based parent-company of a global group that manufactures and supplies a broad range of products under the Sika brand and other group brands, including products used in the construction industry. Sika has subsidiaries in over 100 countries and has more than 300 manufacturing facilities worldwide.⁶ Within the range of products supplied for use in the construction industry, Sika supplies, among others, chemical admixtures, concrete works, waterproofing products, premix mortars, industrial flooring, sealants, adhesives, fibres, and grouts.
- 2.2 Sika's turnover in 2021 was approximately CHF 9.2 billion worldwide and approximately CHF [X]million (approximately £[X] million) in the UK.⁷

MBCC

- 2.3 LSF11 Skyscraper Holdco S.à.r.l. is the ultimate parent company of the Masterbuilders Construction Chemicals Group (**MBCC**). MBCC is a global group of companies headquartered in Germany that manufacture and supply a broad range of products under brands including Master Builders Solutions, including products used in the construction industry. MBCC operates over 120 plants in more than 70 countries.⁸ Within the range of products supplied for use in the construction industry MBCC supplies, among others, chemical admixtures, concrete works, waterproofing products, premix mortars, industrial flooring, sealants, adhesives, fibres, and grouts.
- 2.4 MBCC's turnover in 2021 was approximately €2.7 billion worldwide and approximately €[X] million (approximately £[X] million) in the UK.⁹
- 2.5 MBCC has two core divisions: 'EBA' which is responsible for the manufacture and supply of chemical admixtures and other cementitious materials; and 'EBC' which is responsible for the remaining product lines.¹⁰

⁶ Final Merger Notice (**FMN**) dated 28 May 2022, paragraph 2.

⁷ FMN, paragraph 2.

⁸ FMN, Annex 5.

⁹ FMN, paragraph 3.

¹⁰ FMN, paragraph 4, in relation to the terms 'EBA' and 'EBC', these are 'legacy names' used to describe the parts of the MBCC business when it was owned by BASF: 'EB' stands for Europäische Bauchemie; 'A' stands for 'Admixtures'; and 'C' stands for 'Construction Systems'.

The transaction

- 2.6 Sika, indirectly via its wholly-owned subsidiary Sika International AG, has agreed to acquire 100% of the shares in MBCC pursuant to a sale and purchase agreement (the **SPA**) entered into between Sika International AG and LSF11 Skyscraper Midco 2 S.à.r.l. on 10 November 2021 (the **Merger**).¹¹ The Merger was publicly announced on 11 November 2021.¹²

The rationale

- 2.7 Sika submitted that its rationale for the Merger is to:
- (a) diversify its global product portfolio and geographic footprint; and
 - (b) enable and accelerate the construction industry's transformation towards sustainable practices, by helping cement and concrete manufacturers to meet their CO₂ emission reduction commitments.¹³
- 2.8 Sika's internal documents also include the following reasons for the Merger:
- (a) [REDACTED];
 - (b) [REDACTED]; and
 - (c) [REDACTED].¹⁴
- 2.9 Similarly, MBCC submitted that its rationale for the Merger is to:
- (a) strengthen its offering of products and services across the entire construction lifecycle; and
 - (b) become an enabler of sustainable solutions in the construction industry.
- 2.10 The Parties submitted that they offer complementary product portfolios – the combining of which will benefit their stakeholders including, customers, employees, shareholders, and future generations.¹⁵

¹¹ FMN, paragraph 5.

¹² See [Sika to Acquire MBCC Group to Accelerate Its Growth Strategy and Reinforce Its Position as Sustainability Champion in the Global Construction Industry](#).

¹³ FMN, paragraph 6.

¹⁴ FMN, Annex 5.

¹⁵ FMN, paragraph 7.

3. Concession of SLC identified at phase 1

- 3.1 On 2 September 2022, the Parties requested to concede the SLC identified in the CMA's Phase 1 decision (the **Phase 1 Decision**)¹⁶ for the purposes of the phase 2 investigation, accepting that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of chemical admixtures in the UK.
- 3.2 The Parties agreed to waive their right to challenge this position during the inquiry and confirmed that they intend to submit remedies to address the SLC.
- 3.3 The process that applies where merging parties request to concede an SLC is set out in paragraphs 7.18 to 7.21 of [CMA2 revised](#).¹⁷
- 3.4 We communicated our decision to accept the Parties' request to concede the SLCs on 6 September 2022.
- 3.5 In the phase 2 inquiry we have used evidence and information gathered in phase 1. As set out in [CMA2 revised](#), in some cases it may not be necessary to significantly expand this evidence base in order for the CMA to reach a properly informed decision on the phase 2 statutory competition questions.¹⁸
- 3.6 Given the comprehensive information gathered at phase 1 we have undertaken targeted additional information gathering during the phase 2 inquiry, including by publishing an issues statement and making a limited number of requests for information.¹⁹ As the Parties conceded the SLC identified in the CMA's Phase 1 decision and waived their right to challenge this position in the inquiry, we did not hold main party hearings. We attended a site visit at MBCC's premises in Swinton on 7 October 2022.
- 3.7 As noted in the Issues Statement,²⁰ accepting the Parties' request to concede the SLC in relation to the supply of chemical admixtures in the UK did not preclude us from considering any other theories of harm during our investigation. Having had regard to the evidence gathered at phase 1 in relation to the other areas of overlap in the Parties' product portfolio, we do

¹⁶ [Phase 1 Decision](#), 27 July 2022.

¹⁷ [CMA2 revised](#), paragraphs 7.18-7.21.

¹⁸ [CMA2 revised](#), paragraph 11.2.

¹⁹ [Issues statement](#), 21 September 2022. We have also used evidence and information gathered in the CMA's parallel phase 1 investigation of the acquisition of GCP Applied Technologies Inc. by Compagnie de Saint-Gobain S.A.

²⁰ [Issues statement \(publishing.service.gov.uk\)](#), 21 September 2022.

not believe that the Merger may be expected to result, in an SLC within any other market in the UK.²¹

4. Jurisdiction

Introduction

- 4.1 This chapter addresses the first of the two statutory questions which we are required to answer under section 36 of the Act: whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- 4.2 The concept of a relevant merger situation has two principal elements: two or more enterprises have ceased, or will cease, to be distinct enterprises as a result of the merger;²² and the turnover test and/or the share of supply test is satisfied.²³

Enterprises ceasing to be distinct

Enterprises

- 4.3 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’.²⁴ A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.²⁵
- 4.4 Sika and MBCC are both active in the supply of chemical admixtures (amongst other products) for cement and concrete in the UK and generate turnover in the UK and worldwide from these activities (see Chapter 2 above).
- 4.5 We are therefore satisfied that each of Sika and MBCC is a ‘business’ within the meaning of the Act and that, accordingly, each of Sika and MBCC are ‘enterprises’ for the purposes of the Act.

²¹ We received an anonymous submission during the consultation on the Provisional Findings which suggested that due to the prevalence of overlapping products in the Parties’ portfolios, beyond admixtures, competition concerns are likely: [insert link to submission on case page]. Notwithstanding this submission, we consider that the weight of evidence collected at phase 1 demonstrates, overall, that in the individual markets in which the Parties’ products overlap, the Merger may not be expected to result in any additional SLCs.

²² Sections 23 and 24 of the Act.

²³ Section 23 of the Act.

²⁴ Section 129(1) of the Act.

²⁵ Sections 129(1) and (3) of the Act

Ceasing to be distinct

- 4.6 The Act provides that two enterprises cease to be distinct once they are brought under common ownership or common control.²⁶
- 4.7 The Merger concerns the proposed acquisition by Sika of the entire share capital of MBCC. On completion, MBCC would be 100% owned by Sika. Accordingly, as a result of the Merger, Sika would acquire a controlling interest in MBCC, and Sika and MBCC would therefore cease to be distinct enterprises within the meaning of section 26(1) and 26(2) of the Act.²⁷
- 4.8 We therefore find that the first limb of the jurisdictional test is met.

The turnover test and share of supply test

The turnover test

- 4.9 The turnover test is satisfied where the value of the turnover in the UK²⁸ of the enterprise being taken over exceeds £70 million.²⁹ MBCC's turnover in the financial year 2021 was approximately €2.7 billion of which approximately €[~~3~~] million (approximately £[~~3~~] million) was in the UK.³⁰ The turnover test is therefore not met.

Share of supply test

- 4.10 The share of supply test is satisfied where the merger would result in the creation or enhancement of at least a 25% share of supply or acquisition of goods or services of any description either in the UK or in a substantial part of the UK.³¹
- 4.11 The Parties have overlapping activities in the UK, notably in the supply of chemical admixtures for concrete. On the basis of our estimated shares of supply, as a result of the Merger the Parties would have a combined share of

²⁶ Section 26 of the Act.

²⁷ [CMA2 revised](#), paragraph 4.35.

²⁸ Section 28 of the Act confirms that turnover for the purposes of section 23(1) is determined by taking the total value of the UK turnover of the enterprises which cease to be distinct.

²⁹ Section 23(1)(b) of the Act.

³⁰ FMN, paragraph 3.

³¹ Section 23 of the Act and paragraph 4.60 of [CMA2 revised](#). The concept of goods or services of 'any description' is very broad. The CMA is required by the Act to measure shares of supply by reference to such criterion or such combination of criteria as the CMA considers appropriate (section 23(5) of the Act).

supply of more than 50% and the Merger would result in an increment in the share of supply.³²

- 4.12 Accordingly, it is our finding that the share of supply test in section 23 of the Act is met, and therefore the second limb of the jurisdictional test is also met.

Conclusion on jurisdiction

- 4.13 In view of the above, our view is that the Merger would result in the creation of an RMS.

5. Counterfactual

Introduction

- 5.1 The counterfactual is an analytical tool used to help answer the question of whether a merger gives rise to an SLC.³³ It does this by providing the basis for a comparison of the competitive situation in the market with the merger against the likely future competitive situation in the market absent the merger.³⁴ The latter is called the counterfactual.³⁵
- 5.2 The counterfactual is not, however, intended to be a detailed description of those conditions of competition that would have prevailed absent the merger.³⁶ The CMA seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger.³⁷ The CMA will generally conclude on the counterfactual conditions of competition broadly – that is, prevailing or pre-merger conditions of competition, or conditions of stronger or weaker competition.³⁸

Counterfactual analysis

- 5.3 At phase 1, the CMA adopted the prevailing conditions of competition as the counterfactual.³⁹

³² See Table 2, paragraph 8.9, which gives a market share of [20-30%] for Sika and [20-30%] for MBCC. Whilst shares of supply for the purposes of Section 23 of the Act need not correspond to a relevant economic market (CMA2 revised, paragraph 4.59), these market shares have been calculated on the basis of our market definition, which is the market for the supply of chemical admixtures for cement, concrete and wet mortar in the UK. See Chapter 7.

³³ MAGs, paragraph 1.

³⁴ MAGs, paragraph 3.1.

³⁵ MAGs, paragraph 3.1.

³⁶ MAGs, paragraph 3.7.

³⁷ MAGs, paragraph 3.11.

³⁸ MAGs, paragraph 3.2.

³⁹ Phase 1 Decision, paragraph 34.

- 5.4 At the time of its phase 1 decision, the CMA was also investigating a parallel transaction involving the acquisition of GCP Applied Technologies Inc. (**GCP**) by Compagnie de Saint-Gobain S.A. (**Saint-Gobain**) (the **Saint-Gobain/GCP Merger**). Saint-Gobain and GCP both supply chemical admixtures in the UK. At phase 1, the CMA did not undertake a detailed assessment of this acquisition in its counterfactual,⁴⁰ but took into account any significant changes affecting competition that would arise if the Saint-Gobain/GCP Merger were to go ahead, as well as considering competitive conditions if those two businesses continued to operate under independent ownership.⁴¹
- 5.5 On 22 September 2022, the CMA announced its decision not to refer the Saint-Gobain/GCP Merger for a phase 2 investigation.⁴² The Saint-Gobain/GCP Merger closed on 27 September 2022.
- 5.6 We have therefore found that the relevant counterfactual is the prevailing conditions of competition (which includes the recently completed acquisition by Saint-Gobain of GCP). We recognise that a number of developments are taking place in the relevant market which may have a significant effect on competition in the future. These include the Saint-Gobain/GCP Merger and expansion by Mapei, one of the Parties' rivals, which has told us that it is in the advanced stages of building an admixtures facility in the UK. We have considered the impact of these developments on competition in our competitive assessment.⁴³

6. Nature of competition in the supply of chemical admixtures

- 6.1 In this chapter, we first explain what chemical admixtures are. We then describe how competition among suppliers of chemical admixtures works. We first summarise information on the production, development and distribution of chemical admixtures and then set out our assessment of the demand for chemical admixtures, including an assessment of the factors affecting a customer's choice of supplier. The chapter concludes with an overview of the way chemical admixtures are procured, including the role of trials, supply agreements and the ease of switching between suppliers for customers.

⁴⁰ [MAGs](#), paragraph 3.9 and 3.10.

⁴¹ [Phase 1 Decision](#), paragraph 35.

⁴² See the [Saint Gobain/GCP case page](#).

⁴³ [MAGs](#), paragraph 3.10. Changes affecting competition from third parties which would occur with or without the merger (and therefore form a part of the counterfactual) are unlikely to be assessed in any depth as part of the CMA's counterfactual assessment. This includes entry or expansion by a third party.

Background on chemical admixtures

- 6.2 Chemical admixtures are specially formulated chemicals added in small quantities to alter the properties of cementitious products (cement, concrete and mortar).⁴⁴
- 6.3 Different types of chemical admixtures alter the properties of cementitious products in different ways. For example, water reducing admixtures increase the strength of concrete by reducing the volume of water used in the production of concrete;⁴⁵ air entraining admixtures protect concrete from frost damage; water resisting and water retaining admixtures are used in the production of waterproof or water resistant concrete; and grinding aids reduce the amount of energy required to produce cement.
- 6.4 Suppliers of chemical admixtures typically offer a number of different formulations for each different type of chemical admixture. For instance, Sika supplies a number of different water reducing admixtures, each with different characteristics.⁴⁶ Generally, at least two types of chemical admixture are used in the production of cementitious products.⁴⁷
- 6.5 The chemical admixtures required by a customer depend on the desired properties of the ultimate cementitious product, the other raw materials used by the customer and their production technique. In particular:
- (a) The desired properties of cementitious materials will depend on their ultimate application by downstream customers. For example, concrete used in the production of tunnels (eg the use of shotcrete for tunnel lining) has different properties to other types of concrete. Different applications require different types and dosages of chemical admixtures.⁴⁸
 - (b) Different formulations of chemical admixtures perform better depending on the composition of a customer's aggregates (gravel, sand, etc) and the other raw materials used to produce the concrete, which vary across

⁴⁴ FMN, paragraph 147.

⁴⁵ Water reducing admixtures can also reduce the amount of cement required to produce concrete of a given strength or slump (ie the consistency or flowability of concrete). The strength of concrete increases when the water to cement ratio decreases, however water is required to ensure the concrete meets a specified slump (ie the consistency or flowability of concrete). In this respect there is a trade-off between the slump and the strength of concrete. The use of water-reducing admixtures reduces the amount of water needed to produce concrete of a specified slump, thereby increasing its strength, or reducing the amount of cement needed.

⁴⁶ See: [Water Reducing Admixtures \(sika.com\)](https://www.sika.com) [public]. According to its website 'from conventional to high-strength, self-consolidating concrete our ViscoCrete [water-reducing] products are specially formulated to provide full range water reduction with a variety of cementitious materials allowing for ultimate versatility'.

⁴⁷ FMN, page 63 and 64.

⁴⁸ FMN, paragraph 191.

locations and over time (as sources of these aggregates and other raw materials are exhausted).⁴⁹

- (c) Concrete can be supplied to downstream customers as either ready-mix concrete (transported by mixer trucks in a ready-to-use liquid form) or pre-cast concrete (prepared, moulded and cured in a factory). These can sometimes require different types or dosages of chemical admixtures.⁵⁰

6.6 Demand for chemical admixtures is related to demand for cement, concrete and mortar in the construction industry. Demand is also affected by changing production methods that require the use of chemical admixtures (such as concrete recycling, where rubble from demolished concrete structures is used in the production of new concrete) and attempts to reduce the environmental impact of cementitious products.⁵¹

6.7 The Parties estimate that the chemical admixtures industry in the UK declined by approximately 15% year-on-year in 2020 as a result of the Coronavirus (COVID-19) pandemic and the UK's departure from the EU.⁵² Industry reports submitted by the Parties forecast that the UK concrete admixtures industry will grow by around 5-6% year-on-year in the period 2022–2030.⁵³

Suppliers of chemical admixtures

6.8 We have gathered information from 15 suppliers of chemical admixtures active in the UK, including the Parties. These suppliers accounted for the vast majority (around 95% by value) of sales of chemical admixtures for cement, concrete and wet mortar in the UK in 2021.⁵⁴ This information was primarily

⁴⁹ FMN, paragraph 136.

⁵⁰ For example, ready-mix concrete producers commonly use chemical admixtures that slow the rate at which concrete sets, while pre-cast concrete producers may require admixtures that accelerate it (in order to speed up the production of concrete). FMN, paragraph 197.

⁵¹ In particular, water-reducing admixtures reduce the amount of cement required to produce concrete of a specified strength and slump, thereby reducing its cost and associated CO₂ emissions (as cement production is carbon-intensive). Other ways in which chemical admixtures reduce the environmental impact of cementitious products include admixtures (eg corrosion-inhibiting admixtures) that increase the service life of concrete or admixtures that facilitate the use of waste materials (such as fly ash which is a by-product of coal-burning power stations) as a substitute for cement.

⁵² FMN, paragraph 116.

⁵³ These reports were produced in 2021 and 2022 respectively. Both reports were produced after the Coronavirus (COVID-19) pandemic. These forecasts relate to the wider concrete admixtures industry and, on this basis, are only indicative of possible growth in the market for chemical admixtures as defined in Chapter 7 (Sika, Annex 504 [§], FMN; Sika, Annex 506 [§], FMN). Other industry reports forecast that the European concrete admixtures industry will grow by up to 11% year-on-year in the period 2022–2027 (see, for example: Sika, Annex 503 [§], FMN).

⁵⁴ See Table 2.

gathered through questionnaires, and calls held with some competitors of the Parties.⁵⁵

Production of chemical admixtures

- 6.9 Chemical admixtures are manufactured by blending polymers and other chemicals together.⁵⁶ Generally, chemical admixture suppliers purchase polymers from chemical companies, although some suppliers, including the Parties, have their own polymer production facilities and self-supply some of their polymer requirements.⁵⁷
- 6.10 Suppliers of chemical admixtures in the UK typically purchase raw materials (including polymers) from Europe or Asia.⁵⁸ Market participants told us that there is a global shortage of the raw materials needed to produce chemical admixtures.⁵⁹ In particular, one smaller supplier of chemical admixtures told us that sourcing raw materials at a good price and in adequate quantities is becoming more challenging.⁶⁰
- 6.11 Most suppliers, including the Parties, produce a number of different types of chemical admixtures for concrete, including those outlined at paragraph 6.3.⁶¹ Some suppliers of chemical admixtures for concrete, including Sika but not MBCC, also supply chemical admixtures for cement.⁶² Other small suppliers specialise in only water resisting/retaining admixtures.⁶³
- 6.12 We understand that many suppliers, including the Parties, produce chemical admixtures for most types and applications of concrete.⁶⁴ However, some suppliers specialise in the production of chemical admixtures for pre-cast

⁵⁵ In particular, we issued a questionnaire to third party suppliers of chemical admixtures active in the UK. We received 11 responses to this questionnaire (**competitor questionnaire**). The two other suppliers (other than the Parties), GCP and Saint-Gobain, provided revenue data to enable us to calculate shares of supply. We also relied on information that Saint-Gobain and GCP submitted to the CMA as part of the CMA's parallel phase 1 investigation into the Saint-Gobain/GCP Merger in our investigation.

⁵⁶ FMN, paragraph 171, footnote 107.

⁵⁷ In addition to the Parties, Saint-Gobain, Mapei, and MC Bauchemie have their own polymer production facilities (Sika, Annex 399 [REDACTED], FMN).

⁵⁸ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Third Party response to the phase 1 competitor questionnaire [REDACTED].

⁵⁹ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

⁶⁰ Note of call with a Third Party, phase 1 [REDACTED]. Another small supplier also told us that sourcing raw materials is becoming more challenging (Third Party response to the phase 1 competitor questionnaire [REDACTED]).

⁶¹ In respect of third party suppliers we note that Saint-Gobain, GCP, Oscrete and Mapei each produce a number of different types of admixtures for concrete, including those listed at paragraph 6.3 (Sika, Annex 356 [REDACTED], FMN).

⁶² In respect of third party suppliers we note that Saint-Gobain, GCP, and Mapei produce chemical admixtures for cement, while Oscrete does not (Sika, Annex 356 [REDACTED], FMN). MBCC produces cement admixtures in Europe, but does not supply cement admixtures in the UK (Sika, Annex 398 [REDACTED], FMN).

⁶³ In particular, David Ball Group, Schomburg, FIS, and Kryton specialise in water resisting/retaining chemical admixtures. The Parties and most third party suppliers also produce water resisting/retaining chemical admixtures (Sika, Annex 356 [REDACTED], FMN).

⁶⁴ Third party responses [REDACTED] to the phase 1 competitor questionnaire.

concrete, or concrete for particular applications such as tunnelling and watertight concrete.⁶⁵

- 6.13 To sell products in the UK, suppliers must meet minimum performance requirements set by the British Standards Institute for each type of chemical admixture.⁶⁶ Notwithstanding these regulatory standards, market participants indicated that there are differences in the performance and quality of individual admixtures, particularly when used with a customer's particular mix design (including their specific aggregates) or for particular applications.⁶⁷

Product development and innovation

- 6.14 Evidence from the Parties and third parties indicates that product development and innovation is an important aspect of competition in the supply of chemical admixtures. Product development and innovation can take many forms, ranging from customising existing admixtures to meet the particular needs of customers,⁶⁸ to the development of new admixtures that improve the qualities of cementitious products or reduce production costs.
- 6.15 Suppliers of chemical admixtures have dedicated technical resources, including laboratories and specialist staff, in all major territories in which they are active.⁶⁹ These technical teams are located near customers in part because the requirements of customers and the composition of their aggregates (and therefore the precise formulation of chemical admixture required) vary at the local level and over time (as customers switch to new aggregates and other raw materials as their current sources are exhausted).⁷⁰
- 6.16 Technical teams undertake technical trials for new customers (see paragraph 6.45) and also provide after-sales services to support customers with their mix design on an ongoing basis. They also adjust admixtures to better meet the needs of new or existing customers or the requirements of a particular project.⁷¹ This can be an iterative process between a customer and supplier throughout the commercial relationship and can sometimes result in

⁶⁵ In particular Oscrete specialises in pre-cast concrete (Third Party response to the phase 1 competitor questionnaire [X]) and Normet specialises in concrete used in the production of tunnels (Third Party response to the phase 1 competitor questionnaire [X]). In addition, [X] and [X] specialise in the production of watertight concrete (Third Party responses [X] to the phase 1 competitor questionnaire).

⁶⁶ FMN, paragraphs 140-141.

⁶⁷ Note of call with a Third Party, phase 1 [X]; Note of call with a Third Party, phase 1 [X]; Note of call with a Third Party, phase 1 [X].

⁶⁸ For example, by tweaking formulations to work with a customer's aggregate mix or adjusting a formulation to meet the specific requirements of a project such as concrete strength for an infrastructure project. Parties' Phase 2 Remedies Proposal 1.9 and 1.10.

⁶⁹ FMN, paragraph 342.

⁷⁰ FMN, paragraphs 149, 201, 342, and 358-360.

⁷¹ Sika, Annex 065 [X], FMN.

the launch of a new admixture (ie a supplier adding the new formulation to their range).⁷²

- 6.17 In addition to the services provided by their local technical teams, chemical admixture suppliers may also have a centralised R&D function that undertakes projects to develop new or improved chemical admixtures and may assist its local technical teams in adjusting admixtures to meet the needs of a particular customer.⁷³
- 6.18 Such projects often relate to the development and adaptation of existing admixtures (ie to improve their performance for certain applications) but can also relate to the development of new materials, inputs, or processes that may result in one or more new admixtures (eg through developments in polymer technologies).⁷⁴
- 6.19 Some projects relate to the development of chemical admixtures that improve the sustainability of concrete, for example [REDACTED].⁷⁵ Market participants told us that innovation in chemical admixtures aimed at improving the sustainability of concrete is of increasing importance in the UK and in the industry more generally.^{76,77}
- 6.20 In some cases new product or process developments may be patentable and suppliers of chemical admixtures routinely monitor the chemical admixture R&D activities and patents secured by competing suppliers.⁷⁸
- 6.21 Consistent with this evidence, several chemical admixture suppliers told us that suppliers differentiate themselves from their competitors through innovation and by developing new products.⁷⁹ One of these suppliers considered that there will be considerable competition among suppliers of

⁷² Sika, Annex 065 [REDACTED], FMN; FMN, paragraphs 372-375.

⁷³ Sika, Annex 065 [REDACTED], FMN; Sika, Annex 397 [REDACTED], FMN; FMN, paragraph 373.

⁷⁴ R&D also involves the routine maintenance of product lines. FMN, paragraph 377.

⁷⁵ FMN, paragraphs 548 and 550; Sika, Annex 399 [REDACTED], FMN.

⁷⁶ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

⁷⁷ Consistent with this, the Parties submitted that there will be an increased focus on sustainable chemical admixtures going forward as the importance of sustainability for concrete producers has grown (FMN, paragraphs 552 and 546). In line with this, the Parties are engaged in a number of sustainability focussed R&D projects (Sika, Annex 397 [REDACTED], FMN); and are developing 'sustainable' chemical admixtures (FMN, paragraph 548; Sika, Annex 399 [REDACTED], FMN).

⁷⁸ Sika, Annex 397 [REDACTED], FMN. We understand that patents typically relate to the inputs that improve the performance or use-cases of a chemical admixture product rather than the finished product itself. By way of example Sika has a patent that relates to specific polymers in a solid state (powder, flakes) and the use of such polymers dispersants and plasticizing agents in cementitious systems (FMN, paragraph 497).

⁷⁹ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

chemical admixtures to innovate and develop new products to support customer demand for sustainable solutions.⁸⁰

Distribution of chemical admixtures

- 6.22 Chemical admixtures are typically supplied in ready-to-use liquid form and added to cementitious products at a plant or construction site.⁸¹
- 6.23 Suppliers deliver chemical admixtures directly to a customer's premises into dedicated storage tanks, either in trucks that carry many plastic containers with steel cages (IBCs) or in bulk tankers.⁸² Some suppliers own and manage their distribution network including the vehicles used to deliver chemical admixtures, while others use third party logistics suppliers to distribute all or part of their chemical admixtures.⁸³ We understand that only a very small proportion of chemical admixture sales are made through third-party distributors or retailers.⁸⁴
- 6.24 As set out in paragraph 7.18, the large majority of chemical admixtures consumed in the UK are produced in the UK. In line with this, suppliers of chemical admixtures generally satisfy most of their UK customers' demand with chemical admixtures produced in the UK and import only relatively small quantities of chemical admixtures (eg importing only specialist admixtures or admixtures for cement).⁸⁵ For instance, one supplier told us that it imports waterproofing admixtures from Europe but stated that it is not economical to import admixtures into the UK more generally.⁸⁶
- 6.25 Some suppliers without UK production facilities, and which therefore import all of their chemical admixtures to supply UK customers, indicated that not having a UK production facility affects their ability to compete. In particular:
- (a) One supplier told us that having UK based production is necessary to compete effectively in the UK and noted that its transportation costs account for 10-15% of its prices.⁸⁷
 - (b) Another supplier told us that its shipping costs have increased by 70% since the UK's departure from the EU and that it is considering setting up

⁸⁰ Note of call with a Third Party, phase 1 [REDACTED].

⁸¹ FMN, paragraph 131.

⁸² Note of call with a Third Party, phase 1 [REDACTED].

⁸³ FMN, paragraphs 423 and 424; Note of call with a Third Party, phase 1 [REDACTED].

⁸⁴ FMN, paragraphs 423 and 424.

⁸⁵ Third party responses ([REDACTED]) to the phase 1 customer questionnaire, MBCC [REDACTED] while Sika [REDACTED] (Parties' response dated 17 March 2022 to the phase 1 RFI 2).

⁸⁶ Note of call with a Third Party, phase 1 [REDACTED].

⁸⁷ This supplier is in the process of setting up a UK production facility (Note of call with a Third Party, phase 1 [REDACTED]).

a UK production facility but is facing difficulties finding suitable premises.⁸⁸

Customers of chemical admixtures

- 6.26 We have gathered information from 21 customers of chemical admixtures, representing more than 50% of the Parties' sales (by value) of chemical admixtures in the UK in 2021.⁸⁹ They include a mix of large and small customers.⁹⁰ This information was primarily gathered through questionnaires and calls with some larger customers of the Parties.⁹¹
- 6.27 Customers of chemical admixtures include large ready-mix and pre-cast concrete producers that operate plants across the UK, major construction companies working on national infrastructure projects (eg HS2), as well as other local, typically independent, concrete producers.⁹²
- 6.28 We estimate that at least [40-50%] of the chemical admixtures sold in the UK (by value) in 2021 were purchased by just five customers: [X] (**Large Customers**).⁹³ These Large Customers accounted for [X]% and [X]% of Sika and MBCC's UK chemical admixtures sales (by value) in 2021 respectively.⁹⁴ These Large Customers supply ready-mix and/or pre-cast concrete, as well as smaller volumes of other cementitious products, to the construction industry.
- 6.29 Other customers include suppliers of ready-mix and/or pre-cast concrete and suppliers that produce concrete for specific applications eg the manufacture of concrete railway sleepers. These customers purchase significantly smaller volumes of admixtures.⁹⁵

⁸⁸ As an alternative to setting up a UK production facility, this supplier told us that they are seeking an agreement with a third-party chemical producer that would blend its chemical admixtures in the UK (Note of call with a Third Party, phase 1 [X]).

⁸⁹ Our analysis of data submitted by the Parties shows that the respondents to our customer questionnaire represented at least [X]% and [X]% of Sika and MBCC's sales to UK customers in 2021, respectively. See: Sika, Annex 063 [X], FMN; MBCC, Annex 064 [X], FMN.

⁹⁰ Some customers purchased more than £2.5 million of admixtures in 2021, while others purchased less than £500,000.

⁹¹ In particular, we issued a questionnaire to a sample of customers of chemical admixtures in the UK. We received 21 responses to the questionnaire (**customer questionnaire**), of which 20 respondents purchased chemical admixtures from the Parties.

⁹² FMN, paragraph 335.

⁹³ Sika, Annex 063 [X], FMN; MBCC, Annex 064 [X], FMN; Third party responses ([X]) to phase 2 RFI 2. These [X] are identified as key accounts by the Parties in their internal documents (see paragraph 8.36(a)) and are the only respondents to our questionnaire that made more than £2.5 million of chemical admixture purchasers in 2021 (excluding internal purchases) (see Third party responses ([X]) to the phase 1 customer questionnaire).

⁹⁴ In line with this, we found that each of the Parties' top 10 customers accounted for [X] [a significant part] of their UK chemical admixture revenues in 2021, while each of the Parties had [X] that accounted for more than [X]% of their revenues (Sika, Annex 063 [X], FMN; MBCC, Annex 064 [X], FMN).

⁹⁵ Third party responses ([X]) to the phase 1 customer questionnaire.

Importance of chemical admixtures

- 6.30 Many customers told us that chemical admixtures are an essential input in the production of cementitious products.⁹⁶ This is because construction methods have become increasingly complex and rely on the use of chemical admixtures.⁹⁷
- 6.31 In particular customers told us that chemical admixtures:
- (a) reduce the overall cost of concrete production (by reducing the amount of cement required to produce concrete);⁹⁸
 - (b) improve the performance and workability of cementitious products, particularly the strength and durability of concrete;⁹⁹
 - (c) reduce the environmental impact of cementitious products that have traditionally been carbon intensive;¹⁰⁰
 - (d) facilitate the substitution of cement with waste products, which, for example, allows for the production of low-carbon concrete;¹⁰¹ and
 - (e) reduce the time needed to produce cement.¹⁰²
- 6.32 Evidence from customers indicates that chemical admixtures typically represent a small proportion of the final price of their cementitious products, (1-7%) depending on the type and volume of admixture required.¹⁰³ However, several smaller customers told us that for higher performance or specialist admixtures this can rise to more than 25%.¹⁰⁴

⁹⁶ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Third Party responses ([REDACTED]) to phase 2 RFI 1.

⁹⁷ For example, admixtures have enabled the development of construction methods that require concrete pumping, underwater concreting and shotcreting.

⁹⁸ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

⁹⁹ Third Party responses ([REDACTED]), to phase 2 RFI 1.

¹⁰⁰ This is consistent with the growing importance of sustainability innovation and product development by suppliers of chemical admixtures (see paragraph 6.12). Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Third Party response to the phase 2 RFI 1 [REDACTED].

¹⁰¹ Third Party response to the phase 2 RFI 1 [REDACTED]. For example, chemical admixtures facilitate the use of waste materials such as fly ash (which is a by-product of coal-burning power stations) as a substitute for cement in the production of concrete.

¹⁰² Third Party response to the phase 2 RFI 1 [REDACTED].

¹⁰³ Third Party responses [REDACTED] to the phase 2 RFI 1.

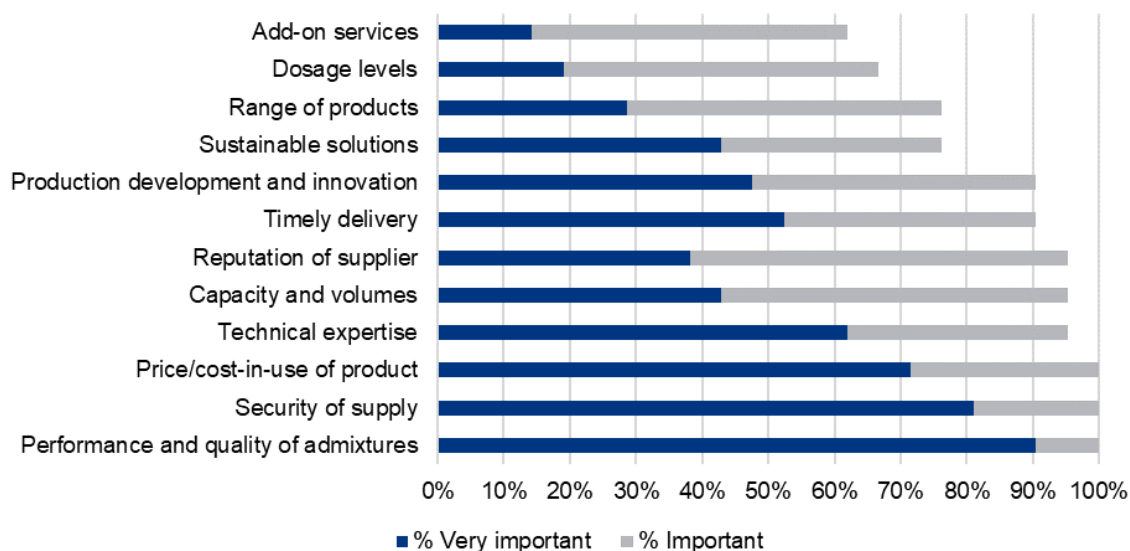
¹⁰⁴ Third Party responses [REDACTED] to the phase 2 RFI 1.

Factors affecting customers' choice of a chemical admixture supplier

6.33 In order to better understand customer choices and the parameters over which suppliers compete, we asked customers which factors are important to them when choosing a supplier to purchase chemical admixtures from.

6.34 Figure 1 shows the proportion of customers that categorised each factor as very important or important.

Figure 1: Factors affecting a customer's choice of chemical admixture supplier



Source: 21 responses to the phase 1 customer questionnaire. (Phase 1 customer questionnaire, question 16: 'What are your company's main considerations when choosing which supplier to purchase chemical admixtures for cement and concrete from? Please rate the importance of the factors in the list below'.)

Notes: Respondents were asked to categorise factors as either 'very important', 'important', 'not very important', 'not at all important' or as 'I don't know'. This includes the Large Customers outlined at paragraph 6.28.

6.35 As can be seen from Figure 1:

- (a) All factors scored highly with respondents to our customer questionnaire, with no factor scored as important or very important by fewer than half of respondents. This is consistent with customers considering a broad range of factors when choosing a chemical admixture supplier.
- (b) All respondents to our customer questionnaire considered performance and quality of the chemical admixtures, security of supply and price to be important or very important factors when choosing a supplier.
- (c) The vast majority of respondents considered technical expertise, capacity and volumes, reputation of supplier, timely delivery, and product development and innovation to be important or very important factors when choosing a supplier.

- (d) The majority of respondents considered sustainable solutions, the range of admixtures, dosage levels and add-on services to be important or very important factors when choosing a supplier.
- 6.36 Many customers also told us that it is essential for their chemical admixture supplier(s) to have advanced product development and innovation capabilities to ensure that they have access to the latest products and can maintain their competitiveness.¹⁰⁵ This is consistent with evidence from suppliers as discussed in paragraphs 6.14 to 6.19 above.
- 6.37 While the factors considered to be important by Large Customers when selecting a supplier were broadly similar to those for all customers, they also indicated that they have additional requirements to other customers and that only a limited number of suppliers can meet those requirements. In particular:
- (a) Four Large Customers said that their volume requirements, and the need for the chemical admixtures to be delivered to their network of production sites (eg more than 100 for [REDACTED] and [REDACTED]),¹⁰⁶ mean that only some suppliers have sufficient scale and the operational network to meet their needs.¹⁰⁷
 - (b) Two Large Customers told us that they need access to a broad range of chemical admixtures and that only a limited number of suppliers can meet this need.¹⁰⁸
- 6.38 We note that the views of customers outlined above, in particular Large Customers, are consistent with proposals and tender documents prepared by the Parties and customers that we have reviewed, which show that customers consider a broad range of factors when choosing a supplier of chemical admixtures, including technical services, R&D, innovation, and delivery service level requirements.¹⁰⁹

Sourcing models for chemical admixtures used by customers

- 6.39 The majority of respondents to our customer questionnaire told us that they source most, or a large proportion, of their chemical admixture requirements

¹⁰⁵ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Third Party responses ([REDACTED]) to phase 2 RFI 1; Third Party responses to the phase 1 consumer questionnaire ([REDACTED]).

¹⁰⁶ [REDACTED], [REDACTED] and [REDACTED] each operate over 80 concrete plants across the UK. ([REDACTED]).

¹⁰⁷ Third Party responses ([REDACTED]) to the phase 1 consumer questionnaire; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

¹⁰⁸ Third Party responses ([REDACTED]) to the phase 1 consumer questionnaire; Note of call with a Third Party, phase 1 [REDACTED].

¹⁰⁹ See for example: Sika, Annex 91 [REDACTED], FMN; Sika, Annex 321 [REDACTED], FMN; MBCC, Annex 332 [REDACTED], FMN; Note of call with a Third Party, phase 1 [REDACTED].

from one supplier, with smaller quantities being sourced from a number of other suppliers.¹¹⁰

6.40 In addition to the chemical admixtures sourced from their main supplier, customers typically source smaller volumes from a number of suppliers that supply particular high-performing or specialist admixtures, or as a result of a downstream customer specifying a particular supplier's admixture in their project specification.¹¹¹ It is uncommon for customers to source the same type of chemical admixture from multiple suppliers for other reasons.¹¹²

6.41 Table 1 provides a breakdown of Large Customers' chemical admixture suppliers in the UK.

Table 1: Sources of chemical admixtures for Large Customers (2021)

	<i>Sika</i>	<i>MBCC</i>	<i>Saint-Gobain</i>	<i>Number of other suppliers</i>
[REDACTED]	80-100%	<20%	<20%	7
[REDACTED]	<20%	40-60%	<20%	5
[REDACTED]	<20%	<20%	40-60%	[REDACTED]
[REDACTED]	[REDACTED]%	60-80%	<20%	2
[REDACTED]	[REDACTED]%	[REDACTED]%	<[REDACTED]%	[REDACTED]

Source: Phase 1 customer questionnaire, question 11; Third Party response to the phase 2 RFI 2 ([REDACTED]). Respondents were asked to identify what proportion of their admixture requirements they sourced from suppliers active in the UK using the following categories: 0%; 0-20%; 20-40%; 40-60%; 60-80%; and 80-100%.

Note: Each of the Large Customers listed in Table 1 do not source more than 20% of their admixture requirements from any other single supplier.

6.42 Table 1 shows that Large Customers source chemical admixtures from at least five different suppliers but rely on one main supplier for a large proportion of their requirements.¹¹³ In relation to this:

(a) One Large customer told us that it has one main supplier and that it uses other suppliers for cement admixtures when working on large infrastructure projects, and for one of its smaller regions in the UK.¹¹⁴

¹¹⁰ Third party responses ([REDACTED]) to the phase 1 customer questionnaire. Respondents were asked to identify what proportion of their admixture requirements they sourced from suppliers active in the UK using the following categories: 0%; 0-20%; 20-40%; 40-60%; 60-80%; and 80-100%.

¹¹¹ We understand that in most cases sourcing decisions are taken by customers (ie those producing cementitious products) but that in a minority of cases sourcing decisions may be influenced or made by the end customer on a particular construction project (Third Party response to the phase 1 competitor questionnaire [REDACTED]). Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

¹¹² Another reason given by customers for sourcing the same type of chemical admixture from multiple suppliers is where suppliers have regional supply agreements. Notwithstanding, we found that those suppliers with regionalised contracts source a significant proportion of their admixtures from one supplier (Third Party response to the phase 1 customer questionnaire [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]).

¹¹³ In addition, we note that two other respondents to the phase 1 customer questionnaire that purchased between £1 million and £2.5 million of chemical admixtures in 2021 sourced the majority of their chemical admixtures from one supplier (Third Party responses ([REDACTED]) to the phase 1 customer questionnaire).

¹¹⁴ This customer said that having multiple suppliers helps it get better terms with suppliers, for example by enabling it to compare and challenge aspects of a supplier's offering including its product quality and innovation. Note of call with a Third Party, phase 1 [REDACTED]; Third Party response to the phase 1 customer questionnaire [REDACTED].

- (b) Two other Large Customers told us that they use one main supplier for their national supply of concrete admixtures to standardise their mix design across different production locations.¹¹⁵ One of these customers also told us that having a main supplier provides economies of scale.¹¹⁶

Negotiations, tenders, and supply agreements for chemical admixtures

- 6.43 Customers procure chemical admixtures through spot purchases, bilaterally negotiated contracts, and/or tenders.¹¹⁷
- 6.44 As described below, bilateral negotiations and tenders typically involve at least two stages, a technical trial stage and a competitive offer phase. Once this process has been completed, customers decide whether to switch all or some of their demand to a new supplier or remain with their current supplier.

Technical trials and product development

- 6.45 Customers need to undertake technical trials when purchasing chemical admixtures to establish the optimum dosage of the chemical admixture and test the resulting cementitious product against their requirements.¹¹⁸ For this purpose, suppliers of chemical admixtures have dedicated technical resources, including laboratories and specialist staff, that undertake trials and offer after-sales services such as training for a customer's employees and assisting customers with the mix-design of concrete.¹¹⁹
- 6.46 Customers use the trial stage of tenders and bilateral negotiations to test suppliers' chemical admixtures with their aggregates to assess, among other things, how the admixtures affect the quality of the final cementitious product. In some cases, the product trial process will involve suppliers working with customers to develop new or reformulated chemical admixtures, with suppliers competing to have the best performing products relative to the customers' requirements.^{120, 121}

¹¹⁵ Note of call with a Third Party, phase 1 [REDACTED]; Third Party response to the phase 2 RFI 2 [REDACTED].

¹¹⁶ Third Party response to the phase 2 RFI 2 [REDACTED].

¹¹⁷ The Parties estimate that sales to customers after a tender process and after bilateral negotiations (and spot purchases) each account for around half of the chemical admixtures market (FMN, paragraph 422).

¹¹⁸ For example, ensuring concrete has sufficient compressive strength. (Third Party responses ([REDACTED]) to the phase 1 customer questionnaire).

¹¹⁹ FMN, paragraph 342.

¹²⁰ By way of example, see: Sika, Annex 360 [REDACTED], FMN; Sika, Annex 362 [REDACTED], FMN.

¹²¹ We understand that this process is sometimes supported by a supplier's dedicated R&D function. Sika, Annex 397 [REDACTED], FMN; FMN, paragraph 373. Both large and small customers (or those procuring for small contracts) undertake technical trials that involve multiple suppliers of chemical admixtures (Sika, Annex 78 [REDACTED], FMN).

- 6.47 Generally, customers have their own in-house technical teams which are responsible for the mix design, testing, and production of their cementitious products, including the management of the technical trials undertaken when purchasing a chemical admixture.¹²²
- 6.48 However, many customers indicated that their in-house technical capabilities are not an effective alternative to the technical resources and R&D function of the Parties and other suppliers of chemical admixtures. In particular customers indicated that, while they may have some capability to test admixtures against their requirements and establish optimum mix-designs, their in-house technical capabilities cannot develop or reformulate chemical admixtures:
- (a) Many customers told us that they can undertake some trials to determine whether an admixture meets their requirements in-house.¹²³ However, the large majority of these customers told us that their in-house technical teams lack either the scale or expertise to be self-sufficient.¹²⁴
 - (b) Two customers told us that they rely on their chemical admixtures supplier for mix design support.¹²⁵
 - (c) One customer told us it relies on the expertise of its chemical admixture supplier(s), in particular to reduce the carbon footprint of its concrete and to formulate chemical admixtures bespoke to its requirements.¹²⁶
 - (d) Another customer told us that its technical capabilities cannot develop or reformulate chemical admixtures or the polymer systems that are used in the development of admixtures.¹²⁷

Tenders and supply agreements

- 6.49 Once suppliers are found to meet the customer's technical requirements during the trial stage of the bilateral negotiation or tender process, suppliers are invited to submit a proposal for the supply contract.
- 6.50 A number of market participants told us that supply agreements for chemical admixtures are typically for a one to three year period.¹²⁸ As set out in

¹²² Third Party responses ([REDACTED]) to phase 2 RFI 1.

¹²³ Third Party responses ([REDACTED]) response to phase 2 RFI 1.

¹²⁴ Third Party responses ([REDACTED]) response to phase 2 RFI 1.

¹²⁵ Third Party responses ([REDACTED]) response to phase 2 RFI 1.

¹²⁶ Third Party response to phase 2 RFI 1 [REDACTED].

¹²⁷ Third Party response to phase 2 RFI 1 [REDACTED].

¹²⁸ Notwithstanding, we found that in some cases customers do not have formal supply contracts with their suppliers (Third Party response to the phase 2 putback table [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED];

paragraph 6.33, the proposals and tender documents prepared by the Parties and customers that we have reviewed show that customers consider a broad range of factors when choosing a supplier of chemical admixtures. We understand that supply agreements can include certain performance requirements, including requirements relating to service levels and R&D.¹²⁹ Two market participants told us that agreements generally do not include minimum volume/purchase requirements, nor do they restrict a customer purchasing from competing suppliers.¹³⁰

- 6.51 We understand that most Large Customers source chemical admixtures using national supply agreements to cover most, if not all, of their production locations in the UK, although some award supply contracts on a regional basis or, in some cases, for a particular construction or infrastructure project.¹³¹

Switching process for customers

- 6.52 The large majority of respondents to our customer questionnaire did not consider that they could easily switch between chemical admixtures produced by different suppliers.¹³² Many customers told us that switching supplier is a long and costly process, as it requires working with a new supplier to test (and in some cases develop) the right product to use with their cement and aggregates in addition to training sales and technical teams on the new products.¹³³
- 6.53 To better understand the potential barriers to switching faced by customers we asked customers which factors were important when deciding whether to switch supplier. The proportion of customers that categorised a factor as very important or important is shown in Figure 2.

Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Third Party response to the phase 1 customer questionnaire [REDACTED].

¹²⁹ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

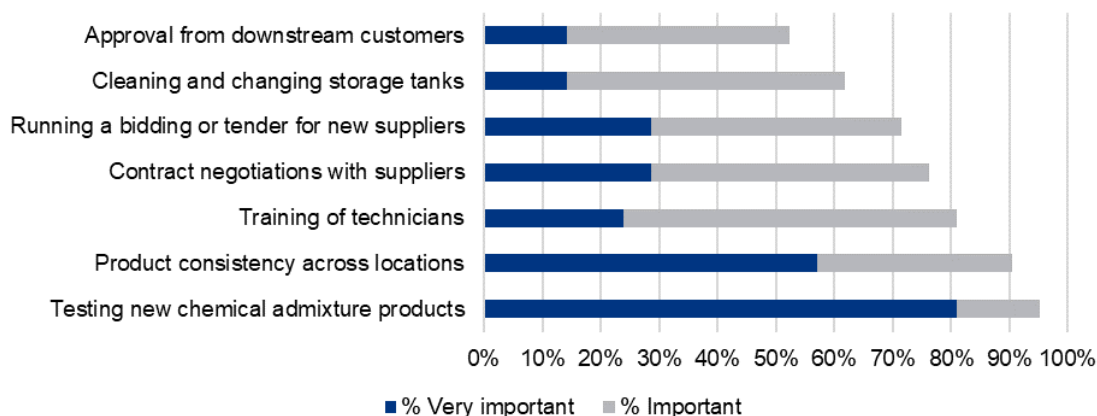
¹³⁰ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

¹³¹ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Third Party response to the phase 1 customer questionnaire [REDACTED].

¹³² Third Party responses ([REDACTED]) to the phase 1 customer questionnaire.

¹³³ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire; Third Party responses ([REDACTED]) to the phase 2 RFI 1.

Figure 2: Factors affecting a customers' decision to switch supplier



Source: 21 customer responses to the Phase 1 customer questionnaire. (Phase 1 customer questionnaire, question 22: 'How important are the following factors for your company when considering whether to switch supplier of chemical admixtures for cement and concrete in the UK?'.)

Notes: Respondents were asked to categorise factors as either 'very important', 'important', 'not very important', 'not at all important' or as 'I don't know'.

6.54 As can be seen from Figure 2, the vast majority of respondents considered testing the new chemical admixtures and ensuring consistency of end product across locations to be important or very important factors when deciding whether to switch supplier. Training technicians and other employees to use the new admixtures, contract negotiations with suppliers and running a bidding or tender process for new suppliers were considered to be important or very important factors by a large majority of respondents. Other factors, such as cleaning and changing storage tanks and seeking approval from customers were seen as less important by respondents to our questionnaire (although they were still considered important by most respondents).

6.55 Switching admixture suppliers when supplying large construction and infrastructure projects was seen as particularly difficult by some customers, with one customer indicating that such switching would be 'extremely difficult'.¹³⁴ These customers told us that, as each input is tested in combination with the others being used in the project, any change in their mix design would typically require approval from the downstream customer before they could use a new supplier and switch to a new admixture.¹³⁵

6.56 Evidence from Large Customers indicates that they find switching supplier more difficult than other customers, particularly when switching their main supplier:

¹³⁴ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

¹³⁵ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

- (a) Large Customers have a large network of production sites across the UK and require separate technical trials across different locations (and for each different type of chemical admixture) when switching supplier.¹³⁶
- (b) Some Large Customers indicated that technical trials are a lengthy process, with one Large Customer noting that technical trials in the context of a tender process can take between 8-12 months.¹³⁷
- (c) One of these Large Customers told us that its products had been developed alongside the admixtures of its supplier, which made it more difficult to switch supplier.¹³⁸

6.57 Consistent with this, Large Customers switch supplier infrequently and, when they do switch, they tend to switch only a portion of their demand, or switch to a new supplier slowly over time.¹³⁹

- (a) One Large Customer switched a regional contract from [REDACTED] to [REDACTED], the incumbent supplier of its other regional contract, in 2021 to be solely supplied by [REDACTED] for its concrete admixture requirements.¹⁴⁰ These regional contracts were initially awarded after a tender in [REDACTED].¹⁴¹
- (b) Another [REDACTED].¹⁴²
- (c) Another Large Customer told us it decided to remain with MBCC for all its contracted, non-project requirements after running a tender in 2020.¹⁴³
- (d) Another Large Customer told us it has been supplied by Saint-Gobain since 2015 and decided to extend its contract with this supplier after it abandoned a planned tender process in 2020.¹⁴⁴
- (e) Another Large Customer switched from GCP for its main supply to MBCC in 2015 after a tender process and told us that it was a gradual process to move the majority of products across from the incumbent supplier.¹⁴⁵

¹³⁶ Third Party response to the phase 2 RFI 1 [REDACTED]; Third Party response to the phase 1 customer questionnaire [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

¹³⁷ Consistent with this, a recent tender process by a Large Customer lasted one year and required three to four months for the customer to switch only a small number of its production sites to another supplier (Note of call with a Third Party, phase 1 [REDACTED]). Third Party response to the phase 2 RFI 1 [REDACTED]; Third party responses ([REDACTED]) to the phase 1 customer questionnaire; Note of call with a Third Party, phase 1 [REDACTED].

¹³⁸ Note of call with a Third Party, phase 1 [REDACTED].

¹³⁹ In relation to smaller customers, the CMA has identified some instances of switching. Sika, Annex 313 [REDACTED], FMN.

¹⁴⁰ Third Party response to the phase 2 RFI 2 [REDACTED].

¹⁴¹ Sika, Annex 313 [REDACTED], FMN.

¹⁴² Note of call with a Third Party, phase 1 [REDACTED].

¹⁴³ Third Party response to the CMA's questions [REDACTED].

¹⁴⁴ Note of call with a Third Party, phase 1 [REDACTED].

¹⁴⁵ Third Party response to the phase 2 RFI 2 [REDACTED].

Summary

- 6.58 This chapter described the nature of competition in the supply of chemical admixtures.
- 6.59 Based on our assessment of the evidence on the production, development, and distribution of chemical admixtures by suppliers, we have found that:
- (a) Most suppliers, including the Parties, produce a number of different types of chemical admixtures for concrete, and suppliers typically offer a number of different formulations for each different type of chemical admixture.
 - (b) Product development and innovation is an important aspect of competition between suppliers of chemical admixtures.
 - (c) Suppliers of chemical admixtures generally satisfy most of their UK customers' demand with chemical admixtures produced in the UK and import only relatively small quantities of chemical admixtures (eg importing only specialist admixtures or admixtures for cement). Suppliers that do not have UK production facilities consider that this affects their ability to compete for UK customers.
- 6.60 Based on our assessment of the evidence on the demand for chemical admixtures by customers, we have found that:
- (a) Chemical admixtures are an essential input in the production of cementitious products.
 - (b) There is a broad range of factors which customers consider when deciding which supplier to source chemical admixtures from. Large Customers have additional needs. In particular, they require their supplier to be able to produce large volumes of admixtures and to be able to deliver admixtures to their large number of production sites.
 - (c) Customers typically source most, or a large proportion, of their chemical admixture requirements from one supplier, with smaller quantities and/or specialist products being sourced from a number of other suppliers.
- 6.61 The evidence on the way chemical admixtures are procured by customers through bilateral negotiations and/or tender processes shows that:
- (a) Customers need to undertake extensive technical trials when purchasing chemical admixtures to test suppliers' chemical admixtures with their aggregates and assess the overall performance of the chemical admixtures in relation to the quality of the final cementitious product.

(b) Switching is not easy, takes time, and is costly.

7. Market definition

7.1 Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We take these factors into account in our competitive assessment.¹⁴⁶

Product market

7.2 The Parties submitted that the relevant product market includes chemical admixtures for concrete, cement, and certain types of mortar, without further segmentation.¹⁴⁷ The Parties stated that while they are not all demand-side substitutes, there is a high degree of supply-side substitutability between the three types of chemical admixtures.

7.3 Identifying the product market definition starts with the overlapping activities of the merger firms.¹⁴⁸ In this case, the Parties overlap in the supply of chemical admixtures for concrete only.

7.4 We considered whether it would be appropriate to widen the product market beyond the Parties' overlapping activities to include the supply of chemical admixtures for cement and chemical admixtures for mortar. These are discussed in turn below.

Chemical admixtures for cement

7.5 On the demand-side, the views of market participants were consistent with the Parties' submissions that cement admixtures are not alternatives to concrete admixtures (and *vice versa*).¹⁴⁹ We understand that this is because each type of admixture is designed to modify cementitious products in different ways.

¹⁴⁶ MAGs, paragraph 9.4.

¹⁴⁷ FMN, paragraph 182.

¹⁴⁸ MAGs, paragraph 9.6.

¹⁴⁹ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

- 7.6 On the supply-side, we found that all suppliers of cement admixtures active in the UK also supply concrete admixtures.¹⁵⁰ Evidence from these suppliers suggests that there are no or very low additional costs when switching production from one type of admixture to the other and that they can use the same production equipment and inputs to produce both types of admixtures.¹⁵¹
- 7.7 Based on the evidence gathered, we find the relevant product market should be widened to include chemical admixtures for cement given that there appears to be some degree of supply-side substitutability between both types of admixtures. In particular, given that all suppliers of cement admixtures active in the UK also supply concrete admixtures, these suppliers could shift their existing production to supply concrete admixtures in response to demand from customers without incurring additional sunk costs.
- 7.8 However, we estimate that total demand for cement admixtures in the UK was less than 5% of total demand for concrete admixtures in 2021.¹⁵² We therefore do not consider that our competitive assessment would differ in this case if cement admixtures were not included in our market definition.

Chemical admixtures for mortar

- 7.9 The Parties submitted that certain concrete admixtures are chemically identical to those used in the production of wet mortars and have similar purposes, for example to reduce the water content in wet mortars.¹⁵³ The Parties submitted that there is both demand-side and supply-side substitutability between these types of chemical admixtures, as evidenced by the common customer base and competitor set for both types of admixtures.
- 7.10 However, the Parties submitted that other types of chemical admixtures used in the production of mortars (specifically for dry mortars) do not have the same characteristics as concrete admixtures.¹⁵⁴ As the customers and suppliers are not the same, the Parties submitted that these admixtures are

¹⁵⁰ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire; Third Party responses ([REDACTED]) to the CMA's revenues questionnaire. As noted in Chapter 6, not all suppliers of concrete admixtures active in the UK supply cement admixtures. As explained in paragraph 7.8, UK demand for cement admixtures is significantly smaller than UK demand for concrete admixtures, which may limit the incentives of suppliers of concrete admixtures to also supply cement admixtures. Consistent with this, [REDACTED] indicated that it deprioritised the supply of cement admixtures in part because of the small size of the market ([REDACTED]).

¹⁵¹ Third Party responses ([REDACTED]) to the competitor questionnaire; Note of call with a Third Party, phase 1 ([REDACTED]); Third Party responses ([REDACTED]) to the phase 1 customer questionnaire; [REDACTED].

¹⁵² CMA analysis of Annex 510 [REDACTED], FMN; Third Party responses ([REDACTED]) to the phase 1 revenues questionnaire.

¹⁵³ FMN, paragraph 186.

¹⁵⁴ FMN, paragraphs 187-188.

not demand-side or supply-side substitutes and should not be included in the relevant product market.

- 7.11 The information received from market participants is consistent with the Parties' submissions. On the demand-side, a customer that self-supplies the majority of its admixture requirements and supplies some volumes to the market told us that some admixtures for concrete and mortar (specifically wet mortar) have the same chemical formulation and tend to be interchangeable for customers.¹⁵⁵ This customer also confirmed that other types of chemical admixtures used in the production of mortars (specifically for dry mortars) do not have the same characteristics as concrete admixtures.¹⁵⁶
- 7.12 On the supply-side, two suppliers said that, while they would not face any significant additional cost to switch their production facilities from the production of cement and concrete admixtures to admixtures for wet mortars, switching production to admixtures for dry mortar would involve additional costs of £[REDACTED] million for drying equipment.¹⁵⁷
- 7.13 In addition, we understand that there are a number of suppliers that are active in the supply of admixtures for dry mortar (such as Synthomer, Bostik and Henkel) that are not active in the supply of concrete admixtures.¹⁵⁸
- 7.14 We therefore find that the product market should not be widened to include chemical admixtures for mortar, other than those admixtures that are identical to those used in the production of concrete (namely admixtures for wet mortars). In any event, we do not consider that our competitive assessment would differ in this case if dry mortar admixtures were included in our market definition as we understand that total demand for both types of mortar admixtures (ie wet and dry mortars) was less than 5% of total demand for concrete admixtures in 2021.¹⁵⁹

Conclusion on product market

- 7.15 Based on the evidence above, we conclude that the relevant product market definition is the supply of chemical admixtures for cement, concrete, and wet mortar.

¹⁵⁵ Note of call with a Third Party, phase 1 [REDACTED].

¹⁵⁶ Third Party response to the phase 2 RFI 1 [REDACTED].

¹⁵⁷ Third Party responses ([REDACTED]) response to the phase 1 RFI.

¹⁵⁸ FMN, paragraph 190.

¹⁵⁹ FMN, Table 9 and Table 13.

Geographic market

- 7.16 The Parties submitted that, in line with the European Commission's decision in *Lone Star / BASF Construction Chemicals (EB) Business*, the relevant geographic market is the UK.¹⁶⁰
- 7.17 The evidence we have gathered from customers is consistent with the Parties' submissions:
- (a) A number of customers told us that they would not rely on imports for a significant proportion of their supply needs because of concerns about security of supply.¹⁶¹
 - (b) Two customers noted that they only import speciality products and only in small quantities.¹⁶²
 - (c) One customer said that it had ruled out several chemical admixture suppliers during its most recent tender process because they did not have UK production facilities.¹⁶³
 - (d) Another customer noted that any delay caused by difficulties importing would be an 'expensive problem' as frequent deliveries are required to keep the large number of sites it has operating.¹⁶⁴
- 7.18 Data on trade flows obtained from the Parties is consistent with the evidence gathered from customers and suggests that the relevant market is no wider than national in scope. The latest available data from Eurostat shows that customers largely rely on chemical admixtures produced in the UK to meet demand within the UK, with only around 20% of consumption in the UK being met by imports in 2019.¹⁶⁵ As set out in paragraph 6.22, this includes imports by suppliers with UK production facilities (which import small volumes of chemical admixtures, particularly specialist products) as well as imports by suppliers without UK production facilities. Based on our understanding of the production locations of suppliers currently active in the UK and our market share estimates (as shown in Table 2 below), it is likely that no more than around 20% of consumption in the UK is currently met by imports and that this

¹⁶⁰ FMN, paragraphs 204-205.

¹⁶¹ Note of call with a Third Party, phase 1 [[§]]; Note of call with a Third Party, phase 1 [[§]]; Note of call with a Third Party, phase 1 [[§]].

¹⁶² Note of call with a Third Party, phase 1 [[§]]; Note of call with a Third Party, phase 1 [[§]].

¹⁶³ Note of call with a Third Party, phase 1 [[§]].

¹⁶⁴ Note of call with a Third Party, phase 1 [[§]].

¹⁶⁵ The Parties told us that this data is only available for 2018 and 2019 (Parties' response dated 25 February 2022 to the phase 1 RFI 1, Table 10 and paragraph 79b).

is an upper bound estimate of the true volume of chemical admixture imports into the UK.¹⁶⁶

7.19 In addition, the large majority of respondents to our competitor questionnaire indicated that local production, sales, and distribution are important requirements for supplying customers of chemical admixtures in the UK.¹⁶⁷

(a) A number of suppliers told us that the costs of transporting chemical admixtures makes it more difficult to rely on imports and be competitive on price.¹⁶⁸

(b) While a small number of suppliers said that they rely on imports of chemical admixtures to supply their customers in the UK, these suppliers told us that they either only import small volumes from production facilities outside the UK or are looking to start producing chemical admixtures in the UK in the next two years.¹⁶⁹

7.20 Consistent with the views of these suppliers, the importance of proximity to customers is recognised in an internal document prepared for BASF's sale of MBCC in 2018, which in the context of BASF's global operations notes that 'local manufacturing and proximity to customers are key success factors'.¹⁷⁰

Conclusion on geographic market

7.21 We therefore find that the relevant geographic market definition is the UK. We have nevertheless taken into account evidence on geographic aspects of competition, particularly constraints from imports into the UK, in our competitive assessment.

Conclusion on market definition

7.22 For the reasons discussed above, we conclude that the relevant market definition is the supply of chemical admixtures for cement, concrete, and wet mortar in the UK.

¹⁶⁶ Parties' response dated 25 February 2022 to the phase 1 RFI 1, Table 11; FMN, Figure 15.

¹⁶⁷ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire.

¹⁶⁸ Note of call with a Third Party, phase 1 ([REDACTED]); Note of call with a Third Party, phase 1 ([REDACTED]); Note of call with a Third Party, phase 1 ([REDACTED]); Third Party response to the phase 1 competitor questionnaire ([REDACTED]).

¹⁶⁹ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire. In particular, as discussed in Chapter 8, [REDACTED] is looking to start producing chemical admixtures in the UK.

¹⁷⁰ MBCC, Annex 44 ([REDACTED]), FMN.

8. Competitive assessment

- 8.1 In this chapter we have assessed whether the Merger 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 through horizontal unilateral effects.
- 8.2 Horizontal unilateral effects can arise in a merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.¹⁷¹
- 8.3 In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the relevant market, we considered (and discuss in turn below) the following:
- (a) The shares of supply of the Parties and other suppliers.
 - (b) Evidence on the closeness of competition between the Parties.
 - (c) Evidence on the competitive constraint that other suppliers would exert on the Merged Entity.
 - (d) Evidence on any countervailing constraints on the Merged Entity from entry and expansion of other suppliers or countervailing buyer power.

Market shares

- 8.4 In this section we consider the market shares of the Parties and other suppliers in the market for the supply of chemical admixtures for cement, concrete and wet mortar in the UK.
- 8.5 The Parties estimated that Sika and MBCC's market shares in 2021 were [X] [10-20%] and [X] [20-30%] respectively.¹⁷² The Parties submitted that the Merged Entity's share of [X] [30-40%] is below the level at which significant competition concerns can arise in a fragmented industry such as chemical admixtures.¹⁷³

¹⁷¹ MAGs, paragraph 4.1.

¹⁷² FMN, paragraph 260. The Parties estimated the size of the chemical admixtures market to have been £[X] million in 2021 when including chemical admixtures for cement and concrete and excluding self-supply by admixture customers (FMN, Table 7).

¹⁷³ FMN, paragraph 261; Parties' response to the Issues Letter – Chemical admixtures, paragraphs 2.1-2.13.

- 8.6 We were unable to verify the Parties' market share estimates, as their methodology relied at least partly on factors that could not be objectively verified (such as input from the Parties' business experts or their external advisors).¹⁷⁴ We therefore produced our own market share estimates by obtaining sales revenue data directly from the Parties and other suppliers of chemical admixtures active in the UK.¹⁷⁵
- 8.7 We received revenue data from all but three small suppliers identified by the Parties and third parties as active in the supply of admixtures in the UK. According to the Parties' own estimates, these suppliers made combined sales of less than £1.6 million in 2021.¹⁷⁶ On a conservative basis, we have adopted the Parties' revenue estimates for all 'other' suppliers (which included these three suppliers as well as a number of others) when calculating our market share estimates.¹⁷⁷
- 8.8 We estimate that Sika and MBCC's market shares were [20-30%] and [20-30%], respectively, in 2021.¹⁷⁸ This is shown in Table 2 below.

¹⁷⁴ Parties, Annex 053 [REDACTED], FMN.

¹⁷⁵ We used the following definitions when obtaining revenue data from chemical admixture suppliers: **Chemical admixtures for cement** are added to cement in order to reduce the amount of energy required to grind the cement (ie grinding aids) as well as to improve the performance of the cement (ie performance enhancers or quality improvers); **Chemical admixtures for concrete** are added to improve the properties of concrete or wet mortar, including super-plasticizers, plasticizers, air entrainers, retarders and accelerators; and **Other chemical admixtures** include admixtures for dry mortar and certain admixtures for wet mortar that are not also used for concrete, for example as they increase the adhesion properties of mortar but do not reduce the amount of water required. In line with our market definition, we have included sales revenue data from the Parties and other suppliers of chemical admixtures for chemical admixtures for cement and concrete (including certain mortar admixtures which are identical to concrete admixtures).

¹⁷⁶ FMN, Table 7.

¹⁷⁷ The Parties included [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] in their market share estimates for 'other' suppliers (FMN, Tables 9 and 11).

¹⁷⁸ Our estimates for Sika and MBCC's market shares in 2021 are based on the Parties' revenues from the sale of chemical admixtures for cement and concrete, as set out in the FMN (FMN, Tables 9 and 11), and the size of the chemical admixtures market being £[REDACTED] million when excluding self-supply by admixture customers in the UK. We estimated the size of the chemical admixtures market by summing the sales revenue data obtained directly from the Parties and other suppliers of chemical admixtures active in the UK for chemical admixtures for cement, concrete and wet mortar.

Table 2: Market shares in cement, concrete and wet mortar admixtures in the UK (2021)

<i>Supplier</i>	<i>Market share</i>
Sika	[20-30%]
MBCC	[20-30%]
<i>Merged Entity</i>	<i>[50-60%]</i>
The merged Saint-Gobain/GCP	[20-30%]
Oscrete	[5-10%]
Cementaid	[0-5%]
Cemex	[0-5%]
David Ball Group	[0-5%]
Foscroc	[0-5%]
Larsen	[0-5%]
Mapei	[0-5%]
MC-Construction Chemicals	[0-5%]
Normet	[0-5%]
ProcterJohnson	[0-5%]
Schomburg	[0-5%]
Other*	[0-5%]
Total	100%

Source: CMA analysis of the FMN (FMN, Tables 9 and 11), and third party responses to the CMA's revenues questionnaire.

* We were unable to obtain sales revenue data from three suppliers identified by the Parties and third parties ([§]). One competitor [§] told us that they do not supply UK customers.

Note: Following the completion of Saint-Gobain's acquisition of GCP on 27 September 2022, we have combined the shares of supply for Saint-Gobain and GCP in 2021 in the table. Saint-Gobain and GCP had shares of supply of [10-20%] and [5-10%] in 2021, respectively.

8.9 Table 2 shows the Merged Entity would have a market share of [50-60%] and would be more than twice the size of the next largest supplier of chemical admixtures in the UK, Saint-Gobain/GCP (following the completion of Saint-Gobain's acquisition of GCP on 27 September 2022).¹⁷⁹ The market post-Merger would be highly concentrated, with the Merged Entity and its two largest rivals representing nearly 80% of supply in the UK and a tail of remaining suppliers each having a market share of less than 5%.

8.10 Our market share estimates for the Parties are broadly consistent with those included in several of Sika's internal documents produced in the normal course of business.¹⁸⁰ Although we recognise that these shares have not been calculated on the same basis, they nevertheless show that in the ordinary course of business Sika considers the Parties to have a market position that is broadly consistent with that based on our own estimates.¹⁸¹

8.11 As a sensitivity check on our analysis, we calculated share of supply estimates using sales revenue data from the Parties and other suppliers active in the UK for all types of chemical admixtures (ie for cement, concrete and all types of mortar) and not just those included in our product market

¹⁷⁹ Our analysis of Annex 510 to the FMN [§] and third party responses to the CMA's revenues questionnaire also suggests that the shares of supply of the Parties, the merged Saint-Gobain/GCP, and all other suppliers combined has been stable (varying by less than three percentage points) in the period 2018-2021.

¹⁸⁰ For example: Sika, Annex 007 [§], FMN; Sika, Annex 077 [§], FMN; Sika, Annex 095 [§], FMN; Sika, Annex 301 [§], FMN. We have attached more weight to these documents than to documents that were prepared in contemplation of the Merger, which the Parties noted included lower share of supply estimates for the Parties. For example: Sika, Annex 033 [§], FMN; Sika, Annex 200 [§], FMN. MAGs, paragraph 2.29.

¹⁸¹ For example, some share of supply estimates may include products outside our market definition and may not capture all competitors. See Parties' response to the Issues Letter – Chemical admixtures, paragraphs 2.4-2.12.

definition.¹⁸² Our share of supply estimates for the Parties calculated on this wider basis are broadly similar to those shown in Table 2: the Merged Entity would have a share of supply of [40-50%] and would be more than twice the size of the next largest supplier.¹⁸³

- 8.12 While the Parties' combined market shares are high enough to raise *prima facie* competition concerns given the structure of the market, measures of concentration are only one piece of evidence that we have assessed in our competitive assessment.

Closeness of competition between the Parties

- 8.13 In this section we assess how closely Sika and MBCC compete with one another, relative to how closely they compete with other suppliers, in the market for the supply of chemical admixtures for cement, concrete and wet mortar in the UK.
- 8.14 The Parties submitted that there is no closeness of competition concern in this case because chemical admixtures are homogenised products and suppliers are not differentiated.¹⁸⁴
- 8.15 We consider (and discuss in turn below) the following sources of evidence as part of our assessment of the closeness of competition between the Parties:
- (a) The shares of supply of the Parties in the market for the supply of chemical admixtures for cement, concrete and wet mortar in the UK.
 - (b) Evidence from the Parties' competitors in the UK.
 - (c) Evidence from the Parties' customers in the UK.
 - (d) Evidence on the Parties' product development, R&D, and innovation activities.
 - (e) Internal documents obtained from the Parties.

¹⁸² That is, using revenue data from the Parties and other suppliers for: chemical admixtures for cement, chemical admixtures of concrete (including certain mortar admixtures which are identical to concrete admixtures); and other chemical admixtures.

¹⁸³ CMA analysis of the FMN (FMN, Tables 9, 11 and 13); and Third Party responses ([[X]]) to the phase 1 revenues questionnaire.

¹⁸⁴ FMN, paragraph 291; Parties' response to the Issues Letter – Chemical admixtures, paragraphs 4-5.

Shares of supply of the Parties

- 8.16 While measures of concentration are only one piece of evidence we have considered in our competitive assessment, firms with higher shares of supply are more likely to be closer competitors to their rivals (with mergers that remove such constraints therefore being more likely to raise competition concerns).¹⁸⁵
- 8.17 As set out above, our estimates show that the Parties are the two largest suppliers active in the market, with a significant difference in the size of each of the Parties and the merged Saint-Gobain/GCP, and their other rivals. There is therefore a *prima facie* expectation that the Parties compete closely with one another.

Evidence from the Parties' competitors

- 8.18 Consistent with the Parties' shares of supply, competitors told us that the Parties are the strongest suppliers in the UK.
- (a) All respondents to our competitor questionnaire considered Sika to be the strongest chemical admixture supplier in the UK.¹⁸⁶
 - (b) All respondents to our competitor questionnaire told us that Sika is a very strong supplier.¹⁸⁷ Some competitors told us that this is because Sika is the largest supplier in the UK with the broadest range of admixtures and is driving innovation in the supply of chemical admixtures.¹⁸⁸
 - (c) The vast majority of respondents to our competitor questionnaire said that MBCC is also a very strong supplier (only Sika was rated very strong by more respondents).¹⁸⁹ One competitor considered MBCC to have a similarly broad range of admixtures to Sika.¹⁹⁰
- 8.19 Competitors told us that the market position of the Parties means that they are particularly well placed to supply larger customers of chemical admixtures and are able to exploit their size and scale to their competitive advantage:
- (a) A competitor said that larger customers of chemical admixtures, particularly those that produce ready-mix concrete in locations across the country, will have less choice as a result of the Merger given the Parties

¹⁸⁵ MAGs, paragraph 4.14.

¹⁸⁶ Third Party responses to the phase 1 competitor questionnaire [REDACTED].

¹⁸⁷ Third Party responses to the phase 1 competitor questionnaire [REDACTED].

¹⁸⁸ Third Party responses ([REDACTED]) the phase 1 competitor questionnaire.

¹⁸⁹ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire.

¹⁹⁰ Third Party response to the phase 1 competitor questionnaire [REDACTED].

are two of a limited number of suppliers that have the size and scale to supply larger customers.¹⁹¹

- (b) One competitor told us that larger suppliers, including the Parties, benefit from economies of scale in production, distribution and in the purchase of the raw materials needed to produce chemical admixtures which is particularly beneficial given the increasing costs of these raw materials.¹⁹² This competitor said that these advantages mean that only larger suppliers can serve larger customers and can offer lower prices than suppliers without the same size and scale.¹⁹³
- (c) Another competitor told us that larger suppliers, such as the Parties, have strong relationships with larger customers in part because of their size and scale, comprehensive offering, and the extensive market experience and knowledge of their R&D and technical support teams.¹⁹⁴

8.20 We note that this evidence from competitors is consistent with the evidence we have obtained from the Parties' customers, which is set out in more detail below (paragraphs 8.22 to 8.26).

8.21 This evidence from competitors shows that the Parties are close competitors given their similarly strong market positions, range of products, R&D and technical support capabilities, size and scale, and ability to supply larger customers of admixtures.

Evidence from the Parties' customers

8.22 As explained in paragraphs 6.31 to 6.36, customers told us that a number of different factors affect their choice of supplier. These include performance and quality of the chemical admixtures, security of supply, price, technical expertise, product development and innovation and, for Large Customers, capacity and volumes, the range of admixtures offered, and scale to deliver admixtures to their network of production sites.

8.23 Based on this broad range of factors, the Parties are viewed by customers as the strongest chemical admixture suppliers in the UK:

- (a) The vast majority of respondents to our customer questionnaire indicated that Sika is a strong or very strong supplier¹⁹⁵ and a large majority said

¹⁹¹ Note of call with a Third Party, phase 1 [REDACTED]; Third Party response to the phase 1 competitor questionnaire [REDACTED].

¹⁹² Note of call with a Third Party, phase 1 [REDACTED].

¹⁹³ Note of call with a Third Party, phase 1 [REDACTED].

¹⁹⁴ Third Party response to the phase 1 competitor questionnaire [REDACTED].

¹⁹⁵ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire.

that Sika is the strongest chemical admixture supplier in the UK.¹⁹⁶ Some customers told us that Sika's strength comes from its size and scale, wide range of products, ability to support customers with technical expertise, and investment in innovation and R&D.¹⁹⁷ One customer told us that Sika is strong because it has the capacity to supply all of its locations in Great Britain.¹⁹⁸

- (b) A large majority of respondents to our customer questionnaire told us that MBCC is a strong or very strong supplier (only Sika was rated as strong or very strong by more customers).¹⁹⁹ Some customers said that MBCC's strengths are its broad range of products, strong supply chain (including access to raw materials, such as polymers), and ability to supply large ready-mix customers.²⁰⁰ In addition, MBCC was considered to be the strongest supplier in the UK by one customer because of its local presence and technical support for its range of concrete products.²⁰¹

8.24 Most respondents to our customer questionnaire (including all Large Customers) said that only some suppliers are able to successfully meet their needs for chemical admixtures.²⁰² Many of these respondents told us that Sika could successfully meet their requirements in the UK, and a smaller number mentioned Saint-Gobain, GCP and/or MBCC.²⁰³ Very few respondents said that any other suppliers could successfully meet their requirements.²⁰⁴ Customers gave a broad range of reasons for not being able to use a wider pool of suppliers including the performance and quality of the admixtures, the customer's volume requirements, the customer's location, the level of technical support and innovation provided by suppliers, the need for admixtures to be delivered to a network of sites, and the range of admixtures offered by suppliers. Some customers suggested that other suppliers could meet some, but not all, of their admixture requirements.²⁰⁵

¹⁹⁶ Third Party responses ([[REDACTED]]) to the phase 1 customer questionnaire.

¹⁹⁷ Third Party responses ([[REDACTED]]) to the phase 1 customer questionnaire.

¹⁹⁸ Third Party response to the phase 1 customer questionnaire [[REDACTED]].

¹⁹⁹ Third Party responses ([[REDACTED]]) to the phase 1 customer questionnaire; Third Party responses ([[REDACTED]]) to the phase 1 customer questionnaire.

²⁰⁰ Third Party responses ([[REDACTED]]) to the phase 1 customer questionnaire.

²⁰¹ Third Party response to the phase 1 customer questionnaire [[REDACTED]].

²⁰² Third party responses to the phase 1 customer questionnaire, [[REDACTED]].

²⁰³ Namely: [[REDACTED]] said that Sika could meet their requirements; [[REDACTED]] said that GCP could meet their requirements; [[REDACTED]] said that Saint-Gobain could meet their requirements; and [[REDACTED]] said that MBCC could meet their requirements. We note that the phase 1 customer questionnaire asked for views on GCP and Saint-Gobain as independent competitors and not as a merged (Third Party responses to the phase 1 customer questionnaire, [[REDACTED]]).

²⁰⁴ Fosroc and Mapei were mentioned by one customer ([[REDACTED]]) and Ocrete was mentioned by another customer ([[REDACTED]]). No others were mentioned. Third Party responses ([[REDACTED]]) to the phase 1 customer questionnaire. See also Note of call with a Third Party, phase 1 [[REDACTED]]; Note of call with a Third Party, phase 1 [[REDACTED]]; Note of call with a Third Party, phase 1 [[REDACTED]]; Note of call with a Third Party, phase 1 [[REDACTED]].

²⁰⁵ Third Party responses ([[REDACTED]]) to the phase 1 customer questionnaire.

8.25 We have found that the views of customers, particularly Large Customers, are consistent with their observed behaviour. In particular:

- (a) As shown in Table 1, four out of five Large Customers of chemical admixtures in the UK sourced the majority or a large proportion of their admixture requirements from Sika or MBCC in 2021. Other than the Parties, only Saint-Gobain supplied more than 20% of any single Large Customer's admixture requirements.²⁰⁶
- (b) The Parties are two of a small number of suppliers that have been invited to bid for recent large tenders by Large Customers.²⁰⁷ In particular, one Large Customer only invited the Parties, Saint-Gobain, GCP and Ocrete to participate in the technical trial and competitive offer stages of its recent tender for its main supply contract.²⁰⁸ Another Large Customer only invited [REDACTED].²⁰⁹
- (c) Sika's limited information on recent tenders and business opportunities shows that it believes that only a small number of competitors are invited to participate in bilateral negotiations and/or tender processes, particularly for contracts to supply Large Customers.²¹⁰

8.26 The evidence from the Parties' customers shows that they compete closely, particularly for Large Customers.²¹¹

The Parties' product development, R&D, and innovation activities

- 8.27 As explained in paragraphs 6.14 to 6.19, product development, R&D and innovation can take many forms, ranging from tailoring existing admixtures to better meet the needs of customers to the development of new products.
- 8.28 Product development and innovation is an important aspect of competition in the supply of chemical admixtures. In particular, some suppliers told us that innovation and the development of new products is one way in which suppliers can differentiate themselves from their competitors.²¹²

²⁰⁶ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire; Third Party response to the phase 2 RFI 2 [REDACTED].

²⁰⁷ As explained at paragraph 6.55, not all Large Customers have recently tendered their main admixture supply contracts.

²⁰⁸ [REDACTED] was invited but did not bid. MBCC, the incumbent supplier to this Large Customer, retained their supply relationship (Third Party response to the CMA's questions dated 26 August 2022 [REDACTED]).

²⁰⁹ Sika, the incumbent supplier to this Large Customer, remained its main supplier after [REDACTED] awarded [REDACTED] previously served by Sika to GCP (Note of call with a Third Party, phase 1 [REDACTED]).

²¹⁰ Sika, Annex 313 [REDACTED], FMN. [REDACTED] (Parties; response dated 13 April 2022 to phase 1 RFI 2, question 8; FMN, paragraph 433).

²¹¹ MAGs, paragraph 4.10.

²¹² See paragraph 6.19.

- 8.29 In addition, the vast majority of respondents to our customer questionnaire said that product development and innovation is an important or very important factor when choosing a chemical admixture supplier.²¹³ Some customers indicated that it is essential for their chemical admixture supplier(s) to have advanced innovation and product development capabilities to ensure that they have access to the latest products and can maintain their competitiveness.²¹⁴
- 8.30 Evidence obtained from the Parties shows that they have dedicated product development and R&D capabilities in chemical admixtures.²¹⁵ In particular:
- (a) The Parties' product development focuses on tailoring existing admixtures to better meet the needs of customers or the specifications of a particular project.²¹⁶ The Parties routinely tweak and adapt the ingredients and formulation of chemical admixtures for particular projects, local conditions (including aggregate mix) and customer specifications.²¹⁷ For large scale infrastructure projects (eg nuclear power stations), the Parties develop tailored solutions that go beyond the minimum requirements of the British Standards Institute.²¹⁸
 - (b) The Parties have R&D projects aimed at improving the sustainability of concrete, including the development of 'sustainable' chemical admixtures that use [REDACTED].²¹⁹
 - (c) The Parties also have R&D projects relating to [REDACTED]. We understand, for example, that MBCC's R&D efforts in relation to [REDACTED] have led to the launch of several new products, including its 'Master X-Seed STE' and 'MasterEase' admixtures.²²⁰
- 8.31 Sika's internal documents show that the Parties have developed admixtures that, at least for a time, were unique in the market. They also show that innovation efforts by Sika are strongly driven by competition with MBCC, with

²¹³ See Figure 1.

²¹⁴ See paragraphs 6.33 and 6.34.

²¹⁵ In relation to chemical admixtures, Sika has a dedicated central R&D facility in Switzerland and a number of other regional laboratories with R&D capabilities (including in the UK). Similarly, MBCC has a dedicated, central R&D facility in Germany and several regional laboratories with R&D capabilities. We understand that MBCC does not have R&D capabilities in the UK (although it does operate laboratory facilities for testing purposes). FMN, paragraphs 362-389; Sika, Annex 399 [REDACTED], FMN.

²¹⁶ Other examples of the Parties tailoring products to meet a customer's needs include, but are not limited to: (i) adjusting admixtures to the specific aggregates of a customer to ensure product efficiency; and (ii) changing a raw input in cooperation with a customer to support the application of concrete in winter conditions. Sika, Annex 397 [REDACTED], FMN; Parties, Annex [REDACTED], FMN.

²¹⁷ Parties' Phase 2 Remedies Submission, paragraphs 1.10 and 1.11.

²¹⁸ Parties' Phase 2 Remedies Submission, paragraph 1.9.

²¹⁹ FMN, paragraph 548; Sika, Annex 399 [REDACTED], FMN.

²²⁰ In particular we note that Sika and MBCC have a number of active R&D projects relating to [REDACTED] (such as [REDACTED]) as well as the development of [REDACTED] (eg [REDACTED]). Sika, Annex 397 [REDACTED], FMN.

some new admixtures developed by Sika in response to innovation by MBCC. For example:

- (a) Sika identifies in an internal document the threat that competitors may copy its [REDACTED], thereby creating the danger that they become commodities that are widely available in the market.²²¹
- (b) Sika recognises that MBCC has '[REDACTED]'.²²² We understand that this is a reference to MBCC's Master X-Seed product, which is described by MBCC as a 'unique and innovative' technology that 'can outperform all alternative solutions'.²²³
- (c) Sika developed [REDACTED] to '[REDACTED]',²²⁴ and compares it in terms of cost and performance to [REDACTED] as an accelerating admixture.²²⁵
- (d) Sika's analysis of its strengths in internal documents consistently recognises its R&D and development of new products.²²⁶

8.32 Market participants indicated that the Parties compete closely in relation to product development, R&D and innovation.

- (a) Some suppliers suggested that the Parties are better equipped to address this aspect of competition than others currently active in the UK.²²⁷ For example, one supplier suggested that the Parties dedicate significantly more resources to technical and innovation functions than other suppliers.²²⁸ This supplier also suggested that the Parties differentiate themselves by embedding technical staff in customer operations.²²⁹
- (b) The vast majority of respondents to our customer questionnaire that considered the Parties to be the strongest suppliers in the UK told us that product development and innovation were important or very important factors in their choice of chemical admixture supplier.²³⁰
- (c) Some Large Customers emphasised the importance of maintaining competitive tension between suppliers to drive innovation and expressed

²²¹ Sika, Annex 095 [REDACTED], FMN.

²²² Sika, Annex 427 [REDACTED], FMN.

²²³ [Master X-Seed 100 hardening admixture for concrete](#) [public].

²²⁴ Sika, Annex 492 [REDACTED], FMN.

²²⁵ Sika, Annex 410 [REDACTED], FMN.

²²⁶ Sika, Annex 123 [REDACTED], FMN. See also: Sika, Annex 077 [REDACTED], FMN; and Sika, Annex 095 [REDACTED], FMN.

²²⁷ Note of call with a Third Party, phase 1 [[REDACTED]].

²²⁸ [REDACTED].

²²⁹ [REDACTED].

²³⁰ Third Party responses ([[REDACTED]]) to the phase 1 customer questionnaire.

concerns about the impact of the Merger on reducing the impetus to continue innovating for the benefit of customers.²³¹

- (d) Some Large Customers told us that the Parties are better placed than other suppliers to help them reduce the environmental impact of their concrete.²³² One of these customers told us that the Parties are the main drivers of sustainable innovation in ready-mix concrete and are the only suppliers that are capable of the levels of innovation required for it to meet its own sustainability targets.²³³
- (e) Another Large Customer said the leading position of the Parties was to a significant extent due to their 'strong R&D capabilities [and] advanced technical and customer-relation services'.²³⁴
- (f) Some smaller customers also emphasised the importance of R&D. One customer said that it did not ask suppliers to design specific admixtures for it and worked from their standard ranges. However, the R&D efforts of the Parties were nevertheless important as new technology could lead to better performance, lower costs or both.²³⁵ Another smaller customer said it had worked closely with GCP, Sika and MBCC over the last few years in developing self-compacting and lower carbon concretes which had helped to reduce the environmental impact of concrete.²³⁶

8.33 In addition, a few customers indicated that suppliers who self-supply their own polymers, including the Parties, have a competitive advantage in relation to their product development capabilities as they can more easily develop and produce new or bespoke polymers, which improve the performance of chemical admixtures.²³⁷

8.34 This evidence demonstrates that the Parties compete closely in relation to product development, R&D, and innovation in the market for the supply of chemical admixtures for cement, concrete and wet mortar in the UK.

²³¹ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire; Note of call with a Third Party, phase 1 ([REDACTED]); Note of call with a Third Party, phase 1 ([REDACTED]).

²³² Note of call with a Third Party, phase 1 ([REDACTED]); Third Party response to the phase 2 RFI 1 ([REDACTED]).

²³³ Note of call with a Third Party, phase 1 ([REDACTED]); Third Party response to the phase 2 RFI 1 ([REDACTED]).

²³⁴ Third Party submission dated 23 June 2022 ([REDACTED]).

²³⁵ Third Party response to the phase 2 RFI 1 ([REDACTED]).

²³⁶ Third Party response to the phase 2 RFI 1 ([REDACTED]).

²³⁷ As discussed at paragraphs 8.27 and 8.28, we found Parties have launched new products that are unique to the market as a result of development in polymers. Third Party response to phase 2 RFI 1 ([REDACTED]). One customer clarified that suppliers who self-supply their own polymers do not always have a competitive advantage in relation to their product development capabilities as sometimes third party suppliers offer better raw materials than self-supplying suppliers of chemical admixtures could produce themselves (Third Party response to the phase 2 PFs putback table ([REDACTED])).

The Parties' internal documents

- 8.35 We found that the Parties' internal documents are consistent with the evidence from the Parties' competitors and customers set out above.
- 8.36 The Parties' internal documents show that they are strong suppliers of chemical admixtures, compete closely, both in the UK and more generally, and that innovation is an important aspect of the competitive dynamic between the Parties.²³⁸ In particular:
- (a) The internal documents of both Parties show a regular interest in targeting Large Customers (ie [REDACTED]).²³⁹
 - (b) Sika's limited information on its recent tenders and business opportunities suggests that it believes that the Parties compete head-to-head to win customers, particularly in tenders for Large Customers, against a small number of other chemical admixture suppliers including [REDACTED].²⁴⁰
 - (c) Sika sees itself as a market leader in chemical admixtures both globally and in the UK, with Sika's five-year plan for 2022-2026 suggesting that [REDACTED].²⁴¹
 - (d) Sika's competitive monitoring documents also [REDACTED].²⁴²
 - (e) As noted above, Sika's internal documents show that the Parties appear to develop market-leading products that, at least for a time, were unique in the market and that Sika aims to develop new products in response to product developments by MBCC.
 - (f) As set out in paragraph 6.33, the proposal and tender documents prepared by the Parties as part of bilateral negotiations and/or tender processes highlight their strengths in relation to technical services, R&D, innovation, and delivery service level requirements.²⁴³

²³⁸ By way of example, see: Parties, Annex 044 [REDACTED], FMN; Sika, Annex 077 [REDACTED], FMN; MBCC, Annex 052 [REDACTED], FMN; Sika, Annex 095 [REDACTED], FMN; Sika, Annex 123 [REDACTED], FMN; MBCC, Annex 165 [REDACTED], FMN; MBCC, Annex 171 [REDACTED], FMN; Sika, Annex 228 [REDACTED], FMN; Sika, Annex 410 [REDACTED], FMN; Sika, Annex 427 [REDACTED], FMN; and Sika, Annex 492 [REDACTED], FMN. The internal documents submitted by MBCC to the CMA did not contain any analysis of competitors for chemical admixtures.

²³⁹ MBCC, Annex 171 [REDACTED], FMN; Sika, Annex 077 [REDACTED], FMN.

²⁴⁰ Sika, Annex 313 [REDACTED], FMN. All tenders and business opportunities included in this annex were undertaken over the period 2017-2021, with the vast majority occurring over the period 2019-2021. We understand that this evidence is not a complete record of tenders and business opportunities as they are not always recorded internally by Sika on its customer relationship management system (Parties' response dated 13 April 2022 to phase 1 RFI 2, question 8; FMN, paragraph 433).

²⁴¹ Sika, Annex 123 [REDACTED], FMN. See also: Sika, Annex 077 [REDACTED], FMN; Sika, Annex 095 [REDACTED], FMN.

²⁴² Sika, Annex 427 [REDACTED], FMN. See also: Sika, Annex 199 [REDACTED], FMN; Sika, Annex 228 [REDACTED], FMN; and Sika, Annex 303 [REDACTED], FMN.

²⁴³ See for example: Sika, Annex 91 [REDACTED], FMN; Sika, Annex 321 [REDACTED], FMN; MBCC, Annex 332 [REDACTED], FMN.

Conclusion on closeness of competition between the Parties

8.37 Based on this evidence, we conclude that the Parties are close competitors in the market for the supply of chemical admixtures for cement, concrete and wet mortar and are important competitive forces in the UK, in particular for Large Customers.

Competitive constraints from other suppliers of chemical admixtures

8.38 In this section we assess the strength of the competitive constraint the Merged Entity would face from other suppliers of chemical admixtures currently active in the UK that will remain after the Merger.

8.39 The Parties submitted that there are numerous strong suppliers of chemical admixtures that currently compete with the Parties and will continue to do so post-Merger.²⁴⁴

8.40 We have assessed evidence on the competitive constraints from alternative suppliers of chemical admixtures on the Merged Entity, including the merged Saint-Gobain/GCP, Oscrete, Mapei and Cemex as well as all other suppliers currently active in the UK.

The merged Saint-Gobain/GCP

8.41 Saint-Gobain completed its acquisition of GCP on 27 September 2022. We do not, however, have direct evidence of the competitive strength of the merged Saint-Gobain/GCP relative to the Merged Entity. Therefore, we have considered historic evidence regarding the competitive strength of Saint-Gobain and GCP as independent competitors before considering the competitive constraint that the merged Saint-Gobain/GCP would exert on the Merged Entity going forward.²⁴⁵

8.42 We estimate that Saint-Gobain and GCP had a combined market share in chemical admixtures in the UK of [20-30%] in 2021, making the newly merged Saint-Gobain/GCP the third largest supplier of admixtures after the Parties.²⁴⁶

²⁴⁴ FMN, paragraph 291(c); Parties' response to the Issues Letter – Chemical admixtures, paragraph 3.

²⁴⁵ We note that the phase 1 customer and competitor questionnaires asked for views on GCP and Saint-Gobain as independent competitors and not as a merged entity.

²⁴⁶ See Table 2.

- 8.43 Market participants generally viewed Saint-Gobain and GCP as strong suppliers, although not as strong as the Parties:²⁴⁷
- (a) The large majority of respondents to our competitor questionnaire indicated that Saint-Gobain and GCP are strong or very strong suppliers in the UK, with a small number stating that they are weak suppliers of chemical admixtures.²⁴⁸
 - (b) At least half of respondents to our customer questionnaire indicated that Saint-Gobain and GCP are strong or very strong suppliers in the UK,²⁴⁹ with a small number stating that they are weak suppliers of chemical admixtures.²⁵⁰
 - (c) As set out at paragraph 8.24, some customers told us that Saint-Gobain and GCP are two of only a small number of suppliers (including the Parties) that are able to successfully meet their chemical admixture requirements in the UK.²⁵¹ Consistent with this, many respondents to the customer questionnaire source a significant proportion of their admixture requirements from these suppliers (in particular GCP).
 - (d) While one Large Customer told us that it receives significant R&D support from Saint-Gobain,²⁵² two other Large Customers told us that Saint-Gobain has weaker innovation and R&D capabilities than the Parties.²⁵³
- 8.44 Both Saint-Gobain and GCP have a track record as major suppliers to Large Customers, although GCP's position as a main supplier to large, national customers has eroded in recent years:
- (a) As shown in Table 1, Saint-Gobain was the main supplier to one Large Customer in 2021. In contrast, GCP is not currently the main supplier to any Large Customer and did not supply more than 20% of any Large Customer's admixture requirements in 2021.
 - (b) Tender information submitted by two Large Customers shows that Saint-Gobain and GCP were two of a small number of chemical admixture

²⁴⁷ Fewer customers and competitors that responded to our questionnaire indicated that Saint-Gobain or GCP were strong or very strong than MBCC or Sika.

²⁴⁸ For Saint-Gobain, all competitors except for [REDACTED] and [REDACTED] said that Saint-Gobain is a strong or very strong supplier. For GCP, all competitors except for [REDACTED], [REDACTED] and [REDACTED] said that GCP is a strong or very strong supplier (Third Party responses to the phase 1 customer questionnaire [REDACTED]).

²⁴⁹ [REDACTED] said that Saint-Gobain is a strong or very strong supplier in the UK. [REDACTED] said that GCP is a strong or very strong supplier in the UK (Third Party responses to the phase 1 customer questionnaire [REDACTED]).

²⁵⁰ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire.

²⁵¹ [REDACTED] said that GCP could meet their requirements. [REDACTED] said that Saint-Gobain could meet their requirements. Third Party responses to the phase 1 customer questionnaire, [REDACTED].

²⁵² Note of call with a Third Party, phase 1 [REDACTED].

²⁵³ Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

suppliers invited to participate in their recent tender processes.²⁵⁴ Saint-Gobain did not win either of these opportunities. One of these customers switched its [REDACTED].²⁵⁵ The other ruled out GCP for a number of reasons including that GCP was unable to supply nationally.²⁵⁶

- (c) [REDACTED] lost a regional contract with another Large Customer to [REDACTED] in 2021. [REDACTED] was the incumbent supplier of this Large Customer's other regional contract and now supplies this customer nationally.²⁵⁷

- 8.45 In relation to innovation and R&D, Saint-Gobain has a number of innovation and R&D projects currently in the pipeline.²⁵⁸ Saint-Gobain also has a recent track record of bringing innovative chemical admixture products to the market, such as its Optima 1180 superplasticiser, [REDACTED].²⁵⁹
- 8.46 However, there is evidence that GCP's position as an innovator in chemical admixtures has declined since it was spun-off from W.R. Grace & Co Group in 2016. In the last four years, [REDACTED].²⁶⁰ In addition, GCP does not have [REDACTED],²⁶¹ and its recent product launches [REDACTED].²⁶² This decline in GCP's innovation capability is reflected in GCP's internal documents. For example, GCP's own SWOT analysis identified [REDACTED].²⁶³
- 8.47 Sika's internal documents assess Saint-Gobain and GCP as having some competitive strengths, particularly in cement admixtures, but also a number of limitations and weaknesses.²⁶⁴
- 8.48 Sika's limited information on its recent tenders and business opportunities shows that it believes it competes less frequently against [REDACTED] than MBCC although it competes frequently against [REDACTED].²⁶⁵
- 8.49 Taking this evidence in the round, we consider that the combined Saint-Gobain/GCP would have a similar competitive position to each of the Parties pre-Merger, particularly having regard to its size and scale, and its product development, R&D and innovation capabilities. Saint-Gobain told us that it has increased its investment in R&D in recent years.²⁶⁶ Saint-Gobain also

²⁵⁴ Note of call with a Third Party, phase 1 [[REDACTED]]; Third Party response to the CMA's questions [[REDACTED]].

²⁵⁵ Note of call with a Third Party, phase 1 [[REDACTED]].

²⁵⁶ Third Party response to the CMA's questions [[REDACTED]].

²⁵⁷ Third Party responses to the response to phase 2 RFI 2 [[REDACTED]].

²⁵⁸ [REDACTED].

²⁵⁹ Sika, Annex 021 [REDACTED], FMN.

²⁶⁰ [REDACTED].

²⁶¹ [REDACTED].

²⁶² [REDACTED].

²⁶³ Sika, Annex 9 [REDACTED], FMN.

²⁶⁴ Sika, Annex 095 [REDACTED], FMN; Sika, Annex 198 [REDACTED], FMN; Sika, Annex 199 [REDACTED], FMN; Sika, Annex 218 [REDACTED], FMN; Sika, Annex 228 [REDACTED], FMN (replicated at Sika, Annex 303 [REDACTED], FMN); Sika, Annex 265 [REDACTED], FMN.

²⁶⁵ Sika, Annex 313 [REDACTED], FMN.

²⁶⁶ [REDACTED].

self-supplies polymers, which will allow the merged Saint-Gobain/GCP to customise admixtures at the polymer level.²⁶⁷ As noted above, the merged Saint-Gobain/GCP would be the main supplier to one Large Customer and the secondary supplier to another Large Customer. We consider that the merged Saint-Gobain/GCP would exert a stronger constraint on the Merged Entity than either supplier would independently.

- 8.50 We therefore find that the merged Saint-Gobain/GCP would exert a strong constraint on the Merged Entity.

Oscrete

- 8.51 Oscrete is based in Bradford and is only active in the UK.²⁶⁸ Unlike other larger suppliers, including the Parties, that primarily supply to ready-mix concrete producers, Oscrete focuses on the sale of admixtures to pre-cast concrete producers, which accounted for [60-80%] of Oscrete's chemical admixture sales in 2021.²⁶⁹

- 8.52 We estimate that Oscrete had a market share in chemical admixtures for cement, concrete and wet mortar in the UK of [5-10%] in 2021.²⁷⁰

- 8.53 Views were mixed, but overall market participants viewed Oscrete as a weaker supplier of chemical admixtures in the UK than the Parties.²⁷¹

(a) Although some respondents to our competitor questionnaire indicated that Oscrete is a strong or very strong supplier in the UK, the same number indicated that Oscrete is a weak or very weak supplier of chemical admixtures.²⁷²

(b) Although some respondents to our customer questionnaire indicated that Oscrete is a strong or very strong supplier in the UK, more indicated that Oscrete is a weak or very weak supplier of chemical admixtures.²⁷³

²⁶⁷ [REDACTED].

²⁶⁸ Oscrete imports small volumes of admixtures from GOVI in Europe. Note of call with a Third Party, phase 1 [REDACTED].

²⁶⁹ Third Party response to the phase 1 customer questionnaire [REDACTED].

²⁷⁰ See Table 2.

²⁷¹ Significantly fewer customers and competitors that responded to our questionnaire indicated that Oscrete was strong or very strong than MBCC or Sika.

²⁷² [REDACTED] said that Oscrete is a strong or very strong supplier; and [REDACTED] said that Oscrete is a weak or very weak supplier. Third Party responses ([REDACTED]) to the CMA questionnaire.

²⁷³ In particular, [REDACTED] said that Oscrete is a strong or very strong supplier; and [REDACTED] said that Oscrete is a weak or very weak supplier. Third Party responses ([REDACTED]) to the phase 1 customer questionnaire.

- (c) Oscrete was only mentioned by one Large Customer, which principally supplies pre-cast concrete products to the construction industry, as being capable of successfully meeting its admixture requirements in the UK.²⁷⁴
 - (d) Another Large Customer told us that Oscrete is a smaller, local supplier of chemical admixtures and is not comparable to Sika and MBCC.²⁷⁵
- 8.54 Evidence from customers on their sources of chemical admixtures as well as their bilateral negotiations and/or tender processes is consistent with the view that Oscrete is weaker than Sika and MBCC and not an effective alternative. In particular:
- (a) No respondent to our customer questionnaire sourced more than 20% of its chemical admixture requirements in 2021 from Oscrete.²⁷⁶
 - (b) Oscrete is not currently the main supplier to any Large Customer.²⁷⁷
 - (c) A Large Customer did not invite Oscrete to take part in its recent tender process for its main supply contract.²⁷⁸ Another Large Customer did invite Oscrete to participate in its recent tender process, alongside the Parties, Saint-Gobain and GCP. However, it did not receive a response from Oscrete to its request for a proposal.²⁷⁹
- 8.55 Sika's internal documents do not show evidence of regular or extensive competitive monitoring of Oscrete and assess Oscrete as a supplier with a '[REDACTED]' that targets '[REDACTED]'.²⁸⁰ Sika's limited information on its recent tenders and business opportunities shows that it believes it [REDACTED].²⁸¹
- 8.56 Consistent with the evidence above, Oscrete told us that when it supplies ready-mix customers, it tends to deal with regional and local producers.²⁸² Oscrete told us that it cannot supply Large Customers who award national contracts, although it is capable of serving regional contracts.²⁸³ Oscrete also explained that it tends to focus on, and is stronger in, the pre-cast sector because there is more regularity in that sector in comparison to ready-mix

²⁷⁴ Of those customers (which included most respondents) that said that only some customers are capable of successfully meeting their admixture requirements. Third Party response to the phase 1 customer questionnaire [REDACTED].

²⁷⁵ Note of call with a Third Party, phase 1 [REDACTED].

²⁷⁶ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire.

²⁷⁷ Third Party response to the phase 1 customer questionnaire [REDACTED]; Third Party response to the phase 2 RFI 2 [REDACTED].

²⁷⁸ Note of call with a Third Party, phase 1 [REDACTED].

²⁷⁹ Third Party response to the CMA questions [REDACTED].

²⁸⁰ Sika, Annex 095 [REDACTED], FMN.

²⁸¹ Sika, Annex 313 [REDACTED], FMN.

²⁸² Note of call with a Third Party, phase 1 [REDACTED].

²⁸³ Note of call with a Third Party, phase 1 [REDACTED].

business where orders tend to be very dynamic and volumes depend on projects.

- 8.57 Ocrete told us that it wants to grow its business by supplying more admixtures to both ready-mix and pre-cast concrete producers but is currently facing significant challenges with scalability.²⁸⁴ Although it has received interest from a Large Customer, Ocrete said it does not have the capacity to serve that customer. [REDACTED]. The evidence from Ocrete is consistent with our view, as set out below, that there are material barriers to entry and expansion.
- 8.58 Taking this evidence in the round, we find that Ocrete would be a limited constraint on the Merged Entity.

Mapei

- 8.59 Mapei currently imports finished chemical admixture products from Italy. Mapei told us that it is planning to expand in the UK and is currently in the advanced stages of setting up a UK production facility.²⁸⁵
- 8.60 We estimate that Mapei had a market share in chemical admixtures for cement, concrete and wet mortar in the UK of [0-5%] in 2021.²⁸⁶
- 8.61 Views on Mapei were mixed, but overall market participants currently viewed Mapei as a weaker supplier of chemical admixtures in the UK than the Parties.²⁸⁷
- (a) Around half of respondents to our competitor questionnaire indicated that Mapei is a strong supplier in the UK, with the others stating that Mapei is a weak or very weak supplier of chemical admixtures.²⁸⁸
- (b) Some respondents to our customer questionnaire, including some Large Customers, indicated that Mapei is a strong supplier in the UK,²⁸⁹ with a smaller number stating that Mapei is a weak or very weak supplier of chemical admixtures.²⁹⁰

²⁸⁴ Note of call with a Third Party, phase 1 [REDACTED].

²⁸⁵ In particular, Mapei told us that it is in the final stages of signing an agreement to lease a UK production facility and expects to start producing chemical admixtures from October 2022, with the facility reaching full functionality in Q1 2023 (Third Party response to the phase 2 RFI 1 [REDACTED]).

²⁸⁶ See Table 2.

²⁸⁷ Significantly fewer customers and competitors that responded to our questionnaire indicated that Mapei was strong or very strong than MBCC or Sika.

²⁸⁸ In particular, [REDACTED] said Mapei is a strong or very strong supplier; [REDACTED] said Mapei is a weak or very weak supplier (Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire).

²⁸⁹ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire.

²⁹⁰ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire.

- (c) One Large Customer told us that Mapei does not currently have the ability to meet its requirements at the volumes needed.²⁹¹
 - (d) Another Large Customer said that Mapei is a smaller, local supplier of chemical admixtures that has only just entered the UK and has a limited footprint.²⁹²
- 8.62 Evidence from customers on their sources of chemical admixtures as well as their bilateral negotiations and/or tender processes is consistent with the view that Mapei is weaker than the Parties. In particular:
- (a) No respondent to our customer questionnaire sourced more than 20% of its chemical admixture requirements in 2021 from Mapei.²⁹³
 - (b) Mapei is not currently the main supplier to any Large Customer.²⁹⁴
 - (c) A Large Customer, which invited Mapei to take part in its recent tender process, alongside the Parties, Saint-Gobain and GCP, ruled Mapei out because it did not have a UK production facility at the time.²⁹⁵
 - (d) Another Large Customer invited Mapei, the Parties, Saint-Gobain, GCP, and Oscrete to participate in its recent tender process although Mapei did not submit any offer.²⁹⁶
- 8.63 Sika's internal documents show it regularly monitors Mapei in relation to a wide range of business areas, with documents which focus on Sika's concrete admixtures noting that Mapei has a '[REDACTED]'²⁹⁷ but that Mapei has a '[REDACTED]'.²⁹⁸ Sika's limited information on its recent tenders and business opportunities shows that it believes it [REDACTED].²⁹⁹
- 8.64 Mapei told us that it needs to establish a manufacturing site in the UK to compete more effectively with other local suppliers. Mapei's expansion plan in the UK is to grow incrementally each year over a five-year period.³⁰⁰
- 8.65 We recognise that Mapei is likely to become a stronger competitor to the Merged Entity once its production facility in the UK comes online and it starts

²⁹¹ Note of call with a Third Party, phase 1 [REDACTED].

²⁹² Note of call with a Third Party, phase 1 [REDACTED].

²⁹³ Third Party responses to the phase 1 customer questionnaire [REDACTED]; Third Party response to the phase 2 RFI 2 [REDACTED].

²⁹⁴ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire; Third Party response to the phase 2 RFI 2 [REDACTED].

²⁹⁵ Note of call with a Third Party, phase 1 [REDACTED].

²⁹⁶ Third Party response to the CMA questions [REDACTED].

²⁹⁷ Sika, Annex 095 [REDACTED], FMN.

²⁹⁸ Sika, Annex 193 [REDACTED], FMN.

²⁹⁹ Sika, Annex 313 [REDACTED], FMN.

³⁰⁰ Note of call with a Third Party, phase 1 [REDACTED].

to supply UK customers from that facility. However, consistent with Mapei's own expansion plans, evidence from customers indicates that Mapei's ability to win large volumes of new customers quickly is likely to be limited.

- (a) As discussed in paragraphs 6.50 to 6.55, many customers did not consider that they could easily switch between chemical admixtures produced by different suppliers, while some customers told us that switching supplier is a long and costly process.
- (b) One Large Customer told us that it would consider giving a share of its demand to Mapei only once it has demonstrated that it meets its requirements and can scale up its production.³⁰¹
- (c) Another Large Customer said it would consider working with Mapei once it has settled and matured within the UK but that it could take two to three years for Mapei to go through its development process and establish it can supply its requirements.³⁰²

8.66 Mapei is therefore only likely to be able to build its market position slowly from its current very small base (as set out in Table 2, we estimate that its market share is less than 5%).

8.67 Taking this evidence in the round, we find that Mapei would currently exert only a limited constraint on the Merged Entity although this constraint would be likely to strengthen over time as Mapei establishes itself in the UK.

Cemex

8.68 Cemex is a large supplier of concrete and cement that self-supplies most of its chemical admixture requirements.³⁰³ It also supplies a small proportion of its chemical admixtures output to third parties.³⁰⁴

8.69 Other than the Parties and the suppliers discussed above, only Cemex was viewed as strong or very strong by more than one third of respondents to our competitor questionnaire.³⁰⁵

8.70 We considered whether Cemex might exert a material constraint on the Parties notwithstanding its small market position (with a market share of less than 5% in 2021).

³⁰¹ Note of call with a Third Party, phase 1 [REDACTED].

³⁰² Note of call with a Third Party, phase 1 [REDACTED].

³⁰³ Note of call with a Third Party, phase 1 [REDACTED].

³⁰⁴ See Table 2.

³⁰⁵ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire.

8.71 However, evidence from the Parties' customers did not suggest that Cemex is a strong supplier of chemical admixtures:

- (a) Only two respondents to our customer questionnaire indicated that Cemex was strong in the UK, with another two indicating that it was a weak supplier (with most stating that they did not know).³⁰⁶
- (b) Cemex did not supply any respondent to our customer questionnaire, including Large Customers, in 2021.³⁰⁷
- (c) Two Large Customers did not invite Cemex to participate in their recent tender processes for their main supply contract.³⁰⁸

8.72 Customers, particularly Large Customers, do not consider Cemex an effective alternative to independent chemical admixture suppliers given that they also compete against Cemex in the supply of cementitious products. Many customers indicated that they would be unlikely to purchase large volumes of chemical admixtures from a vertically integrated competitor, or would only be willing to source a limited range of chemical admixtures:

- (a) A few smaller customers told us that vertically integrated competitors would not be an effective alternative to the Parties as they would be unlikely to offer specialist technical support for chemical admixtures, would gain access to commercially sensitive information on their technical requirements, and could poach their customers.³⁰⁹
- (b) One Large Customer told us that they would consider purchasing standard, non-specialist admixtures from a vertically integrated competitor but expressed concern that this might reveal potentially commercially sensitive information to the competitor.³¹⁰
- (c) One other Large Customer told us that they would not purchase from Cemex given that they compete against them in the supply of cementitious products.³¹¹

³⁰⁶ In particular, [X] said that Cemex is a strong supplier. [X] told us that Cemex is a weak supplier. All other respondents told us that they did not know the strength of Cemex. Third Party responses ([X]) to the phase 1 customer questionnaire.

³⁰⁷ Third Party response to the phase 1 customer questionnaire [X].

³⁰⁸ Note of call with a Third Party, phase 1 [X]; Third Party response to the CMA questions [X].

³⁰⁹ Third Party responses ([X]) to the phase 2 RFI 1. As noted in Chapter 6, customers need to undertake technical trials when purchasing chemical admixtures to establish the optimum dosage of the chemical admixture and test the resulting cementitious product against their requirements. This process necessarily requires the exchange of information between customers and suppliers on the customer's aggregates to assess, among other things, how the admixtures affect the quality of the final cementitious product, whether the dosage levels meet their preferences, and to develop new or reformulated chemical admixtures.

³¹⁰ Third Party response to the phase 2 RFI 1 [X].

³¹¹ Third Party response to the phase 1 customer questionnaire [X].

- (d) Another Large Customer noted that they would be unlikely to purchase from a vertically integrated competitor, unless it was for a one-off specific contract, as it could give the competitor commercially sensitive information.³¹²
- (e) Another Large Customer said that there may be some commercial considerations in relation to product development, innovation, and differentiation when sourcing from vertically integrated competitors, particularly given that input materials play a large role in product development for new admixtures.³¹³

8.73 Taking this evidence in the round, we find that Cemex would be a weak constraint on the Merged Entity.

Other suppliers

- 8.74 We estimate that all remaining suppliers of chemical admixtures had a combined market share of around 20% in 2021, with each having a share of no more than 5%.³¹⁴
- 8.75 Some of these other smaller suppliers indicated that they manufacture a narrower range of chemical admixtures than the Parties and their largest rivals.³¹⁵ David Ball Group, Schomburg, FIS, and Kryton specialise in water resisting/retaining chemical admixtures, while PROQUICESA only supplies chemical admixtures for cement.
- 8.76 Two other smaller suppliers have limited, or no, production facilities in the UK and currently rely on imports to supply their UK customers.³¹⁶ Another supplier only produces and sells chemical admixtures in Ireland and Northern Ireland.³¹⁷ As set out in paragraph 7.17, customers consider suppliers that can only meet their needs through imports are weaker alternatives to suppliers with UK production facilities and would not rely on imports for a significant proportion of their supply needs because of concerns about security of supply and delays in delivery of their admixtures.

³¹² Third Party response to the phase 2 RFI 1 [REDACTED].

³¹³ Third Party response to the phase 2 RFI 1 [REDACTED].

³¹⁴ See Table 2. The Parties and third parties identified, in addition to the Parties, Saint-Gobain, GCP, Oscrete and Mapei, more than ten other suppliers of chemical admixtures that were active in the UK.

³¹⁵ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire. Sika, Annex 356 [REDACTED], FMN.

³¹⁶ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire.

³¹⁷ Third Party response to the phase 1 competitor questionnaire [REDACTED].

- 8.77 One of these smaller suppliers also told us that smaller suppliers cannot compete with bigger suppliers as they have economies of scale to keep prices low.³¹⁸
- 8.78 A Large Customer said that it did not invite other smaller suppliers to participate in its most recent tender as they would not have sufficient scale to meet its requirements.³¹⁹ Another Large Customer said that other smaller suppliers can be important suppliers but of specialty admixtures that meet specific requirements.³²⁰ This customer also observed that some smaller suppliers do not manufacture their own products and just re-supply or distribute products from larger suppliers.³²¹
- 8.79 Consistent with the views of the Parties' competitors and customers, Sika's limited information on its recent tenders and business opportunities shows that it believes it only competed against one supplier other than MBCC, Saint-Gobain, GCP, Ocrete and Mapei on [REDACTED] occasions for smaller value contracts.³²² Subject to one exception, respondents to our customer questionnaire also indicated that they did not source more than 20% of their UK admixture volumes in 2021 from any supplier other than Sika, MBCC, Saint-Gobain, GCP, and Mapei.³²³
- 8.80 Taking this evidence in the round, we find that other suppliers would not exert a material competitive constraint on the Merged Entity, either individually or in aggregate.

Conclusion on competitive constraints from alternative suppliers of chemical admixtures

- 8.81 Based on the evidence set out above, we find that the Merged Entity would not be sufficiently constrained by alternative suppliers, either individually or in aggregate, to prevent competition concerns from arising.
- 8.82 In particular we have found that other than the merged Saint-Gobain/GCP, all existing suppliers would exert only a limited constraint on the Merged Entity. Although the constraint from Mapei is likely to grow in the future, we do not consider that this is sufficient to offset the loss of competition from the Merger

³¹⁸ Note of call with a Third Party, phase 1 [REDACTED].

³¹⁹ Note of call with a Third Party, phase 1 [REDACTED].

³²⁰ Note of call with a Third Party, phase 1 [REDACTED].

³²¹ Note of call with a Third Party, phase 1 [REDACTED].

³²² Sika, Annex 313 [REDACTED], FMN.

³²³ We note that one small customer [REDACTED] sourced 20-40% of its requirements from PROQUICESA, which we understand only supplies chemical admixtures for cement (Sika, Annex 356 [REDACTED], FMN). Third Party responses ([REDACTED]) to the phase 1 customer questionnaire.

given Mapei's small market position relative to the Merged Entity and the likely pace of its growth.

- 8.83 We consequently conclude that the Merger will give rise to an SLC in the market for the supply of chemical admixtures for cement, concrete and wet mortar in the UK.

Countervailing constraints

- 8.84 In some instances, there may be countervailing factors that prevent or mitigate any SLC arising from a merger.³²⁴
- 8.85 We have therefore examined whether (i) entry and/or expansion by suppliers of chemical admixtures would be timely, likely, and sufficient to mitigate or prevent an SLC from arising and (ii) countervailing buyer power could prevent an SLC that would otherwise arise from the elimination of competition between the Parties.

Barriers to entry and expansion

- 8.86 Entry or expansion of existing firms can mitigate the effect of an acquisition on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent a SLC, we consider whether such entry or expansion would be timely, likely, and sufficient. In terms of timeliness, our guidelines indicate that this is case specific but that we will generally look for entry to occur within two years.³²⁵
- 8.87 The Parties submitted that, as there are no barriers to entry and expansion at the production level, the Merged Entity will be constrained by the ability of new suppliers to enter the UK and by existing suppliers expanding production volumes.³²⁶
- 8.88 Market participants told us that there are a number of barriers to entry and expansion in the supply of chemical admixtures in the UK and, consequently, many suppliers view the UK as a difficult market in which to enter and expand successfully.³²⁷ The barriers to entry and expansion viewed as most significant by third parties include:
- (a) Economies of scale in development, production, sales, and distribution, which were considered to be important or very important by all

³²⁴ MAGs, paragraph 8.1.

³²⁵ MAGs, paragraph 8.33.

³²⁶ FMN, paragraph 291(e); Parties' response to the Issues Letter – Chemical admixtures, paragraph 5.

³²⁷ Third Party responses ([[§]]) to the phase 1 competitor questionnaire.

respondents to our competitor questionnaire.³²⁸ A competitor told us that larger suppliers of chemical admixtures benefit from economies of scale in production and distribution and can access the raw materials needed to produce chemical admixtures more reliably and for a lower price.³²⁹ One Large Customer said that admixture suppliers need economies of scale in order to be cost competitive, to have sufficient funds to finance innovation and employ technicians, and to benefit from increased buyer power when sourcing raw materials.³³⁰

- (b) Local production of chemical admixtures, which was considered to be important or very important by a large majority of respondents to our competitor questionnaire.³³¹ Suppliers that rely on imports to supply their UK customers told us that they only import small volumes of admixtures, some speciality products that they only produce in their non-UK production facilities, and/or are looking to start producing chemical admixtures within the UK in the next two years and consider this necessary to be competitive in the UK.³³² This is also consistent with the views of customers who said they would not rely on imports for a significant proportion of their supply needs.³³³
- (c) Investment in product research and development, which was considered to be an important or very important barrier to entry and expansion by the vast majority of respondents to our competitor questionnaire.³³⁴ This is consistent with the views of the vast majority of respondents to our customer questionnaire, who indicated that technical expertise, product development and innovation are important or very important factors in their choice of chemical admixtures supplier.³³⁵ Third parties said that suppliers' technical resources need to be located in the UK as the materials that interact with chemical admixtures have different compositions in the UK and elsewhere in Europe.³³⁶

³²⁸ Third Party responses ([[§]]) to the phase 1 competitor questionnaire.

³²⁹ Note of call with a Third Party, phase 1 [[§]].

³³⁰ Note of call with a Third Party, phase 1 [[§]].

³³¹ Third Party responses ([[§]]) to the phase 1 competitor questionnaire.

³³² Third Party responses ([[§]]) to the phase 1 competitor questionnaire; Note of call with a Third Party, phase 1 [[§]]; Third Party response to the phase 1 competitor questionnaire [[§]].

³³³ See Chapter 7.

³³⁴ Third Party responses ([[§]]) to the phase 1 competitor questionnaire.

³³⁵ Subject to two exceptions ([§] and [§]), all respondents said that production development and innovation is important or very important. Subject to one exception ([§]), all respondents said that technical expertise is important or very important. Third party responses ([[§]]) to the phase 1 customer questionnaire.

³³⁶ Note of call with a Third Party, phase 1 [§]; Note of call with a Third Party, phase 1 [[§]]; Note of call with a Third Party, phase 1 [§]; Note of call with a Third Party, phase 1 [[§]].

- (d) Access to raw materials, which was considered to be an important or very important barrier to entry and expansion by the large majority of respondents to our competitor questionnaire.³³⁷
- (e) Existing relationships between suppliers and customers and the lack of track record or reputation for potential entrants, which were considered to be a barrier to entry and expansion by some respondents to our competitor questionnaire.³³⁸ This is consistent with the vast majority of respondents to our customer questionnaire, who indicated that reputation is an important or very important factor in their choice of chemical admixtures supplier.³³⁹
- 8.89 In addition, some suppliers currently active in the UK identified access to a sufficiently large production area or storage facilities as an additional barrier that would limit their ability to expand chemical admixture volumes. While the large majority of respondents to our competitor questionnaire indicated that they had plans to increase their production of chemical admixtures by utilising their spare capacity,³⁴⁰ some of these suppliers said that this would require them to invest in expanding their facilities to hold the necessary additional raw materials to produce greater volumes and to store these finished products before they are distributed to customers.³⁴¹
- 8.90 We have not received any evidence of planned entry by any suppliers not currently active in the UK (triggered by the Merger or otherwise). In relation to expansion, as set out above in the competitive assessment, Mapei and Oscrete currently have small market positions and we find that any expansion by them is unlikely to mitigate the loss of competition between the Parties arising from the Merger.
- 8.91 Any expansion by the long tail of suppliers currently active in the UK, each with a market share of 5% in 2021, would also be unlikely to mitigate the loss of competition between the Parties arising from the Merger. Small-scale entry or expansion would not be comparable to the constraint eliminated by the Merger and is therefore unlikely to prevent an SLC.³⁴²
- (a) To prevent an SLC, the effect of entry on competition and the market must be timely.³⁴³ The pace at which any long-tail suppliers (or entrants)

³³⁷ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire.

³³⁸ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire.

³³⁹ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire.

³⁴⁰ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire.

³⁴¹ Third Party responses ([REDACTED]) to the phase 1 competitor questionnaire; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED]; Note of call with a Third Party, phase 1 [REDACTED].

³⁴² MAGs, paragraph 8.39.

³⁴³ As explained above, the CMA will look for entry to occur within two years, although each case is fact specific.

would be able to scale up supply, and the pace at which customers might switch supply, means that any growth would be gradual. Given the market position of the Merged Entity any entry or expansion would not offset the loss of competition in a timely manner.

- (b) Moreover, customers generally viewed suppliers with a smaller range of chemical admixture products as weak or very weak in the UK.³⁴⁴ It therefore follows that a supplier which enters or expands with a more limited range of products is unlikely to compete strongly with the larger incumbent suppliers in the market and would pose a weak competitive constraint on the Merged Entity. As explained above, many of the long-tail suppliers only supply a narrow range of admixtures.
- (c) In addition, small-scale entry or expansion would not meet the needs of Large Customers of chemical admixtures in the UK. As explained in paragraph 6.35, many Large Customers told us that they have additional requirements to other customers in relation to volumes and the need for chemical admixtures to be delivered to their network of production sites. Given that these customers told us that only some suppliers currently have sufficient scale and the operational network to meet their needs, small-scale entry or expansion would not be an effective alternative to the Parties for these customers even over the longer term.

8.92 Based on this evidence, we find that there will be limited countervailing constraint on the Merged Entity as a result of the entry and expansion of suppliers in the UK.

Countervailing buyer power

8.93 Where a customer has the ability and incentive to trigger new entry, it may be able to restore competitive conditions to the levels that would have prevailed absent the merger.³⁴⁵ The two main ways customers may be able to trigger new entry – sponsored entry and self-supply – are assessed under the same framework that we apply to the countervailing constraints on the Merged Entity from the ability of suppliers to enter and expand.

8.94 Most other forms of buyer power that do not result in new entry – for example, buyer power based on a customer's size, sophistication, or ability to switch easily – are unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the merger firms.³⁴⁶ This is because a

³⁴⁴ Third Party responses to the phase 1 competitor questionnaire, [REDACTED]; Third Party responses to the phase 1 customer questionnaire [REDACTED].

³⁴⁵ MAGs, paragraph 4.19.

³⁴⁶ MAGs, paragraph 4.20.

customer's buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced.

- 8.95 The Parties submitted that chemical admixture customers exert significant countervailing buyer power, determining the price and share of suppliers in high volume tenders, and can play off suppliers against one another based on parameters such as price and quality of services provided, due to the largely commoditised product.³⁴⁷
- 8.96 Consistent with the views of market participants on the barriers to entry and expansion in the supply of chemical admixtures in the UK set out above, the vast majority of respondents to our customer questionnaire said that they would not consider self-supplying chemical admixtures.³⁴⁸
- 8.97 In particular, one Large Customer said that it would not start self-supplying concrete admixtures in the UK even though it does so in other geographies.³⁴⁹ This customer emphasised that a concrete producer might choose to self-supply if it had the required technical knowledge and capabilities in the UK to successfully produce concrete admixtures, but this would be a significant hurdle for its business as admixtures are not simple products and the technology involved is more sophisticated than it was in the past as sustainability is now a greater focus.
- 8.98 Of the small number that did consider self-supply to be an option, we have found that they (or their parent company) already produce chemical admixtures in the UK or in other geographies.³⁵⁰ In particular, one Large Customer whose parent company produces chemical admixtures in Europe said that it is unlikely it would choose to self-supply chemical admixtures but cannot rule this out as an option given the ongoing consolidation in the market.³⁵¹
- 8.99 We have found that only one customer, Cemex, self-supplies the majority of its chemical admixture requirements in the UK. However, it told us that it sells only a small proportion of the volumes it produces to other customers.³⁵² Consistent with this, Cemex did not supply any respondents to our customer questionnaire, including Large Customers, in 2021.³⁵³ In addition, as set out

³⁴⁷ FMN, paragraph 291(d) and section 23; Parties' response to the Issues Letter – Chemical admixtures, paragraph 1.2.

³⁴⁸ Third Party responses ([[REDACTED]]) to the phase 1 customer questionnaire.

³⁴⁹ Note of call with a Third Party, phase 1 [[REDACTED]].

³⁵⁰ Third Party responses ([[REDACTED]]) to the phase 1 customer questionnaire.

³⁵¹ Third Party response to the phase 1 customer questionnaire [[REDACTED]].

³⁵² Note of call with a Third Party, phase 1 [[REDACTED]]; Third Party response to the phase 1 customer questionnaire [[REDACTED]].

³⁵³ Third Party response to the phase 1 customer questionnaire [[REDACTED]].

above, customers (particularly Large Customers) do not consider Cemex to be an effective alternative to the Parties or other independent chemical admixture suppliers given that they also compete against Cemex in the supply of cementitious products. This suggests that an individual customer choosing to self-supply would be unlikely to address the SLC and its adverse effects on other customers as significant additional volumes may not be made available to the rest of the market (and even if they were customers would be reluctant to purchase them).

8.100 We also found that customers sponsoring the entry or expansion of suppliers is unlikely to prevent the Merged Entity from raising prices and/or worsening quality to these customers or others in the market in the next two years. While sponsoring the entry or expansion of chemical admixture suppliers was considered an option by a majority of respondents to our customer questionnaire, these respondents explained that this was a weaker alternative than switching to another established supplier.³⁵⁴ This is because smaller suppliers would first need to meet their technical requirements and be ready to invest in scaling up their production volumes before giving them a larger share of their demand, a process which could take several years and would be riskier than sourcing products from established players.³⁵⁵

8.101 In addition, as set out in paragraphs 6.50 to 6.55, customers did not consider that they could easily switch between chemical admixtures produced by different suppliers. This is because switching supplier is a costly and long process for customers, particularly for Large Customers with a large network of production sites across the UK, which requires customers to work with a new supplier to test (and in some cases develop) the right product to use with their cement and aggregates in addition to training sales and technical teams on the new products.³⁵⁶ Customers sponsoring the entry or expansion of suppliers would therefore face significant costs when working with new suppliers, which is likely to limit the opportunities available to smaller suppliers looking for opportunities to expand in the UK by increasing the share of Large Customers' demand they supply.

8.102 Based on this evidence, we find that countervailing buyer power would not prevent an SLC from arising following the elimination of competition between the Parties post-Merger.

³⁵⁴ Third Party responses ([REDACTED]) to the phase 1 customer questionnaire.

³⁵⁵ Third Party responses to the phase 1 customer questionnaire [REDACTED].

³⁵⁶ Consistent with this, we have found that Large Customers switch their supply infrequently and, when they do switch, tend to switch only a portion of their demand or switch to a new supplier slowly over time (see paragraph 6.55).

Conclusion on countervailing constraints

8.103 Based on this evidence, we conclude that countervailing constraints on the Merged Entity will not be sufficient to prevent competition concerns from arising the Merger.

Conclusion

8.104 For the above reasons, we conclude that the Merger 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. In particular:

- (a) The Merged Entity would be by far the largest supplier, with a market share of [50-60%], in a highly concentrated market post-Merger.
- (b) The Parties compete closely across a broad range of parameters that customers consider to be important or very important, such as security of supply, quality and performance, product range, technical expertise, product development and innovation. The Parties are also two of only a small number of suppliers that customers, particularly Large Customers, consider have the capacity and capability to meet their chemical admixture requirements.
- (c) The Merged Entity would likely face at least a strong constraint from one other supplier, the merged Saint-Gobain/GCP, but all other remaining competitors will be significantly smaller than the Merged Entity and will exert only a limited constraint. Although the constraint from Mapei is likely to grow overtime, once its UK production facility comes online, this would not be sufficient to offset the loss of competition from the Merger.
- (d) There are significant barriers to entry and expansion and, although a number of suppliers have expansion plans, these will not have a significant enough effect on the structure of the market to prevent an SLC even if these plans materialise.

9. Remedies

Introduction

9.1 This chapter sets out our assessment of, and final decision on, the appropriate remedy to address the SLC and its resulting adverse effects identified in chapter [8]. As noted in chapter [3], on 2 September 2022, the Parties made a request to the CMA to concede the SLC in the market for the supply of chemical admixtures for cement, concrete and wet mortar in the UK,

to enable the CMA to focus on the assessment of remedies. The CMA accepted the Parties' request on 6 September 2022.

9.2 In reaching our final decision on the appropriate remedy, we have considered:

- (a) the written responses from the Parties and five third parties ([REDACTED]) of whom had submitted non-binding offers for the divestment business proposed by the Parties) to our public consultation on our notice of possible remedies (the **Remedies Notice**), which set out our initial views, and invited comments, on possible remedies to address the SLC identified in our provisional findings report;^{357,358}
- (b) the Parties' various submissions, including their detailed submission on their divestiture remedy proposal (the **Parties' Remedy Proposal**),³⁵⁹ and their responses to our questions on remedies;
- (c) the evidence from our response hearings with each of the Parties and various third parties;³⁶⁰ and
- (d) the Parties' response to our Remedies Working Paper (**RWP**), which set out our provisional decision on remedies that the Parties' Remedy Proposal, subject to certain modifications as specified in our RWP, would be an effective and proportionate remedy to the SLC we have found.

9.3 For the purpose of reaching our final decision on the appropriate remedy, as we have stated in our Remedies Notice,³⁶¹ we have also liaised with the other competition authorities who are investigating the Merger in their respective jurisdictions.³⁶²

9.4 The SLC and its resulting adverse effects identified in this report are identical to the provisional SLC and its resulting adverse effects identified in our provisional findings report.

9.5 This chapter is structured under the following section headings:

³⁵⁷ Our Remedies Notice and provisional findings report, both published on 25 October 2022, can be found on the CMA case page (see: [Remedies Notice](#) and [provisional findings report](#)).

³⁵⁸ We received written responses to our Remedies Notice from the following third parties: (a) [REDACTED]; (b) [REDACTED]; (c) [REDACTED]; (d) [REDACTED]; and (e) [REDACTED]. We published the responses of four third parties on the CMA case page. One third party however did not provide consent to the publication of its submission.

³⁵⁹ As part of our public consultation on the Remedies Notice, we published on our case page, a non-confidential version of the Parties' detailed submission setting out the details of the Parties' Remedy Proposal. This document can be found [here](#).

³⁶⁰ We held Remedy Calls with the following third parties: (a) [REDACTED]; (b) [REDACTED]; (c) [REDACTED]; (d) [REDACTED]; (e) [REDACTED]; (f) [REDACTED]; and (g) [REDACTED]

³⁶¹ [Remedies Notice](#), paragraph 7.

³⁶² The European Commission, the US Department of Justice, the Competition Bureau Canada, the Australian Competition and Consumer Commission and the New Zealand Commerce Commission.

- (a) the nature of the SLC and its resulting adverse effects;
- (b) the CMA's framework for assessing remedies;
- (c) an overview of the possible remedy options we have considered;
- (d) our assessment of the effectiveness of a remedy prohibiting the Merger;
- (e) our assessment of the effectiveness of a divestiture remedy;
- (f) our conclusions on effective remedies;
- (g) our assessment of relevant customer benefits;
- (h) our assessment of the proportionality of our preferred remedies;
- (i) remedy implementation issues; and
- (j) our final decision on remedies.

Nature of the SLC and its resulting adverse effects

- 9.6 In chapter [8], we concluded that the Merger may be expected to result in an SLC in the market for the supply of chemical admixtures for cement, concrete and wet mortar in the UK.
- 9.7 Our analysis demonstrates that the SLC may be expected to result in adverse effects, for example in the form of higher prices and/or reduced innovation, service levels and quality compared to what would otherwise have been the case absent the Merger.³⁶³

CMA framework for assessing remedies

- 9.8 Under the Act, where the CMA finds an SLC in its final report, it must decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effects which may be expected to result from the SLC.³⁶⁴
- 9.9 The Act requires that when considering possible remedial actions, the CMA shall 'in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it'.³⁶⁵

³⁶³ Remedies Notice, paragraphs 3 and 4.

³⁶⁴ Section 36(2) of the Act.

³⁶⁵ Section 36(3) of the Act.

- 9.10 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects.³⁶⁶
- 9.11 In determining an appropriate remedy, the CMA will consider the extent to which different remedy options will be effective in remedying, mitigating or preventing the SLC and any resulting adverse effects. As set out in the CMA's published guidance on merger remedies, the effectiveness of a remedy is assessed by reference to its:³⁶⁷
- (a) impact on the SLC and its resulting adverse effects;
 - (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;
 - (c) practicality, in terms of its implementation and any subsequent monitoring; and
 - (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effects.
- 9.12 As such, 'the CMA will seek remedies that have a high degree of certainty of achieving their intended effect. Customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects'.³⁶⁸
- 9.13 In merger inquiries, the CMA will generally prefer structural remedies, such as a divestiture remedy or prohibition of the merger, rather than behavioural remedies designed to regulate the ongoing conduct of the merger parties or control market outcomes (eg prices) following the merger.³⁶⁹ This is because:³⁷⁰
- (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring the rivalry that would be lost as a result of the merger;
 - (b) behavioural remedies generally give rise to risks around specification, circumvention, monitoring and/or distortions in market outcomes (see

³⁶⁶ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.4.

³⁶⁷ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.5.

³⁶⁸ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.5(d).

³⁶⁹ [Merger Remedies](#): CMA87 (13 December 2018), see section 7 for further guidance on behavioural remedies.

³⁷⁰ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.5.

footnote),³⁷¹ and may not have an effective impact on the SLC and its resulting adverse effects; and

- (c) structural remedies do not normally require ongoing monitoring and enforcement once implemented.

9.14 Once the CMA has identified the remedy options that would be effective in addressing the SLC, the CMA will select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no effective remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act,³⁷² to the effect of any remedial action on any relevant customer benefits (as defined in the Act³⁷³) (RCBs) arising from the merger.³⁷⁴

Overview of the possible remedy options we have considered

9.15 In this section, we first set out an overview of the possible remedies set out in our Remedies Notice to address the SLC. We then set out the remedy options which we will assess for the purpose of our determination of the appropriate remedies.

Possible remedy options set out in our Remedies Notice

9.16 In our Remedies Notice, we consulted on the following remedy options:³⁷⁵

- (a) prohibition of the Merger; and
- (b) a divestiture remedy proposed by the Parties, ie the Parties' Remedy Proposal, as described in paragraphs 9.35 to 9.43 below, or a remedy requiring the divestiture of a broader or differently configured divestiture package.

9.17 We indicated in our Remedies Notice our initial view that:³⁷⁶

³⁷¹ The design of behavioural remedies should seek to avoid four particular forms of risk to enable these measures to be as effective as possible: (a) *Specification risks*: these risks arise if the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance; (b) *Circumvention risk*: as behavioural remedies generally do not deal with the source of an SLC, it is possible that other adverse forms of behaviour may arise if particular forms of behaviour are restricted; (c) *Distortion risks*: these are risks that behavioural remedies may create market distortions that reduce the effectiveness of these measures and/or increase their effective costs; and (d) *Monitoring and enforcement risks*: even clearly specified remedies may be subject to significant risks of ineffective monitoring and enforcement. See also [Merger Remedies: CMA87](#) (13 December 2018), section 7.

³⁷² Section 36(4) of the Act.

³⁷³ Section 30 of the Act.

³⁷⁴ [Merger Remedies: CMA87](#) (13 December 2018), paragraph 3.4.

³⁷⁵ [Remedies Notice](#), paragraph 18.

³⁷⁶ [Remedies Notice](#), paragraph 41.

- (a) prohibition of the Merger would represent an effective remedy; and
- (b) while the Parties' Remedy Proposal could also potentially represent an effective remedy, this was subject to any further evidence we received on the Parties' Remedy Proposal and on any other remedy option, and provided that we could satisfy ourselves as to any potential risks associated with the Parties' Remedy Proposal.

9.18 We also indicated that a behavioural remedy was very unlikely to be effective in remedying the SLC and any resulting adverse effects.³⁷⁷

9.19 In relation to the Parties' Remedy Proposal, we invited views on:³⁷⁸

- (a) whether the Parties' Remedy Proposal will represent an effective remedy to the SLC and its resulting adverse effects;
- (b) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market;³⁷⁹
- (c) whether any other elements (eg assets) should also be required to be divested; and
- (d) a number of specific areas of the proposal such as the approach to R&D, branding, patents and intellectual property (**IP**), the separation of assets and economies of scale.

9.20 We also invited views on:

- (a) whether a broader or differently configured divestiture package can also be an effective remedy;³⁸⁰
- (b) whether there are any other practical remedy options (structural or behavioural) which we should consider that could be effective in addressing the SLC and/or its resulting adverse effects;³⁸¹
- (c) the identification and availability of a suitable purchaser;³⁸² and

³⁷⁷ Remedies Notice, paragraph 16.

³⁷⁸ Remedies Notice, paragraphs 44 to 49.

³⁷⁹ Merger Remedies: CMA87 (13 December 2018), paragraph 5.3(a).

³⁸⁰ Remedies Notice, paragraph 50.

³⁸¹ Remedies Notice, paragraph 14.

³⁸² Remedies Notice, paragraphs 52 to 55.

(d) ensuring an effective divestiture process.³⁸³

- 9.21 None of the Parties or third parties who engaged with us on possible remedies told us that we should consider behavioural remedies as a primary remedy or as an adjunct to a possible structural remedy.³⁸⁴
- 9.22 In our view, we consider that designing effective behavioural remedies to address all aspects of the SLC would be impractical and subject to very substantial design risks, eg specification, circumvention, market distortion and/or monitoring risks (see footnote [371]). We therefore do not consider behavioural remedies further.
- 9.23 Other than the divestiture remedy options outlined above and in our Remedies Notice, none of the third parties we spoke to or who responded to our Remedies Notice suggested that we should pursue a materially different remedy option.
- 9.24 Therefore, on the basis outlined above, we assess the effectiveness of each of the following remedy options:
- (a) prohibition of the Merger; and
 - (b) a divestiture remedy, including the Parties' Remedy Proposal and, if necessary, a broader or differently configured package.
- 9.25 We then reach an overall conclusion on the effectiveness of each of these remedy options.

Assessment of the effectiveness of a prohibition remedy

- 9.26 In this section, we consider the effectiveness of a remedy requiring the prohibition of the Merger.

Remedy description

- 9.27 Prohibition of the Merger would prevent any combination of the Parties' businesses, with Sika and MBCC continuing to operate under separate ownership as independent competitors. This could be effected by accepting final undertakings under section 82 of the Act or making a final order under section 84 of the Act, prohibiting the Merger and preventing the Parties from

³⁸³ Remedies Notice, paragraph 56.

³⁸⁴ For example, the use of behavioural remedies in a supporting role to safeguard the effectiveness of any structural remedies.

attempting to merge for a further period (our normal practice would be to prevent a future merger between the Parties for the next ten years).

Parties' and third parties' views

9.28 The Parties told us that prohibition of the Merger would be an unnecessary, unreasonable and disproportionate remedy for the SLC,³⁸⁵ given the availability of a 'fully effective divestment remedy' in the form of the Parties' Remedy Proposal, which represented a comprehensive solution to the SLC.³⁸⁶

9.29 In relation to the views of third parties on the effectiveness of prohibition:

(a) One third party told us that both prohibition of the Merger and a divestiture of MBCC's chemical admixtures business as proposed by the Parties would result in a 'strong competitor' to Sika, and added that since MBCC's divested chemical admixtures business could be run as a standalone business, prohibition did not seem to be necessary.³⁸⁷

(b) A potential purchaser told us that it believed that prohibition of the Merger was disproportionate and unnecessary given that the Parties' Remedy Proposal was a comprehensive solution to the SLC.³⁸⁸

Assessment and conclusions on effectiveness of prohibition

9.30 Prohibition of the Merger would result in Sika and MBCC continuing to operate under separate ownership as independent competitors. It would therefore prevent the SLC from arising in the relevant market.

9.31 Given this, we conclude that prohibition would represent an effective and comprehensive solution to the SLC and consequently prevent any resulting adverse effects. The proportionality of prohibition is addressed later in this chapter when we consider the proportionality of our preferred remedies.

Assessment of the effectiveness of a divestiture remedy

9.32 This section covers our assessment of the effectiveness of a divestiture remedy, as part of which we consider the effectiveness of the Parties'

³⁸⁵ Parties' response to the Remedies Notice, paragraph 1.2(a).

³⁸⁶ Parties' response to the Remedies Notice, paragraph 3.2.

³⁸⁷ Note of a Remedies Call with a Third Party [REDACTED].

³⁸⁸ Third Party response to Remedies Notice [REDACTED].

Remedy Proposal and whether we need a broader or differently configured divestiture package.

- 9.33 In our RWP, we provisionally concluded that based on our detailed assessment the Parties' Remedy Proposal, subject to certain modifications as specified in our RWP, would be an effective and proportionate remedy to the SLC we have found. In their response to the RWP, the Parties agreed with the CMA's overall provisional conclusion on the effectiveness of the Parties' Remedy Proposal and raised limited points for our consideration (primarily in relation to our provisional conclusions on the process for the sequencing of the closings of the divestment transaction and the Merger, and the arrangements with respect to the non-chemical admixtures product trademarks which will not form part of the divestiture package under the Parties' Remedy Proposal).³⁸⁹ The Parties' submissions and our consideration of them are set out in the relevant subsections below.

Remedy description

- 9.34 In this case, under the Parties' Remedy Proposal, the Parties have proposed to divest MBCC's chemical admixtures business in the UK and other geographical markets. We provide below an overview of the Parties' Remedy Proposal.

Overview of the Parties' Remedy Proposal

- 9.35 By way of background information, MBCC is comprised of two main business divisions:
- (a) the 'Admixture Systems' business division (the **EBA business**), which contains:
 - (i) MBCC's chemical admixtures business; and
 - (ii) a number of businesses in adjacent markets (namely, MBCC's 'non-chemical admixtures' business and its 'underground construction' (**UGC**) business, which supply fibres for concrete and injection resins, foams and greases for tunnel boring machines, etc); and

³⁸⁹ Parties' response to the RWP, paragraphs 1.2 and 1.3.

- (b) the 'Construction Systems' business division (the **EBC business**), which supplies industrial floorings, waterproofing, ETICS,³⁹⁰ sealants, adhesives, etc.³⁹¹
- 9.36 Under the Parties' Remedy Proposal, the Parties are proposing a partial divestiture remedy comprising the divestiture of the following MBCC businesses to a single purchaser:
- (a) the EBA businesses in the countries of the European Economic Area (**EEA**), Switzerland, UK, Canada, United States, Australia and New Zealand; and
- (b) the EBC business in Australia and New Zealand,
- (together, the **Divestment Business**).
- 9.37 Sika will retain the MBCC businesses which are outside the scope of the Divestment Business, namely:
- (a) the EBA business outside the EEA, Switzerland, UK, Canada, United States, Australia and New Zealand (the **Retained EBA Business**); and
- (b) the global EBC business except in Australia and New Zealand (the **Retained EBC Business**),
- (together, the **Retained Business**).
- 9.38 Given that MBCC Group's legal entities carry both the assets of its EBC and EBA businesses, a divestiture of the Divestment Business would necessitate the separation of the Divestment Business from the Retained EBC Business. Under the Parties' Remedy Proposal, the Parties have proposed to structure and implement the divestiture of the Divestment Business by way of:³⁹²
- (a) first 'carving out' the assets of the Retained EBC Business from the existing MBCC Group legal entities that hold the Divestment Business and transferring the Retained EBC Business's assets to a new separate legal entity (or in some smaller jurisdictions to existing Sika legal entities) (the **Reverse Carve-Out**). The Parties told us that following the Reverse

³⁹⁰ External Thermal Insulation Composite System.

³⁹¹ The EBA and EBC businesses accounted for 49% and 51% of MBCC sales (respectively) in 2020.

³⁹² Parties' submission on the Parties' Remedy Proposal, paragraphs 2.2, 2.3, 2.7 and 2.9.

Carve-Out, all assets, staff, and resources of the Divestment Business would remain in the existing MBCC Group legal entities;³⁹³ and then

- (b) selling 100% of the shares in the existing MBCC Group legal entities that carried the Divestment Business to a purchaser (the **Share Sale**).

9.39 Under the Parties' Remedy Proposal, the Divestment Business will:³⁹⁴

- (a) operate in 36 countries (in the EEA, Switzerland, UK, United States, Canada, Australia and New Zealand);
- (b) manufacture chemical admixtures, fibres, mineral admixtures, UGC and other related products such as polymers;
- (c) have net sales of around €[X] with an EBITDA margin³⁹⁵ of around [X]%;³⁹⁶
- (d) comprise 25 legal entities and seven branches;
- (e) include:
 - (i) 36 production sites, as well as over 30 standalone warehouses and around 20 standalone offices (including the whole of the current MBCC headquarters in Mannheim, Germany);
 - (ii) over 1,000 registered trademarks;
 - (iii) over [X] EBA patent families³⁹⁷ and [X] EBC patents with national scope in Australia and New Zealand;
 - (iv) three R&D sites (Treviso, the EBA part of the Trostberg site and the EBA part of the Beachwood site) and over 80 global EBA R&D projects;³⁹⁸

³⁹³ The Parties told us that the few exceptions to the Reverse Carve-Out structure were [X], where due to their very small size, the local EBA businesses would be carved out instead (Parties' submission on the Parties' Remedy Proposal, footnotes 27 and 31).

³⁹⁴ Parties' submission on the Parties' Remedy Proposal, Table 1.

³⁹⁵ EBITDA means earnings before interest, tax, depreciation and amortisation. EBITDA margin is calculated by dividing EBITDA by net sales.

³⁹⁶ Net sales and EBITDA margin are based on perimeter-adjusted figures including standalone cost adjustments.

³⁹⁷ As of May 2022.

³⁹⁸ As of April 2022.

- (v) around 1,600 full-time equivalent (**FTE**) staff, including around 160 R&D/Technical FTEs;³⁹⁹
- (vi) over 60 'Key Personnel' including top-level executive management (CEO, CFO, CTO and Head of M&A)⁴⁰⁰ and a number of global functional leads (Group Vice President Marketing & Strategy Admixtures, Head of Global Operations, Director Global Brand Management and Global Vice President Underground Construction); and
- (vii) all EBA-related customer⁴⁰¹ and supplier relationships in the 36 countries in which the Divestment Business operates; and transitional service agreements (**TSA**) for the benefit of the Divestment Business for IT, HR and transitional arrangements for the supply of certain products.

9.40 Under the Parties' Remedy Proposal, the eventual purchaser and final transaction documents (including the TSA and any supply agreements) would be subject to CMA approval.

9.41 The Parties launched the formal sale process for the Divestment Business on [X]. The Parties told us that a total of [X] potential purchasers (comprised of both [X]) requested and received a process letter for the ongoing sale process. From those, [X] potential purchasers submitted a non-binding offer on [X].⁴⁰² [X] potential purchasers were shortlisted by the Parties on [X].

9.42 The Parties have proposed the divestiture of the EBA businesses in the UK, the EEA and Switzerland (the **European Divestment Business**) to address specifically the concerns of the CMA in relation to the overlap between the Parties in the UK and the concerns of the European Commission.

³⁹⁹ The absolute number of FTEs within the Divestment Business is subject to normal fluctuations, eg as a result of future leavers and new hires. The FTE count was derived from an FTE base dated 30 June 2022 and excluded certain categories of employees based on information that was current at 4 October 2022 (eg those on temporary leave, apprentices, trainees and contractors). The count does not reflect leavers in the United States and Canada.

⁴⁰⁰ Chief Executive Officer, Chief Financial Officer and Chief Technology Officer.

⁴⁰¹ The Parties told us that the vast majority of customers purchased on a spot basis, on the basis of purchase orders and therefore, for such customers, consent clauses were not a relevant consideration. The Parties also stated that for customers who purchased on the basis of contracts, the contracts themselves would remain with the same MBCC Group legal entities that would be acquired by the purchaser (ie no assignment would be required). The Parties told us that any change of control clauses would simply require that the customer consent to any change in the ultimate ownership of the legal entity (ie from Lone Star to the purchaser). The Parties stated that for each of these customers, MBCC Group management would obtain the required consents before closing, and that doing so was a matter of standard practice in any sale. The Parties therefore told us that they did not anticipate any commercial or legal issues in obtaining such consents and that [X]. Source: Parties' response dated 18 November 2022 to the phase 2 RFI 4 (**RFI 4**), paragraphs 18 to 22.

⁴⁰² Parties response to Remedies Notice, paragraph 2(e).

- 9.43 We understand that the combination of the European Divestment Business with the EBA businesses in Australia, Canada, New Zealand and the United States and the EBC businesses in Australia and New Zealand as part of the same divestiture package, was primarily driven by the concerns of other competition authorities in their respective geographical markets, particularly in relation to ensuring access to centralised assets, such as R&D facilities and patents. The Parties also told us that a single divestment package would ensure that the Divestment Business would have sufficient scale, financial resilience and the incentive to invest in order to compete effectively in the relevant markets where the Divestment Business would operate.⁴⁰³
- 9.44 In this section, we focused on whether the remedy is capable of remedying, mitigating or preventing the SLC identified in the UK and any resulting adverse effect. For the purpose of certain aspects of our assessment, we considered it appropriate to discuss aspects of the Divestment Business specific to geographic areas outside Europe. For the purpose of this chapter, we define its businesses in the United States and Canada as the **N. American Divestment Business**; and its businesses in Australia and New Zealand as the **ANZ Divestment Business**.

Parties' submission on the effectiveness of the Parties' Remedy Proposal

- 9.45 In relation to the overall effectiveness of the Parties' Remedy Proposal, the Parties told us that:⁴⁰⁴
- (a) the Parties' Remedy Proposal would comprehensively address the SLC by entirely eliminating the overlap between the Parties in the supply of chemical admixtures in the UK (ie the scope of the SLC);
 - (b) the Divestment Business would have:
 - (i) sufficient scale and resilience to compete effectively with chemical admixture suppliers across three major regions of the world;
 - (ii) all assets located outside the UK that were necessary to support the UK chemical admixtures business, and the chemical admixtures business in the other countries within the Divestment Business perimeter (including the R&D centres and R&D personnel in Trostberg, Treviso and Beachwood;

⁴⁰³ Parties' submission on the Parties' Remedy Proposal, Table 1.

⁴⁰⁴ Parties response to Remedies Notice, paragraph 2.1.

- (iii) [X] the senior executive management of the Mannheim headquarters; and
- (iv) the benefit of a secure supply of (and means of production for) raw materials (including polymers);
- (c) the divestiture package would contain all of the necessary assets (including assets related to R&D, trademarks, patents and other IP and employees), to enable the Divestment Business to operate successfully as a standalone competitive and resilient organisation, and compete successfully on an ongoing basis;
- (d) the Parties' Remedy Proposal was practical in its structure and design and did not give rise to any implementation risks, given that the EBA business already operated effectively as a standalone, independent business division, and the 'reverse carve-out' structure proposed by the Parties ensured that there was no risk of 'asset loss' as a result of the separation of the Retained EBC Business; and
- (e) the Divestment Business was an attractive package, which had already attracted interest from many suitable purchasers.

9.46 The Parties told us that the Parties' Remedy Proposal was therefore an effective and proportionate remedy that would comprehensively address the SLC and its resulting adverse effects.⁴⁰⁵

Assessment of effectiveness of a divestiture remedy

9.47 We would expect a divestiture of a viable, stand-alone business containing all of the businesses and assets of one of the Parties that are engaged in the supply of chemical admixtures in the UK could be an effective remedy. Such a divestment would re-establish the structure of the market and thereby restore the dynamic process of competition that would exist between the Parties in the absence of the Merger. To be effective, any such remedy would need to be designed to address the practical risks normally associated with any divestiture remedy (see paragraph 9.49 below).

9.48 The remainder of this section focuses largely on the design of a divestiture remedy, which is integral to our assessment of its effectiveness. We end this section with our conclusion on the effectiveness of a divestiture remedy.

⁴⁰⁵ Parties response to Remedies Notice, paragraph 6.1.

Risks associated with a divestiture remedy

9.49 There are three categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, purchaser risk and asset risk.⁴⁰⁶

- (a) Composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor.
- (b) Purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available.
- (c) Asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture.

9.50 An effective divestiture remedy should give us confidence that these practical risks can be addressed in its design. We will therefore consider:

- (a) the appropriate scope of the divestiture package;
- (b) the identification and availability of suitable purchasers; and
- (c) the procedural safeguards to ensuring an effective divestiture process.

9.51 Our assessment is set out below.

Scope of the divestiture package

9.52 The CMA's guidance on remedies states that the CMA will 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.⁴⁰⁷ The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a standalone basis, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to composition and purchaser risks and can generally be achieved with greater speed.⁴⁰⁸

9.53 In our Remedies Notice, we invited views on the appropriate scope of a divestiture package, including the scope of the Parties' Remedy Proposal and a possibly broader or differently configured divestiture package. Before setting out our own assessment of the scope of the Parties' Remedy Proposal, we

⁴⁰⁶ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 5.3.

⁴⁰⁷ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 5.7.

⁴⁰⁸ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 5.12.

first set out the views of the Parties and third parties on the appropriate scope of a divestiture package.

Scope of the divestiture package – Parties’ views

- 9.54 The Parties told us that the European Divestment Business, and the Divestment Business more broadly, represented a ‘comprehensive and attractive standalone and effectively competitive business’, and that there was no risk that the scope of the European Divestment Business would give rise to composition risks.⁴⁰⁹
- 9.55 In their response to the Remedies Notice, the Parties told us that there were no composition risks arising from the Parties’ proposal. In particular, the Parties noted:
- (a) in relation to branding, that their proposed rebranding transitional periods (see paragraph 9.126 below) would not hamper the expansion by the Divestment Business into any country in the Retained Business’s geographic perimeter during the rebranding transitional period, or affect the viability of the Divestment Business;⁴¹⁰ and
 - (b) in relation to patents and IP, that all relevant patents and other IP rights could be easily and comprehensively identified and that the Parties had developed a simple and comprehensive approach with regards to patents and other IP rights for the Divestment Business, ensuring that there was ‘nothing further to include’.⁴¹¹

Scope of the divestiture package – third parties’ views

- 9.56 There was a broad consensus from third parties that the proposed scope of the divestiture package under the Parties’ Remedy Proposal was likely to be effective in addressing the SLC. For example:
- (a) One competitor told us that MBCC’s UK admixtures business would be viable as a standalone business and an effective competitor in the UK. This competitor told us that the Divestment Business provided the potential purchaser with sufficient scale to compete effectively.⁴¹²

⁴⁰⁹ Parties’ submission on the Parties’ Remedy Proposal, Appendix, paragraph 4.2.

⁴¹⁰ Parties’ submission on the Parties’ Remedy Proposal, Appendix, paragraph 5.5.

⁴¹¹ Parties’ response to Remedies Notice, paragraph 5.16.

⁴¹² Note of a Remedies Call with a Third Party [REDACTED].

- (b) One customer told us that it considered that the Divestment Business would be an effective competitor in the UK provided that it ended up with the 'right' purchaser.⁴¹³
- (c) One potential purchaser told us that the Divestment Business would be a global entity with the necessary assets to be an effective competitor in the chemical admixtures market, including having the R&D capabilities and brands. This third party told us that the potential purchaser would therefore be in a position to run the Divestment Business as effectively as it was currently operated by MBCC.⁴¹⁴
- (d) Another potential purchaser told us that based on the scope of the Parties' proposed divestiture package, it considered that the Divestment Business would be an effective competitor in the UK chemical admixtures market.⁴¹⁵
- (e) Another potential purchaser told us that the Divestment Business was a viable business which could take market share from other players over time.⁴¹⁶
- (f) Another potential purchaser told us that it considered the Divestment Business to be a viable standalone business and an attractive divestiture package, with the potential to profitably and sustainably grow. This third party added that the EBA arm of MBCC already comprised 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. This third party also considered that the divestment package included the critical assets and know-how to enable future growth, innovation and expansion.⁴¹⁷
- (g) Another potential purchaser told us that it considered that the approach to separation of the Divestment Business appeared well 'thought-through' and that the package contained the necessary key management, IP, brands and R&D facilities to ensure the transfer of a viable business.⁴¹⁸
- (h) Another potential purchaser told us that the Parties' Remedy Proposal did not give rise to composition, purchaser or asset risks, and that the divestiture package was attractive, well-configured and capable of operating as a standalone competitor to the Merged Entity from day one.

⁴¹³ Note of a Remedies Call with a Third Party [REDACTED].

⁴¹⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁴¹⁵ Note of a Remedies Call with a Third Party [REDACTED].

⁴¹⁶ Note of a Remedies Call with a Third Party [REDACTED].

⁴¹⁷ Third Party response to Remedies Notice [REDACTED].

⁴¹⁸ Third Party response to Remedies Notice [REDACTED].

It added that it had not identified any missing elements from the divestiture package.⁴¹⁹

- 9.57 One competitor, however told us that since the announcement of Sika's acquisition of MBCC in November 2021, [REDACTED]. It considered that while a purchaser of the Divestment Business could probably rebuild and re-establish its credibility, it would not restore the MBCC business to what it was prior to the Merger.⁴²⁰ We consider the issue of [REDACTED] and the impact of [REDACTED] on the Divestment Business later in this chapter (see paragraphs 9.339 to 9.369) when we turn to our consideration of the asset risks associated with the Parties' Remedy Proposal.
- 9.58 In response to our question to third parties on what key attributes and capabilities the Divestment Business would need to win and retain customers in UK:
- (a) One potential purchaser told us that the 'size and capabilities' of the Divestment Business would be important and explained that the Divestment Business would need to have 'sufficient weight and coverage' to be able to 'carry the costs' of the R&D it would require, as well as having the 'right kind' of IP. It also told us that the Divestment Business would need to have the 'right experienced people' within the business who knew the market and could run the business.⁴²¹
 - (b) One customer told us that on the 'technological development side, the Divestment Business would need to have access to polymers and innovation, and the 'vast experience' required to bring 'technical enhancements' to the products it brought to market.⁴²² It added that it wanted to work with an admixtures supplier who would develop products for it and that the Divestment Business would need to be able to replicate in its laboratories, the concrete it needed. This third party therefore considered that it was important for the Divestment Business to retain its 'technical attributes'.⁴²³ It also told us that there were higher risks associated with a divestiture package that was smaller than the Divestment Business and given that it was important for the Divestment Business to have continuity of innovation and supply, it considered that the bigger the divestiture package, 'the better'.⁴²⁴

⁴¹⁹ Third Party response to Remedies Notice [REDACTED].

⁴²⁰ Note of a Remedies Call with a Third Party [REDACTED].

⁴²¹ Note of a Remedies Call with a Third Party [REDACTED].

⁴²² Note of a Remedies Call with a Third Party [REDACTED].

⁴²³ Note of a Remedies Call with a Third Party [REDACTED].

⁴²⁴ Note of a Remedies Call with a Third Party [REDACTED].

- (c) One competitor told us that any divested business would require technical expertise, manufacturing capabilities in the UK and the ability to offer 'competitive value'.⁴²⁵
- (d) One customer told us that when choosing to partner with a potential admixtures supplier, the supplier would need the technology, capability and knowledge to produce the 'right-performing' admixtures. In terms of production capability, it told us that a supplier would also need production facilities in the UK or in Europe.⁴²⁶
- (e) A customer and also a potential purchaser told us that for the Divestment Business to be an effective competitor, it would need: a strong technical sales team; well-equipped and modern laboratory facilities; to be able to rely on existing R&D projects to continue to invest in R&D; and to have global scale, allowing it to invest in R&D and well-known brands.⁴²⁷
- (f) One competitor told us that customers would expect the Divestment Business to: (i) provide continuity of supply; (ii) have the same 'recipes', including the same raw materials; (iii) have R&D capabilities; and (iv) have the same existing UK team structure.⁴²⁸
- (g) A potential purchaser told us that it was 'critical' that the Divestment Business had:⁴²⁹
 - (i) the relevant patents, as this market was an IP-intensive industry and having patents was vital to protecting the viability of business;
 - (ii) the global R&D centres in Trostberg and Treviso (with the inclusion of its polymer capability being considered 'critical');
 - (iii) all the relevant brands (with Sika transitioning away from the Master Builders brands as quickly as possible); and
 - (iv) the right people, as this was a business where relationships mattered both centrally and locally, and therefore the Divestment Business would need central, local and regional staff. It added that, R&D personnel were key, as they led the business's ability to be at the forefront of technology.

⁴²⁵ Note of a Remedies Call with a Third Party [REDACTED].

⁴²⁶ Note of a Remedies Call with a Third Party [REDACTED].

⁴²⁷ Note of a Remedies Call with a Third Party [REDACTED].

⁴²⁸ Note of a Remedies Call with a Third Party [REDACTED].

⁴²⁹ Note of a Remedies Call with a Third Party [REDACTED].

- 9.59 We take into account these third parties' views on the assets required to ensure the competitiveness and capabilities of the Divestment Business in our assessment below of possible composition risks for the Divestment Business.

Scope of the divestiture package – our assessment

- 9.60 In considering the appropriate scope for a divestiture package, we aim to ensure that it:

- (a) addresses the SLC and its resulting adverse effects;
- (b) is attractive to potential purchasers; and
- (c) enables the eventual purchaser to operate the divested business as an effective competitor.

- 9.61 As noted above, there was a broad consensus from the third-party evidence received to date that the Parties' Remedy Proposal would represent an effective remedy to the SLC.

- 9.62 Based on our understanding of the market from our investigation of the Merger, our assessment of the evidence above, and the details of the scope of the divestiture package set out in the Parties' submission on the Parties' Remedy Proposal, we focus our assessment on the following areas:

- (a) the proposed transaction structure;
- (b) patents, IP and know-how;
- (c) R&D facilities and innovation capabilities;
- (d) branding and trademarks;
- (e) procurement and raw materials;
- (f) premises (production sites, warehouses and offices);
- (g) EBC separation issues; and
- (h) financial resilience.

- 9.63 We consider each of these in turn below.

(a) Proposed transaction structure

- 9.64 As set out in paragraph 9.38 above, the Parties have proposed a transaction structure involving first, a Reverse Carve-Out of the Retained EBC Business

from the MBCC Group legal entities, followed by the Share Sale to a purchaser of the MBCC Group legal entities which carry the Divestment Business.⁴³⁰

- *Proposed transaction structure – Parties’ proposal*

9.65 The Parties told us that the proposed Reverse Carve-Out meant that there was no risk of ‘asset loss’ as a result of the separation of the Retained EBC Business.⁴³¹ For example, the Parties told us that following the Reverse Carve-Out, the MBCC Group legal entities would continue to have all of the assets that contributed to the operations of the European Divestment Business, such that no European asset would get ‘lost’ during the separation process, and that Sika would take the risk of the separation measures.⁴³²

9.66 The Parties told us that the Reverse Carve-Out structure had been chosen to ensure that the European Divestment Business would be economically viable, clear-cut and stand-alone and to secure business continuity, reducing significantly any separation risk. As such, the Parties told us that the proposed transaction structure would ensure that there would be no impact on the operation and the continuity of the European Divestment Business.⁴³³

- *Proposed transaction structure – third-party evidence*

9.67 In relation to the views of third parties on the Parties’ proposed transaction structure:

- (a) One potential purchaser told us that it did not consider the carve-out nature of the Divestment Business would negatively impact the attractiveness of the Divestment Business, noting in particular the proposal to implement the proposed divestment as a reverse carve-out.⁴³⁴
- (b) Another potential purchaser told us that the reverse carve-out transaction structure meant that there did not appear to be any material risk of asset deterioration assumed by a prospective purchaser pre-disposal and during any transitional period. This third party told us that the Parties’ proposed reverse carve-out mechanism helped mitigate the risk of a

⁴³⁰ Parties’ submission on the Parties’ Remedy Proposal, paragraphs 2.2, 2.3, 2.7 and 2.9.

⁴³¹ Parties response to Remedies Notice, paragraph 2.1.

⁴³² Parties’ submission on the Parties’ Remedy Proposal, paragraph 2.10.

⁴³³ Parties’ submission on the Parties’ Remedy Proposal, paragraph 2.10.

⁴³⁴ Third Party response to Remedies Notice [[]].

failure to transfer relevant IP and know-how, since they would transfer with the relevant legal entities.⁴³⁵

- *Proposed transaction structure – our assessment*

9.68 We consider that the Parties' proposal to implement the divestiture transaction by way of a sale of 100% of the MBCC Group legal entities which carry on the Divestment Business (ie the Share Sale) would (compared to an asset sale):

- (a) ensure greater business continuity and minimise the risk of business disruption for the Divestment Business by transferring to a purchaser the existing legal entities that carry on the operations of the Divestment Business, eg in terms of the transfer of the Divestment Business's contracts and permits to a purchaser; and
- (b) reduce the potential complexity of reviewing and implementing the transaction from the purchaser's perspective.

9.69 We consider, however, that the extent to which the Parties' proposed Reverse Carve-Out mitigates composition risk would depend on the extent to which we can correctly and comprehensively scope and identify the assets which should be carved out, and therefore, the proposed Reverse Carve-Out would not obviate our need to consider carefully the composition risks associated with the Parties' scope for the Divestment Business (as we have done in this section below).

9.70 We also note that under the Parties' proposed Reverse Carve-Out, for a limited number of smaller jurisdictions, the Parties have proposed to transfer the assets of the Retained EBC Business to a Sika entity (see paragraph 9.38 above) prior to the Share Sale of the Divestment Business. While we would have some concerns if certain elements of the Merger (ie Sika's acquisition of MBCC or the Retained Business) completed prior to the Share Sale of the Divestment Business (see also paragraphs 9.329 to 9.337. below for our assessment and conclusions on the sequencing of the completion timings for the sale of the Divestment Business and the Merger), in their response to the RWP, the Parties confirmed that [REDACTED], and that the Reverse Carve-Out, the Share Sale of the Divestment Business would complete on [REDACTED].⁴³⁶

⁴³⁵ Third Party response to Remedies Notice [REDACTED].

⁴³⁶ Parties' response to the RWP, paragraph 2.3.

- *Proposed transaction structure – our conclusions*

- 9.71 Based on the above, we conclude that the Parties' proposal to implement the sale of the Divestment Business by way of a Reverse Carve-Out followed by a Share Sale would help to ensure business continuity and minimise the risk of business disruption for the Divestment Business, and limit the potential complexity of reviewing and implementing the transaction from the purchaser's perspective.
- 9.72 Given also that the Parties have confirmed that completion of the Reverse Carve-Out and the Share Sale of the Divestment Business will take place on [REDACTED], we conclude that this will mitigate the risk associated with completing the Merger (or even certain elements of it) prior to the sale of the Divestment Business (see also paragraphs 9.329 to 9.338 below).
- 9.73 We therefore conclude that the proposed transaction structure itself would not involve unacceptable risk in relation to its implementation.

(b) Patents, IP and know-how

- 9.74 There was a broad consensus from the evidence we received from third parties that patents, IP and know-how were critical components the Divestment Business needed in order to compete effectively.
- 9.75 Below, we provide further details of the Parties' proposal under the Parties' Remedy Proposal in relation to patents, IP and know-how and the views of third parties, before setting out our assessment and conclusions in relation to whether there were any composition risks in relation to the inclusion of patents, IP and know-how under the Parties' Remedy Proposal.

- *Patents, IP and know-how – Parties' proposal*

- 9.76 The Parties told us that:
- (a) the Divestment Business would own all patents relating to the EBA business worldwide⁴³⁷ (with the exception of [REDACTED]⁴³⁸ EBA patents which were used exclusively in Japan – see also paragraph 9.77 below) and that all pending EBA patent applications would form part of the Divestment Business.⁴³⁹

⁴³⁷ Parties' submission on the Parties' Remedy Proposal, paragraph 4.8 and Appendix, paragraph 7.4(a).

⁴³⁸ At the time of the RWP, we understood that there were [REDACTED] Japanese EBA patents relating to Pozzolith products. The Parties updated this figure in the Parties' response to the RWP.

⁴³⁹ Parties' response dated 9 November 2022 to the phase 2 RFI 2 (RFI 2), paragraph 15.

- (b) the Merged Entity would obtain a sole licence from the purchaser to use the patents until the end-of-life for the Retained EBA Business in the Retained EBA Business's geographic perimeter;⁴⁴⁰
- (c) for EBC-related patents, all patents worldwide would transfer to Sika, with the exception of EBC patents with national scope that were relevant to the Divestment Business's EBC business in Australia and New Zealand;⁴⁴¹ and
- (d) the Divestment Business would own all Bills of Materials (**BoMs**) relating to the EBA operations of each of the production sites included in the Divestment Business.⁴⁴²

9.77 The Parties told us that while the Parties' Remedy Proposal was that all patents pertaining to EBA products globally would form part of the Divestment Business for the benefit of the purchaser, the Parties had recently discovered that exceptionally, [X], the legal entity in Japan that would be part of the Retained Business, owned (or in some cases, co-owned) [X] Japanese EBA patents. The Parties noted that these were purely related to Japanese Pozzoloth products, and that they were not required by the Divestment Business and would be owned by Sika as part of the Retained Business. The Parties confirmed that all other EBA patents globally would remain with the Divestment Business (and held by the MBCC legal entity, CORTE GmbH, which would be transferred with the Divestment Business).⁴⁴³

9.78 The Parties told us that under the Parties' Remedy Proposal, they had adopted a simple and comprehensive approach, which ensured that the purchaser obtained all patents required for the functioning of the Divestment Business, including any future global expansion. In this regard, the Parties told us that:

- (a) patent rights could be clearly allocated to either the EBA business or the EBC business by reference to the nature of the product and the underlying research projects (ie EBA- or EBC-focused) and as such there were no patents which were relevant to both the Divestment Business and the Retained EBC Business;^{444,445} and
- (b) the proposed approach (ie the Reverse Carve-Out step) to carve-out the EBC patents from the MBCC legal entities being sold (rather than carving

⁴⁴⁰ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.4(a).

⁴⁴¹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.4(b).

⁴⁴² Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.11(b).

⁴⁴³ Parties' response to RFI 4, paragraph 25.

⁴⁴⁴ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 4.2 and 4.5.

⁴⁴⁵ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.3.

out the EBA patents) ensured that no EBA-related patents were inadvertently excluded from the Divestment Business.⁴⁴⁶

- *Patents, IP and know-how – third-party evidence*

9.79 Overall, third-party evidence highlighted the importance of patents for the competitiveness of the Divestment Business and that it was important that the purchaser had the necessary information to assess whether all of the relevant patents formed part of the Divestment Business. Third parties also noted that access to the know-how underlying the development of those patents, including the individuals with that know-how, were just as relevant:

- (a) One potential purchaser told us that patents were very relevant and that the highest growth/margin products all had patents. That third party told us that a supplier needed to be innovative at the polymer level. This third party told us that it appeared that there were more patents filed than were part of the Parties' proposed divestiture package and expressed the view that the purchaser should take those patents, not the Merged Entity, as some of them could be relevant for future growth.⁴⁴⁷
- (b) Another potential purchaser told us that patents were important and that they were the reason why the business invested in R&D, as patents would give the business, exclusive access to that IP for a period of time. It also told us that patents were not the only important differentiator and that other important factors included: (i) technical know-how, which might not be 'patentable'; and (ii) the individuals in technical roles, who were important and understood what formulations could be used to obtain certain properties. This third party added that the 'key know-how' sat in the R&D teams, the technical service teams and local management.⁴⁴⁸
- (c) Another potential purchaser told us that it was 'very important' to have the relevant patents,⁴⁴⁹ as patents enabled the purchaser to have the 'fundamental knowledge' and 'access to the knowledge' for the ongoing development of the Divestment Business. It also noted that having the patents would provide the Divestment Business with greater confidence that it could perform the various 'development processes'. It added that having the three R&D sites as part of the Divestment Business would be less valuable if the Divestment Business did not come with the relevant patents.⁴⁵⁰ This third-party considered that since all of the Divestment

⁴⁴⁶ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.5.

⁴⁴⁷ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁴⁸ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁴⁹ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁵⁰ Note of a Remedies Call with a Third Party [REDACTED].

Business's IP was sitting in one legal entity, it would not expect any IP to be lost. However, it told us that the detail around the licensing back of some of the IP to the Retained Business would be one area of focus if it was progressed to the second stage of the sale process.⁴⁵¹

- (d) One competitor told us that patents were important, as it was seeing more innovation in terms of new raw materials. For example, this third party explained that MBCC and BASF held patents around the use of 'nanotechnology' in the UK and European admixtures markets.⁴⁵²
- (e) One customer told us that the UK operations should have the BOMs as these were the 'recipe mix' which contained all of the information on the products which had been developed and were produced.⁴⁵³
- (f) One competitor told us that patents were very important and that it made a 'significant difference' if an admixtures business did not have the 'recipes', as 'reverse engineering' did not always work. It added that the key types of know-how for an admixture business were recipes and customer databases (eg their prices and volumes).⁴⁵⁴

- *Patents, IP and know-how – our assessment*

9.80 We consider below the scope of the Divestment Business in relation to:

- (a) patents; and
- (b) know-how, including BOMs.

9.81 In relation to patents, based on the evidence set out above, we consider the inclusion of patents within the Divestment Business to be necessary to ensure its competitiveness and ability to compete.

9.82 While the Parties told us that patents rights could be clearly allocated to either the EBA business or the EBC business by reference to the nature of the product and the underlying research projects,⁴⁵⁵ given the asymmetry of information and market knowledge, which go beyond the scope of our expertise, there remains some uncertainty in relation to whether we ourselves could clearly verify whether a particular patent related to the EBA or EBC

⁴⁵¹ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁵² Note of a Remedies Call with a Third Party [REDACTED].

⁴⁵³ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁵⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁵⁵ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.3.

business, or whether there were patents common to both the EBA and EBC businesses.

- 9.83 In response to our question of how a potential purchaser could take comfort on the completeness of the patents which would form part of the Divestment Business, MBCC told us at its response hearing, that a purchaser could get comfortable on this point by speaking to the management team, as well as bringing in an IP expert, an independent patent lawyer, R&D specialist and/or a former MBCC staff. MBCC added that given the different ‘technology’ used for EBA and EBC, it would be clear which activity a patent related to by looking at what was protected by the patent. Therefore, MBCC stated that ensuring that all EBA patents formed part of the Divestment Business was a ‘very clear-cut’ issue from its perspective.⁴⁵⁶
- 9.84 On balance, and based on the evidence available to us at this stage, given that the EBA and EBC businesses use different technologies and processes and that all EBA patents globally (with the exception of the [X] patents used exclusively in Japan) are included in the Divestment Business, we consider that the risk of omitting any relevant patents for the effective functioning of the Divestment Business to be low. We also consider that the Parties should provide potential purchasers (including their external advisors equipped with the necessary expertise) with the information necessary to enable them to make that determination for themselves during the due diligence process, including whether the [X] EBA patents in Japan which the Retained EBA Business will retain, should form part of the Divestment Business.
- 9.85 In relation to the Parties’ proposal for the Merged Entity to obtain a sole licence from the purchaser to use the patents until the end-of-life for the Retained EBA Business,⁴⁵⁷ we assessed whether this would restrict the Divestment Business’s ability to grow in the future, including by way of expanding into new markets outside the geographic perimeter of the Divestment Business.
- 9.86 At its response hearing, Sika confirmed that there would be no restrictions on the Divestment Business using its know-how and patents outside the geographic perimeter of the Divestment Business.⁴⁵⁸ MBCC also told us that while the Divestment Business would license back patents to the Retained EBA Business, it confirmed that the Divestment Business would be free to

⁴⁵⁶ MBCC Response Hearing (7 November 2022), response to q.4.

⁴⁵⁷ Parties’ submission on the Parties’ Remedy Proposal, Appendix, paragraph 7.4(a).

⁴⁵⁸ Sika Response Hearing (7 November 2022), response to q.4.

exploit its patents anywhere in the world (including outside the geographic perimeter of the Divestment Business).⁴⁵⁹

- 9.87 Based on the above, we would have no concerns with the Divestment Business licensing its patents to the Retained EBA Business, subject to the CMA's approval of the final terms of any patent licensing agreement, in particular, to ensure that its terms do not restrict the Divestment Business's ability in any way to use its patents outside the geographic perimeter of the Divestment Business.
- 9.88 Having considered the importance of patents, we now turn to our consideration of whether the Divestment Business will have the necessary know-how to compete effectively.
- 9.89 Based on the evidence set out above, know-how and personnel are critical to ensure the competitiveness of the Divestment Business. In particular, we noted the importance of BOMs as one form of know-how (sometimes referred to as 'recipes' for chemical admixture products) which should form part of the divestiture package (see paragraph 9.79 above). We consider the issue of personnel later in this chapter (see paragraphs 9.211 to 9.220).
- 9.90 Under the Parties' Remedy Proposal, we note that while the production sites within the perimeter of the Divestment Business will be divested with their relevant BOMs (ie the recipes needed to produce chemical admixtures), the BOMs relating to the Retained EBA Business would transfer to the Merged Entity. We considered whether the omission of the BOMs at the production sites of the Retained EBA Business would give rise to a material composition risk.
- 9.91 In chapter [6], we found that suppliers of chemical admixtures have dedicated technical resources, including laboratories and specialist staff, in all major territories in which they are active, and that these technical teams are located near customers in part because the requirements of customers and the composition of their aggregates (and therefore, the precise formulation of chemical admixture required) vary at the local level and over time (as customers switch to new aggregates and other raw materials as their current sources are exhausted).⁴⁶⁰ In chapter [8], we also found that based on the evidence obtained from the Parties, the Parties routinely tweak and adapt the ingredients and formulation of chemical admixtures for particular projects, local conditions (including aggregate mix) and customer specifications.⁴⁶¹

⁴⁵⁹ MBCC Response Hearing (7 November 2022), response to q.4.

⁴⁶⁰ Chapter [6], paragraph [6.15].

⁴⁶¹ Chapter [8], paragraph [8.30(a)].

- 9.92 At its response hearing, Sika also told us that BOMs were the ‘main body’ of know-how other than the people themselves, and that BOMs were a ‘comprehensive list’ of the recipe and processes to make a particular product. It added that BOMs were generally generated ‘locally’ and always held at a local level and at the production plant.⁴⁶²
- 9.93 Based on the above, we consider, at this stage, that BOMs can be regarded as a key component of know-how and contain the proprietary recipes for product formulations, and the BOMs located at each production site have been predominantly and specifically developed at a local level to adapt to local market conditions. Given that the BOMs of each of the production sites within the geographic perimeter of the Divestment Business will form part of the divestiture package and that the BOMs generated outside the geographic perimeter of the Divestment Business will have limited applications (if any) for the production of chemical admixtures within the geographic perimeter of the Divestment Business, including the UK, we consider that the omission of BOMs of the Retained EBA Business within the scope of the divestiture package would not give rise to a material composition risk.
- 9.94 Furthermore, our current view is that requiring the further divestiture of the BOMs of the Retained EBA Business’s production sites would likely prove to be detrimental not only to the Retained EBA Business’s ability to continue to serve its customers with the same product formulations, but also to the customers of the Retained EBA Business.
- 9.95 We consider, however, that given the importance of BOMs as a parameter of competition in this market, and their proprietary nature, we would have significant concerns if the Merged Entity either retained or had access to the BOMs of the production sites of the Divestment Business, which would give rise to the risk that the Merged Entity could undermine the Divestment Business’s ability to compete if the Merged Entity could use the Divestment Business’s BOMs in the UK and/or the other markets where the Divestment Business operates.
- 9.96 We also note that MBCC told us that know-how was not only captured in the minds of the staff, but also documented, including R&D results and records of product trials in laboratories, which would all be divested as part of the Divestment Business.⁴⁶³

⁴⁶² MBCC Response Hearing (7 November 2022), response to q.5. By way of background, the Parties told us that each MBCC Group plant held its own list of BOMs, covering material composition information for products as well as variation by production site (Parties’ submission on the Parties’ Remedy Proposal, Appendix, paragraph 7.4(a)).

⁴⁶³ MBCC Response Hearing (7 November 2022), response to q.5.

- 9.97 As such, our current view is that all BOMs and their related commercial and technical know-how in the form of data and records (either stored in physical form or electronically) relating to the Divestment Business should form part of the Divestment Business, including for the avoidance of doubt, any data relating to customers of the Divestment Business (eg historic supply and price data).
- 9.98 Furthermore, and as part of this remedy, we would seek to ensure that the Merged Entity did not retain or have access to the BOMs of the Divestment Business in any form. In this regard, MBCC told us that the details of its BOMs were held electronically on its [X] platform, which was hosted by [X] (the provider of its IT services).⁴⁶⁴ Therefore, we would expect restrictions to access the BOMs of the Divestment Business by the Merged Entity to be put in place in an effective manner, eg if possible, these restrictions should be imposed at source (ie at the [X] platform level).
- 9.99 Finally, in relation to the internal documents of the Divestment Business (eg MBCC Board records, strategy and R&D decision-making documents and market analysis), we would expect all internal documents relating to the Divestment Business to be transferred to the purchaser of the Divestment Business. In relation to the Parties' views on MBCC Group's internal documents which relate to both the Divestment Business and the Retained Business:
- (a) Sika told us that it would not require these internal documents (eg board papers and strategy documents) for the Retained Business as its only interest in the Retained Business was on its future (rather than decisions made in the past).⁴⁶⁵
 - (b) MBCC told us that its understanding was that confidential information relating to the Divestment Business would not be accessible to the Retained Business but added that internal strategy documents covering both the EBA and EBC businesses would not be too important given that these types of reports had a 'short shelf-life'.⁴⁶⁶
- 9.100 We consider that arrangements should be made for the allocation of existing internal documents (eg MBCC Board records, strategy and R&D decision-making documents and market analysis) between the Divestment Business and the Retained Business in a way that prevents commercially sensitive information to be shared between the Parties.

⁴⁶⁴ MBCC Response Hearing (7 November 2022), response to q.5.

⁴⁶⁵ Sika Response Hearing (7 November 2022), response to q.8.

⁴⁶⁶ MBCC Response Hearing (7 November 2022), response to q.5.

- *Patents, IP and know-how – our conclusions*

- 9.101 We conclude that under the Parties' Remedy Proposal, the Divestment Business appears to have all the patents it would need in order to compete effectively. We also conclude that to enable potential purchasers to confirm the completeness of the patents/patent families and know-how which will go with the Divestment Business, the Parties should provide potential purchasers (and their external advisors with the relevant expertise) access to all of the information necessary to make that assessment and determination.
- 9.102 To the extent that a potential purchaser, at any stage during its due diligence exercise, identifies an EBA-related patent which should have been included within the scope of the divestiture package, and where the CMA considers that the patent should form part of the Divestment Business based on the evidence available to it (including any representations from the Parties and the potential purchaser), we conclude that in order to ensure that the Divestment Business fully addresses the loss in competitive constraint arising from the Merger, we would seek to require the Parties to include the omitted patent within the scope of the divestiture package.
- 9.103 In relation to the Divestment Business granting a sole licence to the Merged Entity in relation to patents, we conclude that the CMA should approve the final terms of any patent licensing agreement before it is entered into between the Merged Entity and the purchaser of the Divestment Business to ensure its consistency with our remedy (if required) and to ensure that it does not restrict in any way the Divestment Business's rights to exploit the patents it has licensed to the Merged Entity in the markets outside the geographic perimeter of the Divestment Business.
- 9.104 In relation to BOMs, we conclude that for the avoidance of doubt, the Merged Entity should not retain or have access to the BOMs of the Divestment Business, and that we will seek to ensure that the Parties take the necessary steps to ensure this is the case prior to completion of the sale of the Divestment Business.
- 9.105 We also conclude that all know-how in the form of data and records (either stored in physical form or electronically) relating to the Divestment Business should form part of the Divestment Business.
- 9.106 We conclude that the Parties should be required to put in place the appropriate safeguards to ensure that the Merged Entity does not retain or have access to the patents, BOMs and related commercial and technical know-how which will form part of the Divestment Business (unless permitted under any licensing back of patents relating to the Retained EBA Business).

(c) R&D facilities and innovation capabilities

9.107 Based on the evidence considered above, there are a number of contributory factors which will underpin the Divestment Business's R&D and innovation capabilities, including patents and know-how (which we covered above) and the R&D and technical personnel and the R&D facilities themselves. In this regard, we note the evidence from one third party who told us that having the three R&D sites which came with the Divestment Business would be less valuable if the Divestment Business did not come with the relevant patents.⁴⁶⁷

9.108 We set out below the Parties' proposal in relation to the R&D facilities and more generally the submissions from the Parties and third parties on the importance of R&D and innovation in order to compete effectively in this market. In particular, we also consider the Parties' proposed separation of the Retained EBC Business's activities from the R&D facilities which will form part of the Divestment Business.

- *R&D facilities and innovation capabilities – Parties' proposal*

9.109 The Parties told us that under the Parties' Remedy Proposal:

- (a) the Divestment Business would have all know-how relating to ongoing R&D projects relevant for the Divestment Business' operations;⁴⁶⁸
- (b) the Divestment Business would also have:⁴⁶⁹
 - (i) MBCC's regional R&D centre in Treviso (Italy);
 - (ii) the EBA part of MBCC's global R&D centre in Trostberg (Germany);⁴⁷⁰ and
 - (iii) the EBA part of the regional R&D centre in Beachwood (United States);
- (c) the Divestment Business would also have the local R&D facilities associated with all EBA production sites in the divestment perimeter;⁴⁷¹ and

⁴⁶⁷ Note of a Remedies Call with a Third Party [§§].

⁴⁶⁸ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 7.8.

⁴⁶⁹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraphs 6.13 to 6.14.

⁴⁷⁰ Parties' submission on the Parties' Remedy Proposal, paragraph 2.9, Table 1.

⁴⁷¹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 6.2.

- (d) all R&D staff of MBCC's European EBA business (and in particular those personnel who contributed to R&D for the European Divestment Business [X]), would transfer with the European Divestment Business.⁴⁷²

9.110 The Parties told us that the scope of the Divestment Business would not give rise to any composition risk given that:

- (a) the Trostberg, Treviso and Beachwood R&D facilities encompassed all the R&D facilities required for polymer and chemical admixture R&D for the operation of the Divestment Business;⁴⁷³
- (b) local product adaptation would be facilitated by the local technical centres supporting production plants within the geographic perimeter of the Divestment Business;⁴⁷⁴
- (c) all R&D FTEs of MBCC's EBA business (and in particular those who contributed to R&D for the European Divestment Business [X]) would remain with the European Divestment Business;⁴⁷⁵
- (d) all ongoing relevant R&D projects could be easily and comprehensively identified and that IP would belong to the Divestment Business;⁴⁷⁶
- (e) the European Divestment Business was not dependent on the Retained EBA Business and all of the R&D needs of the European Divestment Business were met through the R&D activities at Trostberg and Treviso;⁴⁷⁷ and
- (f) the regional R&D facilities that were outside the scope of the Divestment Business (in Dubai and Shanghai) had limited scope and did not provide any support to the European Divestment Business,⁴⁷⁸ and to the extent that these excluded R&D facilities currently provided support to Australia and New Zealand, this role would be transferred to the Trostberg and Treviso facilities.⁴⁷⁹

9.111 Based on the Parties' proposal above, we note that only the 'EBA parts' of the Trostberg (Germany) and Beachwood R&D facilities will form part of the Divestment Business. The Parties told us that these facilities were also used by the Retained EBC Business and therefore the Parties have proposed to

⁴⁷² Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 6.17.

⁴⁷³ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 6.1

⁴⁷⁴ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 6.2.

⁴⁷⁵ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 6.17.

⁴⁷⁶ Parties response to Remedies Notice, paragraph 5.4.

⁴⁷⁷ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 4.6.

⁴⁷⁸ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 6.4.

⁴⁷⁹ Parties' response dated 2 November 2022 to the phase 2 RFI 1 (RFI 1), paragraphs 80-82.

reorganise the R&D activities in Trostberg and Beachwood to ensure separation of the Divestment Business's EBA R&D activity and the Retained Business's EBC activity as follows:⁴⁸⁰

- (a) in Trostberg, all EBC-related R&D will be relocated (at the Retained Business's expense) to a building located outside the chemical park and that is separated from the main facilities by a railway line. As such, the Divestment Business will have all EBA-related R&D facilities grouped together within the chemical park, inaccessible to the Retained Business; and
- (b) in Beachwood, the limited EBC back-office functions currently using the site will be moved to a standalone building which is separated from the EBA-related functions by a roadway and which has a separate parking lot.

9.112 The Parties told us that they had not identified any risks associated with the physical separation of EBC-related functions from either of the EBA R&D facilities, and anticipated that the Trostberg separation would be completed within [X], while the Beachwood separation would take [X] and would be completed prior to Merger completion.⁴⁸¹

- *R&D facilities and innovation capabilities – third-party evidence*

9.113 There was a broad consensus from the third-party evidence on the importance of including the R&D facilities and personnel within the scope of the Divestment Business, and the need for the Divestment Business to have advanced R&D and innovation capabilities in order to compete effectively:

- (a) One potential purchaser told us that the inclusion in the Divestment Business of MBCC's three main R&D centres (in addition to all patents) had mitigated its initial concerns with the scope of a possible remedy. This third party noted that the Divestment Business needed to have the assets related to the two sides of R&D: the research/patents side (at a global level) and local laboratories and technical advice/ability to customise products for customers/leverage research locally.⁴⁸²
- (b) Another potential purchaser told us that R&D and product innovation were a very important part of the business and that it had not identified any gaps in the Divestment Business relating to its R&D and innovation capabilities. In particular, this third party noted that MBCC was one of the

⁴⁸⁰ Parties' submission on the Parties' Remedy Proposal, Appendix, section 6.

⁴⁸¹ Parties' submission on the Parties' Remedy Proposal, Appendix, section 6.

⁴⁸² Note of a Remedies Call with a Third Party [X].

most innovative businesses in the sector for a long time with well-respected R&D capabilities and that it was important that the Trostberg R&D facilities and the R&D teams were included in the Divestment Business.⁴⁸³

- (c) One competitor told us that any purchaser of the Divestment Business would want to be certain that there were no gaps in its R&D capabilities, and added that it did not consider that there were any gaps in the scope of the Divestment Business which could undermine the R&D and innovation capability of the European Divestment Business. It also told us that MBCC had a good track record in R&D and innovation and that product innovation and R&D were important to compete in the chemical admixtures market.⁴⁸⁴
- (d) One potential purchaser told us that MBCC appeared to have a good track-record in R&D, and that its 'technical capabilities' was a 'key attraction' for this third party.⁴⁸⁵ It added that at this stage, it considered that the Divestment Business appeared to encompass everything it required to have a 'robust' R&D capability.⁴⁸⁶ This third party also told us that the ability to innovate did not depend only on 'resources', but also on the people involved in that innovation and on the IP. In this regard, this third party told us that know-how (eg in terms of knowledge and experience) would exist in the 'minds of the staff' and therefore, the staff and know-how which came with the R&D centres were just as important as having the relevant patents themselves.⁴⁸⁷ This third party noted that, as part of its due diligence, it would seek to verify that all of the personnel in the R&D centres were the 'correct people'.⁴⁸⁸
- (e) One customer told us that it had not identified any gaps in the scope of the divestiture package in relation to the Divestment Business's R&D and innovation capabilities.⁴⁸⁹ It also told us that it worked with both the Divestment Business's European and local R&D sites, and therefore the Divestment Business should include the European and local R&D sites.⁴⁹⁰ In relation to whether the Divestment Business would lose the benefit from the R&D taking place from within the Retained Business, this customer told us that it would not expect this to be the case given the way

⁴⁸³ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁸⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁸⁵ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁸⁶ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁸⁷ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁸⁸ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁸⁹ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁹⁰ Note of a Remedies Call with a Third Party [REDACTED].

it used admixtures and the cements.⁴⁹¹ This third party noted that MBCC probably had a ‘better’ track record in R&D and innovation than its competitors.⁴⁹²

- (f) One competitor told us that product innovation, new product development and bringing new products to the market, and R&D were very important in the chemical admixtures market, and that these would be a ‘key differentiator’ for the Divestment Business. It added that for its own business, it placed a strong emphasis on new product development and sustainability. It also told us that the people, assets and existing projects would be needed to capture the relevant know-how and the R&D and innovation capabilities of the Divestment Business.⁴⁹³
- (g) Another customer told us that product innovation and R&D were very important in the chemical admixtures market and that it was also important to maintain continuity in terms of R&D personnel.⁴⁹⁴ It told us that it rated MBCC’s track-record in R&D and innovation highly, eg in terms of offering product solutions.⁴⁹⁵ It added that product testing was also an important part of its process of selecting an admixtures supplier, and therefore it was important for the Divestment Business to have the relevant testing facilities and capabilities.⁴⁹⁶ It added that it had worked with only Sika and MBCC over many years to develop admixtures to perform the way it wanted them to, because it considered that only they had the capability or the interest to do so.⁴⁹⁷

9.114 We did not receive any evidence from third parties to suggest that the separation of the EBC-related assets from the Divestment Business’s R&D assets would create any risks for the Divestment Business. In particular, we note that none of the potential purchasers, who have had greater access than other third parties to the details of the proposed separation as part of their involvement in the sale process for the Divestment Business, raised concerns in this respect.

- *R&D facilities and innovation capabilities – our assessment*

9.115 As noted in chapter [8], we consider that advanced R&D and innovation capabilities are an important competitive parameter – and a factor contributing

⁴⁹¹ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁹² Note of a Remedies Call with a Third Party [REDACTED].

⁴⁹³ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁹⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁹⁵ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁹⁶ Note of a Remedies Call with a Third Party [REDACTED].

⁴⁹⁷ Note of a Remedies Call with a Third Party [REDACTED].

to MBCC's strong market position currently.⁴⁹⁸ This assessment is supported by the third-party evidence we have gathered from the responses to our Remedies Notice and during our response hearings.

9.116 In assessing whether the Parties' Remedy Proposal includes the necessary assets to enable the Divestment Business to compete in R&D and innovation we have considered whether:

- (a) the EBC-related activities undertaken by the R&D personnel at Trostberg and Beachwood are distinct and clearly separable from the EBA-related activities;
- (b) there are assets outside the Divestment Business perimeter – for example the R&D facilities or IP held in the Dubai and Shanghai laboratories; or linkages across regions – which are required to enable the Divestment Business to continue to compete in relation to R&D and innovation and therefore should be included within the scope of the Divestment Business; and
- (c) whether the Parties' proposed separation of the EBA and EBC R&D activities in the Trostberg and Beachwood R&D facilities entails any composition risks.

9.117 In relation to the first question, we queried whether the R&D activities undertaken at Trostberg in relation to polymer synthesis could be common to both the Divestment Business and the Retained EBA Business. In response to this question, MBCC confirmed at its response hearing that all polymer synthesis activities undertaken at Trostberg were entirely separate for the EBA and EBC businesses and undertaken by separate teams.⁴⁹⁹

9.118 In relation to the second question, we understand from the Parties' submissions and from third-party evidence that chemical admixture suppliers may benefit from having integrated R&D and innovation capabilities in multiple locations – both in terms of financial economies of scale, but also the sharing and dispersion of learnings and ideas. However, the regions included in the Divestment Business perimeter appear to be the regions which are most important to the ongoing R&D and innovation capabilities for the UK EBA business given that:

⁴⁹⁸ Chapter [8], paragraphs [8.28 and 8.34].

⁴⁹⁹ MBCC Response Hearing (7 November 2022), response to q.8.

- (a) ownership of the global and regional R&D facilities (Trostberg and Treviso respectively) that directly contribute to UK operations are included within the scope of the Divestment Business;
- (b) the product formulations used in the UK operations are more similar to those in Europe and North America due to common aggregate mixes and/or similar levels of technological maturity (compared with many regions in the Retained Business that use less advanced admixture products); and
- (c) the R&D facilities in the Retained Business perimeter use less advanced technology.

9.119 On this basis, we consider that the intangible and tangible assets referred to in paragraphs 9.109. and 9.110. above are sufficient to enable the Divestment Business to compete effectively in R&D and innovation in the chemical admixtures market. Third parties did not identify any additional R&D assets that would be required by the Divestment Business.

9.120 In relation to the third question, we have reviewed the Parties' detailed separation plans and currently consider that the Parties' proposed separation of assets currently shared between EBA and EBC appear to adequately mitigate any risk of degradation to the Divestment Business. This is mainly because the Retained Business will: (a) carry the risk and responsibility to vacate the R&D facilities at Trostberg and Beechwood; and (b) transfer to separate buildings with physical restrictions on the Retained Business's access to the Divestment Business's premises.

- *R&D facilities and innovation capabilities – our conclusions*

9.121 Based on our assessment above, we conclude that:

- (a) the Divestment Business will have all the assets required to compete effectively in terms of the competitive parameter of R&D and innovation in the chemical admixtures market; and
- (b) the Parties' proposed separation of assets currently shared between EBA and EBC appear adequate to mitigate any risk of degradation to the Divestment Business.

- (d) *Branding and trademarks*

9.122 In assessing whether the Divestment Business has the appropriate scope in relation to brand and trademarks and any composition risks related with branding, we have considered:

- (a) the importance of MBCC's brands and whether all the relevant brands are included within the scope of the Divestment Business; and
- (b) the appropriateness of the rebranding transitional periods.

- *Branding and trademarks – Parties' proposal*

9.123 In relation to branding and trademarks, the Parties told us that under the Parties' Remedy Proposal, the Divestment Business would own.⁵⁰⁰

- (a) all trademarks for the Master Builders Solutions (**MBS**) umbrella brand, globally;
- (b) all EBA-related registered product trademarks, globally (with the exception of Pozzoloth in Japan); and
- (c) all EBC-related registered product trademarks in Australia and New Zealand. The Parties told us that the Merged Entity would own all other EBC-related registered product trademarks globally.

9.124 The Parties also told us that the legal entities which currently owned all the trademarks subject to the divestment would form part of the Divestment Business perimeter and that there would be no need for any trademarks to be transferred to alternative legal entities to implement the divestment.⁵⁰¹

9.125 In response to the RWP, the Parties clarified that under the Parties' Remedy Proposal, the Retained EBC Business would be able to use EBC product suffixes after the rebranding transitional period (except in Australia and New Zealand).⁵⁰²

9.126 The Parties told us that under the Parties' Remedy Proposal, there would be a temporary rebranding transitional period during which the Merged Entity would obtain an exclusive royalty-free licence from the purchaser permitting the Merged Entity to use.⁵⁰³

- (a) the MBS brand in relation to EBA products for the benefit of the Retained EBA Business ([REDACTED]);⁵⁰⁴

⁵⁰⁰ Parties' response to Remedies Notice, paragraphs 5.6 and 5.7.

⁵⁰¹ Parties' response to RFI 2, paragraph 1.

⁵⁰² Parties' response to the RWP, paragraph 3.4.

⁵⁰³ Parties' response to Remedies Notice, paragraph 5.8, and Parties' response to RFI 4, paragraph 23.

⁵⁰⁴ The Parties had previously proposed a rebranding transitional period of [REDACTED] for the Retained EBA Business. The Parties subsequently amended this proposal to [REDACTED] and told us that [REDACTED] would be sufficient for the Retained EBA Business to rebrand EBA products outside of the Divestment Business perimeter. Source: Parties' response to RFI 4, paragraphs 23 to 25.

- (b) the MBS brand in relation to EBC products: (i) EEA, Switzerland and the UK ([REDACTED]); (ii) United States and Canada ([REDACTED]); and (iii) rest of the world ([REDACTED]).

9.127 The Parties told us that after the expiry of the applicable licence periods, Sika would no longer have the right to use the MBS brand and the relevant product trademarks referred to above and the Merged Entity would rebrand the relevant products to a Sika brand. It added that Sika would also commit not to use the word 'Master' in its EBC product branding after [REDACTED] in the EEA, Switzerland and the UK; after [REDACTED] in the United States and Canada; and after [REDACTED] in relation to other countries, in line with the terms of the MBS brand licence above.⁵⁰⁵

9.128 The Parties confirmed that the Retained Business would not be able to use any of MBCC's EBA product suffixes after the rebranding transitional period.

9.129 The Parties also told us that the proposed approach to branding under the Parties' Remedy Proposal did not give rise to separation risk because there were only limited to product trademarks which were shared between the Divestment Business and the Retained EBC Business.⁵⁰⁶ In this regard, the Parties told us that:

- (a) the MasterKure brand encompassed both EBA and EBC curing agents (accounting for around two-thirds and one-third of sales under that brand respectively), but that there was no overlap within the European Divestment Business perimeter,⁵⁰⁷ and rebranding of the EBC products would take place within [REDACTED] in the United States and Canada;⁵⁰⁸ and
- (b) the MasterSeal brand included a single EBA product (MasterSeal345) which would be rebranded to [REDACTED].⁵⁰⁹

- *Branding and trademarks – third-party evidence*

9.130 In relation to the importance of the brand and trademarks in enabling the Divestment Business to compete effectively, the third-party evidence we received was broadly consistent in showing that it was not necessary for the Divestment Business to own the 'MBCC' corporate brand. The third-party evidence in relation to the importance of MBCC's product brands and trademarks was mixed, with some third parties citing that they were important

⁵⁰⁵ Parties response to Remedies Notice, paragraph 5.9.

⁵⁰⁶ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 8.11.

⁵⁰⁷ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 8.4.

⁵⁰⁸ Parties response to Remedies Notice, paragraph 5.8.

⁵⁰⁹ Parties' submission on the Parties' Remedy Proposal, Appendix, footnote 76.

for the Divestment Business's competitiveness, while others cited that while brands provided some value, customers valued the product's quality and the supplier's capabilities more highly. None of the third parties raised concerns in relation to the brands and trademarks which formed part of the Divestment Business.

9.131 We set out below the details of the third-party evidence:

- (a) One potential purchaser told us that the Divestment Business captured everything that was necessary in terms of brands. It explained that product brands were more important than the umbrella MBS brand. This third party told us that the product name suffix plus the number were both critical parts of the branding. This third party told us that there would be some value to keeping the MBCC brand, but that it was not as relevant or necessary compared to the trademark names. This third party also told us that the MBS brand was less important in Europe than in North America, because many customers in Europe still referred to MBCC as BASF.⁵¹⁰
- (b) A potential purchaser told us that branding and trademarks were very important. It added that the MBS brand was a standalone brand, which was very well-recognised, known globally and had a long heritage. This third party noted that, in general, branding was important and signified quality, eg in terms of R&D, innovation and technical knowledge. It added that MBCC was more a corporate name, and therefore the MBS brand had a lot more relevance than the MBCC name.⁵¹¹
- (c) One competitor told us that branding 'gets you through the door' and that product names sometimes had value. However, it noted that customers could 'get over' name changes over time, eg where new product formulations were generated, customers could be informed about the 'generation' of the product to help them understand the new product.⁵¹²
- (d) One potential purchaser told us that it would be very important to acquire and keep the MBS brand and trademarks, but that based on its branding approach for its past acquisitions, the purchaser's own brand and name could also form part of its branding strategy for the Divestment Business alongside its use of the acquired MBS trademarks.⁵¹³ According to this

⁵¹⁰ Note of a Remedies Call with a Third Party [REDACTED].

⁵¹¹ Note of a Remedies Call with a Third Party [REDACTED].

⁵¹² Note of a Remedies Call with a Third Party [REDACTED].

⁵¹³ Note of a Remedies Call with a Third Party [REDACTED].

third party, when the customers knew who supplied them, branding was a less important factor than having sites which were close to customers.⁵¹⁴

- (e) One customer told us that branding was 'quite important' because with the brand came the business's 'reputation'. It considered that while the 'MBCC' brand was 'big', the MBS brand had been around for a long time and was 'synonymous' with being a 'strong admixtures business'. Therefore, this customer considered that the MBS brand should form part of the Divestment Business. This customer explained that product names (trademarks) were 'important' and noted that a lot of the chemical admixtures products had been around 'for a long time'. This customer considered, however, that it would be able to transition to new product names over time.⁵¹⁵
- (f) One competitor told us that Sika's and MBCC's brands carried weight internationally and that given that admixtures were consumables, 'brand value' was to some extent 'questionable'.⁵¹⁶ In this regard, it considered that the 'quality and consistency' of the admixture were more important to the customer than the brand. Therefore, this competitor considered that, while the brand might bring with it an 'identity of scale and innovation' and might give customers the 'confidence' in the consistency of the products, the key areas customers most cared about were the service and the quality of the product.⁵¹⁷
- (g) One customer told us that brand was important to the extent that it stood for a business having an 'established track-record'.⁵¹⁸ However, it considered that the MBCC's 'Master' brand or the product names did 'not carry much weight', eg the product names were useful as a 'label' for the purpose of ordering these products, but that they did not provide much benefit beyond that.⁵¹⁹ Instead, it considered that it was the competence and knowledge of the individuals within the admixtures business, as well as the product capabilities which were more important than the brand.⁵²⁰

9.132 We now set out below the third-party evidence we received in relation to the Parties' proposed rebranding transitional period.

9.133 Regarding the rebranding transitional period, overall, third-party evidence indicates that it is possible to conduct a rebranding process within a shorter

⁵¹⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁵¹⁵ Note of a Remedies Call with a Third Party [REDACTED].

⁵¹⁶ Note of a Remedies Call with a Third Party [REDACTED].

⁵¹⁷ Note of a Remedies Call with a Third Party [REDACTED].

⁵¹⁸ Note of a Remedies Call with a Third Party [REDACTED].

⁵¹⁹ Note of a Remedies Call with a Third Party [REDACTED].

⁵²⁰ Note of a Remedies Call with a Third Party [REDACTED].

period of time than those proposed by the Parties and point out some of the risks of a long rebranding period for the Merged Entity:

- (a) One potential purchaser told us that if a competitor could use the same brand, this arguably made the brand less viable and weakened its position. This third party considered that it would need around two to three years to rebrand and slightly longer to change product brands. This third party did not have strong views on whether these periods would vary by location.⁵²¹
- (b) One potential purchaser told us that it would prefer if the Merged Entity stopped using any related brands 'relatively soon', and added that this would avoid brand confusion and help to make it a separate entity more quickly. This third party also explained that Sika was in a better position to rebrand because it had its own brands to which it could transition to. This third party did not have strong views on whether these periods would vary by location.⁵²²
- (c) One competitor told us that rebranding could take a year or two but not much longer. This competitor noted that customers were not naïve enough to be confused by multiple entities operating with the same name.⁵²³
- (d) One potential purchaser told us that it would look to ask Sika to rebrand as quickly as it could, and within one year (which was likely the longest rebranding period it had accepted in past acquisitions). It also told us that while the rebranding period was not a 'huge concern', it would still want any rebranding to complete 'fairly rapidly'. It added that it had not yet considered whether the rebranding period would impact on the Divestment Business's ability to grow and expand into new markets, as it had been focused primarily on the sale process.⁵²⁴
- (e) One customer told us that rebranding could 'easily' take 12 months, as the rebranding would probably be a 'legal process' and marketing the new brand would take time in order to effect the 'mentality change'. This third party added that if it had to rebrand, it would also need to update its systems and reprint packaging, etc.⁵²⁵

⁵²¹ Note of a Remedies Call with a Third Party [[§]].

⁵²² Note of a Remedies Call with a Third Party [[§]].

⁵²³ Note of a Remedies Call with a Third Party [[§]].

⁵²⁴ Note of a Remedies Call with a Third Party [[§]].

⁵²⁵ Note of a Remedies Call with a Third Party [[§]].

- (f) Another potential purchaser told us that the Retained Business should benefit from a licence of the MBS brand for an appropriate transitional period. It added that in terms of the rebranding transitional period, it should give the Retained Business ‘adequate’ time to rebrand, but should not be ‘too lengthy’ as to affect expansion by the Divestment Business into the geographies where the licensed brands would be supplied.⁵²⁶

- *Branding and trademarks – our assessment*

9.134 Based on the Parties’ proposal and the evidence set out above in relation to branding and trademarks, we assess the following:

- (a) whether the Divestment Business will own the brands and trademarks it will need in order to compete effectively; and
- (b) the risks associated with the Parties’ rebranding transitional periods for the Retained EBA Business and the Retained EBC Business, and what the appropriate rebranding transitional periods should be.

9.135 In relation to whether the Divestment Business will own the brands and trademarks it will need in order to compete effectively, MBCC told us that the MBS brand had ‘weight’ in the market and welcomed its inclusion within the scope of the Divestment Business. In relation to product trademarks, MBCC told us that taking any of its products, such as MasterGlenium, the ‘Glenium’ element provided customers with a ‘certain idea’ of its performance and that all (except one) of its product trademarks were ‘performance driven’.⁵²⁷

9.136 We note that while the third-party evidence was mixed, none of the third parties told us that the brand or product trademarks were not necessary. In contrast, we note the broad consensus we received from third parties that the MBCC corporate name would not need to form part of the Divestment Business.

9.137 We considered that, while it would not be necessary for the MBCC brand to be divested alongside the Divestment Business, it would be necessary for the Divestment Business to have the EBA brands and trademarks which form part of the Divestment Business under the Parties’ Remedy Proposal.

9.138 The Parties told us that the concept of an ‘umbrella brand’ was a ‘commercial concept’ and not a recognised legal concept under IP law. Therefore, under

⁵²⁶ Third Party response to Remedies Notice [redacted].

⁵²⁷ MBCC Response Hearing (7 November 2022), response to q.1.

the Parties' Remedy Proposal, the Parties told us that the purchaser of the Divestment Business would, in legal terms, own trademarks (not a brand).⁵²⁸

9.139 The Parties also told us that the MBS trademarks were registered trademarks in and of themselves, eg the 'Master Builders Solutions' trademark was registered in the UK). The Parties told us that there were separate trademark registrations for specific products including the 'Master' prefix, such as 'MasterGlenium' given that there was no registered trademark for 'Master' and then separate product trademarks for 'Glenium'.⁵²⁹

9.140 In relation to the Parties' proposal for the Retained EBA Business to hold on to the EBA-related registered product trademarks for Pozzoloth in Japan, the Parties told us that there were two registered trademarks associated with the Pozzoloth brand in Japan:⁵³⁰

- (a) a 'Master Builders Pozzoloth' umbrella brand trademark which was registered and used only in Japan, for both EBA and EBC products; and
- (b) the EBA-related MBS 'MasterPozzoloth' product trademark was registered in a number of countries globally (including within the perimeter of the Divestment Business). The Parties added that in the rest of the world outside of Japan, the MasterPozzoloth product trademarks would be licensed to Sika for two years (in line with its proposal for the Retained EBA Business).

9.141 The Parties told us that within [X], Sika intended to register the trademark Pozzoloth and use it as an umbrella brand for EBA and EBC products in Japan.⁵³¹

9.142 Given the limited and narrow use of the Pozzoloth trademark in Japan, we have no concerns with excluding the 'Master Builders Pozzoloth' umbrella brand trademark and the 'MasterPozzoloth' product trademark in Japan from the scope of the Divestment Business.

9.143 Based on the above, we consider that the Divestment Business includes the necessary MBS brand and product trademarks.

9.144 We understand that under the Parties' Remedy Proposal the Retained Business will be able to use existing MBCC EBC product suffixes, except in Australia and New Zealand (see paragraph 9.125 above). We consider that

⁵²⁸ Parties' response to RFI 1, paragraph 21.

⁵²⁹ Parties' response to RFI 1, paragraph 21.

⁵³⁰ Parties' response to RFI 2, paragraphs 6-8.

⁵³¹ Parties' response to RFI 2, paragraphs 6-8.

the ongoing use of these suffixes beyond the rebranding transitional periods is unlikely to have a detrimental impact on the value of the Divestment Business's brands and trademarks (with the exception of 'MasterKure' discussed further below). This is because such an arrangement would be unlikely to cause any customer confusion, given the different customer bases for these products.

- 9.145 With regard to 'MasterKure', as noted in paragraph 9.129. above, the product name is currently used for both EBA and EBC products. For the avoidance of doubt, we expect that after the rebranding transitional period for the United States and Canada (where MasterKure is used for EBC products⁵³²), the Retained Business would cease to use both the 'Master' prefix *and* 'Kure' suffix. This is because the continued use of the product name by the Retained Business – even if only in the United States and Canada – could have implications on the value of the brand for the Divestment Business, including in the UK.
- 9.146 We consider that on the basis of the Retained Business's branding plans, the Retained Business should be required not to use any existing MBCC product suffixes after the rebranding transitional period, with the exception of product suffixes used exclusively for EBC (except in Australia and New Zealand).⁵³³ This could be implemented by way of the Parties giving undertakings as part of any final undertakings or being required to so under a final order.
- 9.147 This undertaking (or requirement under any order) should include all suffixes rather than just those that would be protected from third-party use under the Divestment Business's trademarks. For example, it should prevent the Retained Business from using suffixes that are also commonly used words ('Ease', 'Finish', 'Air', 'Sure' and 'Set' etc) to the extent that these are not already used in Sika's chemical admixture product names.
- 9.148 We now turn to our assessment of the Parties' proposed rebranding transitional periods (see paragraph 9.126. above).
- 9.149 Under the Parties' Remedy Proposal, the Merged Entity's Retained Business will have a fixed transition period to cease using the brands and trademarks owned by the Divestment Business in the markets outside the geographic

⁵³² We understand that these EBC products represent only approximately [X] of the total sales value of 'MasterKure' products in 2021: Parties Remedy Proposal, Appendix, footnote 74.

⁵³³ We note that currently 'MasterSeal' is also used for both EBA and EBC. However, in this instance, the Parties propose to rebrand the single EBA product to an existing alternative EBA product name and as such, we understand that there will be no branding overlap for 'MasterSeal' at the end of the rebranding transitional period.

perimeter of the Divestment Business. In this regard, the Parties have proposed (see also paragraph 9.126 above):⁵³⁴

- (a) a [X] rebranding transitional period for the Retained EBA Business to rebrand away from the EBA product trademarks of the Divestment Business, and on to Sika's brands; and
- (b) that Sika would discontinue the use of the word 'Master' in relevant EBC product branding after [X] for the Retained EBC Business in the EEA, Switzerland and the UK; after [X] in the United States and Canada; and after [X] in the rest of the world.

9.150 In relation to the appropriate rebranding transitional period, we assessed the practical considerations in relation to the time needed by the Retained Business to rebrand and minimise disruption to its customers. We then balanced these considerations with the possible risks of the Retained Business continuing to use the Divestment Business's brands and trademarks outside the geographic perimeter of the Divestment Business during any rebranding transitional period, in particular, that this could:

- (a) give rise to a risk of brand degradation in the markets where the Retained EBA Business operates, eg given that the Retained EBA Business may have little, or no, incentive to protect a brand which is owned by its competitor;
- (b) prevent the Divestment Business from launching its branded chemical admixture products in any new markets where the Retained EBA Business has yet to rebrand its chemical admixtures products, and thereby restricting the Divestment Business's overall ability to grow; and
- (c) cause customer confusion given the use of the 'Master' prefix by the Retained EBC Business for construction systems products in the same countries where the Divestment Business operates and uses the 'Master' prefix for its chemical admixtures products.

9.151 In relation to the practical considerations in terms of the time needed by the Merged Entity to rebrand, the Parties told us that the Merged Entity could not cease using the trademarks 'overnight' and that each of the Retained EBA Business and the Retained EBC Business would need time to rebrand (eg by adjusting packaging, marketing materials, training staff etc), as otherwise,

⁵³⁴ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraphs 8.9 and 8.10.

continuity of supply for the Merged Entity's customers on 'Day 1' would be disrupted.⁵³⁵

9.152 The Parties submitted that the timescales for the rebranding transitional period were appropriate and reflected the necessary amount of time required by Sika, based on past practice and supply chain management considerations, to rebrand the relevant products in different regions. The Parties explained this was not standard but varied depending on a number of factors including:⁵³⁶

- (a) the shelf-life of products;
- (b) whether the products were sold directly to customers or through indirect channels/distribution (in which case a period of phased dual branding might be required);
- (c) the importance of branding for the type of product; and
- (d) any certifications, specifications and third-party test certificates that were required to be re-issued under the new brand.

9.153 At its response hearing, Sika told us that it would seek to rebrand away from the MBCC brands as quickly as possible and feasible. In determining its proposed rebranding transitional periods, Sika noted that:⁵³⁷

- (a) one of the factors it had considered was the 'local and cultural elements' of the EBA and EBC businesses it would retain, eg in Japan where customers were 'very conservative';
- (b) a product's shelf-life was relevant to the rebranding period given distributors (predominantly for the Retained EBC Business, where more sales were generated via an indirect sales channel using distributors) would hold products in their original packaging;
- (c) where products were sold via distributors (an indirect channel), it would not have direct access to the customers and therefore, it would be more difficult to discuss changes to the product brands;
- (d) changing the product trademarks would take longer than if just the 'endorsement' (eg from MBCC to Sika) was being changed; and

⁵³⁵ Parties' response to Remedies Notice, paragraph 5.11.

⁵³⁶ Parties' response to Remedies Notice, paragraph 5.12.

⁵³⁷ Sika Response Hearing (7 November 2022), response to q.1.

(e) the rebranding transitional period would also need to take account of the many ‘small customers’ whom MBCC supplied on a ‘small job to small job’ basis, as well as MBCC’s distributors.

9.154 Sika told us that, for distributors (used predominantly by the EBC business and less so by the EBA business), it would seek to adopt a ‘dual branding’ approach of using both the Sika and MBCC branding, but make the Sika branding more visible over time before phasing out MBCC’s branding entirely. Sika told us that based on its past experience of a ‘dual branding’ approach, it took over [REDACTED] to rebrand the [REDACTED] different brands it had acquired, and added that replacing the original brand with the ‘dual brand’ alone would take between [REDACTED].⁵³⁸

9.155 Therefore, based on the above, Sika told us that if the rebranding transitional period was shorter then there would be greater risk for Sika (including the risk of customer attrition) associated with the rebranding process. It added that the proposed rebranding transitional period sought to balance that risk of customer attrition with the risk of customer confusion.⁵³⁹

9.156 MBCC told us that, while a rebranding exercise would involve continuously engaging with customers, all of the rebranding by the Merged Entity could be achieved in less than [REDACTED].⁵⁴⁰

9.157 Overall, the third-party evidence we received indicates that it is possible to complete a rebranding process relatively quickly, and in no more than two years.

9.158 In response to the RWP, Sika expressed concerns that the third-party evidence cited was ‘unreliable’ and ‘factually incorrect’ on the basis that it ‘significantly underplays’ the time required for rebranding. Sika noted that customer estimates on the time required to rebrand might not fully appreciate the logistical steps required before consulting with customers which could not be done within 12 months. Similarly, Sika suggested that the estimates for rebranding submitted by potential purchasers might have been influenced by their commercial incentives rather than reflecting the actual requirements of rebranding.⁵⁴¹

9.159 Third parties highlighted some of the risks of a long rebranding period by the Merged Entity. For example: (a) the risk that the brand would become less

⁵³⁸ Sika Response Hearing (7 November 2022), response to q.1.

⁵³⁹ Sika Response Hearing (7 November 2022), response to q.1.

⁵⁴⁰ MBCC Response Hearing (7 November 2022), response to q.1.

⁵⁴¹ Parties’ response to the RWP, paragraph 3.8.

viable and weaker;⁵⁴² (b) the risk of brand confusion;⁵⁴³ and (c) delaying the Divestment Business from becoming completely separate and independent from the Merged Entity.⁵⁴⁴

9.160 We assessed whether a longer rebranding transitional period increased the risk that the MBCC brands and trademarks being divested could be degraded in any way given that the Merged Entity might not be incentivised to protect them. In this regard, Sika told us that degrading the brand during that transitional period would probably harm the Merged Entity's own business in that market (and not just the chances of the Divestment Business entering that market). It added that even if the brand was 'harmed', eg in Japan, this would not affect the UK or its brands.⁵⁴⁵ At this stage, we cannot rule out the possibility that a lengthy rebranding period increases the risk of degradation of the EBA brands and trademarks. However, we consider that a period of two years for the Retained EBA Business to rebrand to be sufficiently short to minimise this risk.

9.161 We assessed whether a rebranding transitional period for the Retained EBA Business could represent a barrier to expansion for the Divestment Business during the rebranding transitional period:

(a) Sika told us that the Divestment Business could 'focus' on its existing geographic perimeter given that potential growth in the markets where the Divestment Business was already operating in, was greater than the growth in less mature markets outside its geographic perimeter.⁵⁴⁶

(b) MBCC told us that the extent to which the rebranding transitional period might be a barrier to expansion for the Divestment Business, depended on whether it intended to grow organically or by way of making acquisitions (ie 'inorganic' growth). It told us that the rebranding transitional period would not prevent 'inorganic' growth.⁵⁴⁷

9.162 We would have concerns by a lengthy rebranding transitional period, which would prevent the Divestment Business from attempting to achieve organic growth through expansion into new markets where the Retained EBA Business operates during the rebranding transitional period.⁵⁴⁸ We note that growing the business would increase its scale, which could increase the purchaser's ability to invest in R&D and other functions that could benefit the

⁵⁴² Note of a Remedies Call with a Third Party [REDACTED].

⁵⁴³ Note of a Remedies Call with a Third Party [REDACTED].

⁵⁴⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁵⁴⁵ Sika Response Hearing (7 November 2022), response to q.1.

⁵⁴⁶ Sika Response Hearing (7 November 2022), response to q.1.

⁵⁴⁷ MBCC Response Hearing (7 November 2022), response to q.1.

⁵⁴⁸ The Parties submitted that entry and expansion in another geographic market could occur within [REDACTED].

business in the UK. In this regard, we consider that the Divestment Business' ability to grow as a whole would enhance its ability to compete in each and every market it operates, including in the UK, Europe and the rest of the world, eg in terms of the group-wide resources, which could benefit all of the EBA business.

- 9.163 The Parties' Remedy Proposal for the rebranding transitional period is consistent with earlier submissions that suggested that it would be possible for rebranding to complete in [X], to align with the Parties' earliest expectation of when market entry could take place.
- 9.164 In relation to the risk of potential customer confusion, MBCC told us that it would not be concerned during the rebranding transitional period where both the Divestment Business and the Retained Business would both be using the same brands, given that: (i) the sales 'channels' and the 'applicators' (ie those using the products) for EBC and EBA were 'very different' and therefore the risk of customer confusion was 'very limited'; and (ii) products did not travel 'very far'.⁵⁴⁹ Given that no EBA product trademarks are used by the EBC business, we consider, at this stage, the risk for customer confusion to be low.
- 9.165 We consider that a two-year rebranding transitional period for the Retained Business's EBA products would achieve a right balance in mitigating the risks highlighted above. We have considered the range of evidence on the appropriate period, having had regard to the various incentives of Sika, MBCC and potential purchasers. Should a potential purchaser consider a shorter rebranding transitional period to be appropriate, we consider that this would be a matter for commercial negotiation between the purchaser and Sika. Turning to the rebranding transitional period for the Retained EBC Business, we consider that the Parties' proposed rebranding transitional periods would not have a material impact on the Divestment Business's ability to grow its chemical admixture business in Europe (including the UK), eg given that the Divestment Business will only have EBC operations in Australia and New Zealand. We note that the proposed rebranding transitional period for the Retained EBC Business may be assessed in more detail by the other competition authorities.

⁵⁴⁹ MBCC Response Hearing (7 November 2022), response to q.1.

- *Branding and trademarks – our conclusions*

- 9.166 Based on our assessment, we conclude that the Divestment Business should include the MBS brand and product trademarks, as included under the Parties' Remedy Proposal.
- 9.167 We also conclude that the Parties should be required not to use any existing MBCC product suffixes after the rebranding transitional period, except the EBC product suffixes (but not in Australia and New Zealand), either as part of any final undertakings or a final order.
- 9.168 In relation to rebranding transitional period, we conclude that the Retained EBA Business should rebrand the EBA brands and trademarks within two years from the legal completion date of the sale of the Divestment Business, subject to further evidence received from purchasers that a shorter period might be necessary to mitigate the risks identified above.
- 9.169 For the avoidance of doubt, the final terms of any brand licence agreement will be subject to CMA approval.

(e) Procurement and raw materials

- 9.170 We considered whether there were any composition risks in relation to the Divestment Business's supplier arrangements by considering the Parties' proposal, including the separation of certain shared contracts and certain transitional supply arrangements.

- *Procurement and raw materials – Parties' proposal*

- 9.171 In relation to the procurement of raw materials and inputs, and by way of background, the Parties told us that currently, MBCC Group's direct procurement was generally [REDACTED].⁵⁵⁰
- 9.172 The Parties told us that under the Parties' Remedy Proposal, the Divestment Business would have all supply contracts, order and records relating to the EBA business in the geographic perimeter of the Divestment Business.⁵⁵¹
- 9.173 The Parties added that the scope of the European Divestment Business would not give rise to composition risk given that the European Divestment Business sourced raw materials (in particular polymers) either from third parties or 'in-house' (from within the European Divestment Business

⁵⁵⁰ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 10.3.

⁵⁵¹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 10.1.

perimeter) and as such the European Divestment Business would not be dependent on the Retained Business for polymer supply.⁵⁵²

9.174 In relation to the Divestment Business's supply arrangements for polymers, one of the key raw materials for chemical admixture production, for use in its production, the Parties told us that under the Parties' Remedy Proposal:

- (a) the European Divestment Business would have its own polymer production capability at Treviso in order to ensure it had a supply of polymers to support its various production sites,⁵⁵³ and therefore the European Divestment Business would not be dependent on the Retained Business for polymers or other raw materials;⁵⁵⁴
- (b) the Treviso site produced around [X] tonnes of polymers for EBA production, of which [X]% was sold to the European Divestment Business and the remaining [X]% to the rest of the world;⁵⁵⁵ and
- (c) in relation to the UK, the Parties told us that the current polymer sourcing arrangements for the Divestment Business's UK operations would continue following completion of the divestiture, ie whereby the UK plant in Swinton would continue to receive [X] polymers under a supply agreement between MBCC and [X] in Trostberg for the production of chemical admixtures. The Parties told us that the Swinton plant sourced [X]% of its polymer requirement from this [X] supply agreement, with the remaining [X]% from Treviso (also part of the Divestment Business).⁵⁵⁶

9.175 The Parties told us that in FY22, the Treviso polymer production facility had [X]⁵⁵⁷ [X].⁵⁵⁸ The Parties explained that while Treviso was currently operating at [X].⁵⁵⁹ The Parties also stated that MBCC Group had [X]. The Parties confirmed that other than this [X].⁵⁶⁰

9.176 In relation to the Divestment Business' supply contracts with [X] relating to polymers (and polymer inputs), the Parties told us that:

- (a) the European Divestment Business had a polymer supply agreement with [X], which was not shared with the Retained Business, and therefore, would fully transfer to the Divestment Business – under this supply

⁵⁵² Parties' submission on the Parties' Remedy Proposal, Appendix, paragraphs 4.2 and 4.6.

⁵⁵³ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 10.6.

⁵⁵⁴ Parties' submission on the Parties' Remedy Proposal, paragraph 4.6.

⁵⁵⁵ Parties' submission on the Parties' Remedy Proposal, Appendix, footnote 36.

⁵⁵⁶ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 10.7.

⁵⁵⁷ [X].

⁵⁵⁸ Parties' response to RFI 4, Annex Q3 and paragraph 11.

⁵⁵⁹ Parties' response to RFI 4, Annex Q3.

⁵⁶⁰ Parties' response to RFI 4, paragraphs 11 and 12.

agreement, [X] was under an obligation to supply polymers to the Divestment Business of between [X] tonnes (minimum volumes) and [X] tonnes (maximum volumes), with the Divestment Business being given the right to discuss in good faith with [X] should it require more than the maximum volumes;⁵⁶¹ and

- (b) there were [X] contracts with [X], which related to inputs for the production of polymers, which were shared with the Retained Business, for which the Parties would seek to negotiate with [X] for the contracts to be split between the Divestment Business and the Retained Business:
- (i) a contract for the supply of [X] (total FY21 spend of €[X]), where the projected volume requirements were split [X]% for the Divestment Business and [X]% for the Retained Business (the Parties added that only this contract stipulated minimum volumes);
 - (ii) a contract for the supply of [X] (total FY21 spend of €[X]), where the projected volume requirements were split [X]% for the Divestment Business and [X]% for the Retained Business; and
 - (iii) a contract for the supply of a [X] (total FY21 spend of €[X]), where the projected volume requirements were split [X]% for the Divestment Business and [X]% for the Retained Business.⁵⁶²

9.177 The Parties also noted that there were a number of supply contracts for certain products, which were used by both MBCC's EBA and EBC businesses, and therefore these supply contracts would need to be split between the Divestment Business and the Retained Business. In this regard, we note that:⁵⁶³

- (a) there are [X] suppliers ([X]) which are shared between the European Divestment Business and the Retained Business, namely for [X] ([X]); an [X] product ([X]); and [X] ([X]) (this shared [X] contract was mentioned in paragraph 9.177 above);⁵⁶⁴ and

⁵⁶¹ Parties' response to RFI 1, Annex Q29.

⁵⁶² Parties' response dated 14 November 2022 to the phase 2 RFI 3 (**RFI 3**), paragraphs 6-8.

⁵⁶³ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 10.4 and footnote 95.

⁵⁶⁴ These three supply contracts relate to: (a) [X]: a [X] product supply agreement between [X] and a Belgian MBCC entity worth €[X] in 2021 (of which around [X]% relates to EBA and [X]% to EBC); (b) [X]: an [X] product supply agreement between [X] and MBCC worth €[X] in 2021 (of which around [X]% relates to EBA and [X]% to EBC); and (c) [X]: [X] supply agreements between [X] and MBCC's German entities worth €[X] in 2021 (of which around [X]% relates to EBA and [X]% to EBC).

(b) there are [X] suppliers ([X] and [X]) which are shared between the wider Divestment Business (excluding the European Divestment Business) and the Retained Business:

- (i) a contract with [X] under which the Divestment Business and Retained Business currently sourced polymers (around [X] tonnes); and
- (ii) contracts with [X] from which the Divestment Business and Retained Business currently sourced: (a) EBA raw materials ([X] and [X] polymers, around [X] tonnes); (b) [X] (around [X] tonnes); and (c) [X] (around [X] tonnes).

9.178 In relation to the [X] shared contracts for the European Divestment Business, the Parties told us that the [X] and [X] contracts would remain within the Divestment Business (despite EBA accounting for only [X]% and [X]% of annual expenditure respectively). In relation to the [X] contracts, where EBA only accounted for around [X]% of annual expenditure, the Parties told us that they would transfer these to the Retained Business and would negotiate with [X] to procure a supply agreement on behalf of the Divestment Business for the EBA-related supply.⁵⁶⁵

9.179 The Parties submitted that the [X] ‘shared suppliers’ ([X]) would have the ‘commercial motivation’ to agree to a split in the event that the divestment did proceed, given that this would be ‘economically beneficial’ for all parties involved but added that, in the unlikely event that any of these suppliers were unwilling to split the applicable contract, the contract would be allocated between the Divestment Business and the Retained Business and volumes would be supplied by one business to the other via a supply agreement for the duration of the applicable contract.⁵⁶⁶

9.180 We also note that under the Parties’ Remedy Proposal, the Parties told us that the Retained Business would supply polymers to the Divestment Business’s operations outside the European Divestment Business for a period of up to two years (the **Reverse Polymer Supply Agreement**). The Parties told us that the Retained Business currently produced and supplied [X] polymers from Shanghai, mainly to the ANZ Divestment Business (with limited amounts to the N. American Divestment Business). The Parties told us that the volumes of [X] polymers supplied to the Divestment Business in 2021 were as follows: (a) [X] tonnes (Australia); (b) [X] tonnes (New Zealand; (c)

⁵⁶⁵ Parties’ submission on the Parties’ Remedy Proposal, Appendix, paragraph 10.4.

⁵⁶⁶ Parties’ submission on the Parties’ Remedy Proposal, Appendix, paragraph 10.5.

[X] tonnes (the United States); and (d) [X] tonnes (Canada).⁵⁶⁷ The Parties told us that under the proposed supply agreement, the Retained Business would continue to supply the same sites within the Divestment Business with these products for a period of two years (shorter or longer at the election of the purchaser) until the Divestment Business was able to secure an alternative supply arrangement.⁵⁶⁸

9.181 The Parties also told us that under the Parties' Remedy Proposal, there would be another temporary supply arrangement, whereby the Divestment Business would supply certain polymers and chemical admixtures to the Retained Business for a period of up to [X] (the **Polymer Supply Agreement**).⁵⁶⁹ The Parties told us that under this temporary supply arrangement, the Divestment Business would continue to supply around [X] tonnes of polymers ([X]) from its Treviso plant, in line with the quantity supplied in previous years, until Sika [X].⁵⁷⁰ We understand in relation to [X] polymers there are no alternative suppliers, however the Parties consider that the Merged Entity will be able to reformulate with third-party polymers.⁵⁷¹

- *Procurement and raw materials – third-party evidence*

9.182 Overall, the third-party evidence confirmed the importance of having the ability to source polymers, and the benefits of having the in-house capability to produce polymers in terms of reducing reliance on third-party suppliers and having greater control on raw material costs:

- (a) One competitor told us that it was important for the Divestment Business to be able to source the raw materials it would need, with no restrictions on its ability to do so.⁵⁷²
- (b) One customer told us that it was 'critical' that the Divestment Business owned the Treviso site to have the capability to produce polymers,⁵⁷³ as having that access provided the Divestment Business with the ability to make 'technical enhancements' to the products it brought to market.⁵⁷⁴
- (c) One competitor told us that self-supply of polymers made a big difference regarding costs, eg by not having to pay for a third party's margins and transport costs. It told us that having both the capability to produce

⁵⁶⁷ Parties' RFI 1 response, response to Q31.

⁵⁶⁸ Parties' RFI 1 response, response to Q31.

⁵⁶⁹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 11.3.

⁵⁷⁰ Parties' submission on the Parties' Remedy Proposal, Annex 25.

⁵⁷¹ Parties' response to RFI 3, Annex 2.

⁵⁷² Note of a Remedies Call with a Third Party [X].

⁵⁷³ Note of a Remedies Call with a Third Party [X].

⁵⁷⁴ Note of a Remedies Call with a Third Party [X].

polymers and an R&D facility with the related expertise, would provide an advantage in terms of innovation at the polymer level.⁵⁷⁵

- *Procurement and raw materials – our assessment*

9.183 Based on the Parties' proposal above in paragraphs 9.171 to 9.181, we assess the following:

- (a) the ability of the Divestment Business to source polymers;
- (b) the risks associated with the separation of the Divestment Business's shared contracts with the Retained Business;
- (c) the risks associated with the Retained Business's supply of polymers to the Divestment Business, ie under the Reverse Polymer Supply Agreement;
- (d) the risks associated with the Divestment Business's temporary supply arrangement to supply polymers and chemical admixtures to the Retained Business for up to [X], ie under the Polymer Supply Agreement; and
- (e) whether the Divestment Business would have access to all the key inputs necessary in order to compete effectively.

9.184 In relation to the *ability of the Divestment Business to secure polymer supplies*, as polymers are a key input into the production of chemical admixtures, access to polymers is essential for chemical admixture production. In relation to the European Divestment Business, we note that given its annual polymer requirement in FY21 was [X] tonnes and the Treviso polymer facility's planned capacity of around [X] tonnes,⁵⁷⁶ the Treviso polymer facility alone would be insufficient to meet all of the European Divestment Business's annual polymer requirements. As such, in addition to the polymer production facilities in Treviso that will form part of the Divestment Business, we consider it critical for the Divestment Business to maintain its polymer supply arrangement with [X]. We note that the importance of this arrangement is particularly acute for the Divestment Business's UK operations given that over [X]% of its polymer requirements are met under the [X] contract.

9.185 On this basis, we consider that the [X] polymer supply contract is essential to the ongoing viability of the Divestment Business and to ensure that it can compete as effectively in the supply of chemical admixtures in the UK as

⁵⁷⁵ Note of a Remedies Call with a Third Party [X].

⁵⁷⁶ Parties' response to RFI 4, Annex Q5, Annex Q3 and paragraph 11.

MBCC currently does. As such, we expect the Merged Entity to procure written confirmation from [REDACTED] prior to completion of the sale of the Divestment Business, that it will continue to supply the Divestment Business on the same terms as it currently supplies MBCC.

- 9.186 In relation to the risks associated with the *separation of the Divestment Business's shared contracts with the Retained Business*, we first note that for the European Divestment Business, its expenditure under the [REDACTED] 'shared contracts set out in paragraph 9.177(a) does not appear to be material, such that the risk of any separation resulting in an increase in pricing under these contracts would be unlikely to have a material impact on the overall cost base of the Divestment Business. For example, the total annual expenditure for both the European EBA and EBC businesses with these [REDACTED] 'shared suppliers' (ie [REDACTED]) was up to around €[REDACTED] in 2021, of which the EBA element (or the element attributable to the European Divestment Business) accounted for around €[REDACTED].⁵⁷⁷ In FY21, the European Divestment's total annual expenditure on materials amounted to €[REDACTED].⁵⁷⁸ We therefore did not consider the shared contracts of the European Divestment Business to be material in absolute or relative expenditure terms, and that to the extent that any separation results in changes to their pricing terms, we would not expect these to have a material impact on the European Divestment Business's cost base.
- 9.187 In relation to the Divestment Business's other shared contracts (with [REDACTED] and [REDACTED]) set out in paragraph 9.177.(b), we note that some of these contracts relate to the supply of polymers (or inputs that go into polymers) to the Divestment Business. We also note that the total annual expenditure under these shared contracts attributable to the Divestment Business of around £[REDACTED] (or around €[REDACTED]) appears relatively significant in the context of the Divestment Business's total annual expenditure on materials in FY22 of around €[REDACTED].⁵⁷⁹
- 9.188 We consider that for all of the shared contracts discussed above, the Parties should take steps to negotiate terms similar to those under the current contracts to the extent this is commercially viable for the suppliers concerned (see also paragraph 9.185 above about the Parties' obligation in relation to the continuation of the polymer supply arrangement with [REDACTED]).

⁵⁷⁷ Total European EBA and EBC expenditure of around €[REDACTED] based on €[REDACTED] under [REDACTED]; €[REDACTED] under [REDACTED]; and €[REDACTED] under [REDACTED]. The EBA-only expenditure was calculated by applying [REDACTED]%, [REDACTED]% and [REDACTED]% respectively to the total European EBA and EBC expenditure.

⁵⁷⁸ Parties' response to RFI 1, Annex Q2.

⁵⁷⁹ Parties' response to RFI 4, paragraph 16 and Parties' response to RFI 1, Annex Q2.

9.189 We note, however, the Parties' proposal that in the event these 'shared suppliers' do not agree to a contract split between the Divestment Business and the Retained Business, the contract would be allocated between the Divestment Business and the Retained Business and volumes would be supplied by one business to the other via a supply agreement for the duration of the applicable contract.⁵⁸⁰ We would have concerns with an arrangement whereby the Divestment Business relies on the Merged Entity for key inputs on an ongoing (rather than a transitional and temporary) basis. We therefore consider that all such contracts should remain with the Divestment Business, and that the Divestment Business should supply the Retained Business under a transitional supply arrangement lasting up to two years, to enable the Merged Entity to secure a new contract or to make alternative supply arrangements. The final terms of such agreements would be subject to CMA approval.

9.190 In relation to the *risks associated with the Retained Business's supply of polymers to the Divestment Business* under the Reverse Polymer Supply Agreement, we note that while the European Divestment Business does not, and is not expected to, source any polymers from the Retained Business,⁵⁸¹ we note that for the other regional businesses within the Divestment Business, in FY21:

- (a) the ANZ Divestment Business's total annual polymer requirement was [X] tonnes, of which [X] tonnes (or [X]%) were supplied by the Retained Business (ie from the [X]), with [X]% from third-party suppliers and [X]% from within the Divestment Business; and
- (b) the N. American Divestment Business's total annual polymer requirement was [X] tonnes, of which [X] tonnes (or [X]%) were supplied by the Retained Business's [X]% from within the Divestment Business and the remaining [X]% from third-party suppliers.

9.191 We would expect the prospective purchaser to be able to seek alternative arrangements for the supply of polymers (for both the ANZ Divestment Business and the N. American Divestment Business) with third parties at short notice to the extent that these arrangements relate to polymers that are available from third-party polymer suppliers. We note that the information submitted by the Parties suggests that, while the polymers that would be supplied by the Retained Business to the Divestment Business are a patented

⁵⁸⁰ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 10.5.

⁵⁸¹ For reference, the European Divestment Business's total annual polymer requirement in FY21 was [X] tonnes, which was sourced either in-house from its own polymer facility or from third-party suppliers of the Divestment Business. Source: Parties' response to RFI 4, Annex Q5.

technology, these would be similar to polymers that are available from third parties.

9.192 We consider that any supply agreements between the Retained Business and the Divestment Business should be on arm's length terms and should not restrict the Divestment Business from sourcing similar products from alternative suppliers. In line with our normal practice, the CMA will approve the terms of such agreements between the purchaser and the Divestment Business prior to the completion of any divestiture transaction.

9.193 Turning now to the *temporary supply of polymers by the Divestment Business to the Retained Business*, under the Polymer Supply Agreement, we have considered whether such polymer supply arrangements to the Retained Business for up to two years may be detrimental to the competitiveness of the Divestment Business, including:

- (a) by reducing its available production volume of polymers to supply the Divestment Business, as a result of supplying the Retained Business under the Polymer Supply Agreement; and/or
- (b) by enabling the Retained Business to have access to proprietary technology – or enable it to reverse engineer such technology.

9.194 In relation to the first point, we note that the Polymer Supply Agreement:

- (a) is temporary in nature, and will terminate after up to two years following completion of the divestiture of the Divestment Business, and therefore will not be a lasting link between the Divestment Business and the Merged Entity;
- (b) represents a continuation (albeit temporary) of existing supply arrangements between the Divestment Business and the Retained Business, and therefore, the volume obligations under this temporary supply arrangement may not represent an additional volume obligation on what the Divestment Business is currently producing; and
- (c) will involve the supply of around [X] tonnes of polymers to the Divestment Business from the Treviso plant, which accounts for a relatively small proportion of Treviso's 'planned' annual capacity of around [X] tonnes.

9.195 The Parties also confirmed that the [X] tonnes of polymers to be supplied by the Divestment Business to the Retained Business under the Polymer Supply Agreement were consistent with historic volumes supplied from the Treviso facility to the Retained Business and that the annual volumes supplied to the

Retained Business had not varied significantly year-to-year.⁵⁸² The Parties considered that it was clear that Treviso would not only be able to supply the Retained Business with these [X] tonnes, but also continued to reserve more than enough supply for the Divestment Business.⁵⁸³

9.196 The Parties also noted that the Parties' proposed Polymer Supply Agreement would not prevent the Divestment Business from expanding its business. In this regard, the Parties told us that:⁵⁸⁴

- (a) they [X] on the Divestment Business over its entire two-year duration; and
- (b) in the event polymer supply needed to be diverted to the Divestment Business, then the Divestment Business would be able to do so as it would under any arm's-length contract, without any penalty, since there would be no 'minimum obligations' to Sika under the Polymer Supply Agreement.

9.197 In our RWP, we provisionally concluded that provided the Polymer Supply Agreement does not place minimum volume obligations on the Divestment Business, the volumes supplied under the Polymer Supply Agreement and its proposed duration would not hamper the Divestment Business's ability to expand. In the Parties' response to the RWP, the Parties told us that:⁵⁸⁵

- (a) while the Polymer Supply Agreement [X], the Divestment Business should not be prevented from supplying a set volume of polymers to Sika in any given year, if the quantities were agreed on an arm's length basis and negotiated in the ordinary course of business on terms acceptable to both parties;
- (b) therefore, the Parties envisaged that the Polymer Supply Agreement would include a mechanism that facilitated such arrangements, if required by either business;
- (c) similarly, there was no reason why the agreement must place limits on the volumes the Retained Business could request under the Polymer Supply Agreement, if the Divestment Business was free to negotiate the volumes

⁵⁸² The Parties told us that Treviso had supplied the Retained Business with: (a) [X] tonnes of polymers in 2020; (b) [X] tonnes in 2021; and (c) was forecast to supply [X] tonnes in 2022. The Parties told us that the [X] tonnes of annual polymer supply referred to under its proposal for the Polymer Supply Agreement was based on a simple average of these [X]. The Parties added that the [X] tonnes was a 'small fraction' of the annual volumes of [X] tonnes supplied by Treviso to the Divestment Business over the same [X] period.

⁵⁸³ Parties' response to RFI 4, paragraphs 1, 2 and 4.

⁵⁸⁴ Parties' response to RFI 4, paragraphs 3 and 4.

⁵⁸⁵ Parties' response to the RWP, paragraph 5.1(d).

it would supply in the future and had the ability to refuse to supply volumes it did not wish to make available to the Retained Business; and

(d) the final terms of the Polymer Supply Agreement would be approved by the CMA in any event.

9.198 Given these considerations, the Parties told us that there would be no need for the CMA to conclude that there should be no minimum volume clause under the Polymer Supply Agreement.⁵⁸⁶

9.199 At this stage, the terms of the Polymer Supply Agreement have yet to be agreed between Sika and the ultimate purchaser of the Divestment Business, and we have not seen how that agreement would operate in practice. For example, if the Polymer Supply Agreement contained a minimum volume clause, it is unclear how that would enable the Divestment Business to refuse to supply volumes to the Retained Business, where doing so could disrupt its own downstream production of chemical admixtures or reduce the polymer volumes available for its own expansion. In our view, provided that the CMA can be highly confident that the terms of the Polymer Supply Agreement place no obligations on the Divestment Business to supply the Retained Business with polymers which the Divestment Business needs for its own business, we would have no concerns with the Polymer Supply Agreement.

9.200 Based on the evidence above, and provided that the Polymer Supply Agreement does not place any obligations on the Divestment Business to supply the Retained Business with polymers which the Divestment Business needs for its own business, we considered that the volumes supplied under the Polymer Supply Agreement and its proposed duration would not hamper the Divestment Business's ability to expand. We would expect to approve the final terms of any Polymer Supply Agreement prior to completion of the sale of the Divestment Business.

9.201 In relation to the second point, information provided by the Parties show that most of the polymers that would be temporarily supplied under the Polymer Supply Agreement are subject to patented technology,⁵⁸⁷ and that MBCC Group already sells many of these polymers to third parties including to competing chemical admixture suppliers.⁵⁸⁸ While we consider the risk of the Retained Business having access to proprietary technology and reverse engineering such technology is low in relation to those polymer protected by patents, we cannot rule out the possibility of such risks for the few polymers

⁵⁸⁶ Parties' response to the RWP, paragraph 5.1(d).

⁵⁸⁷ We note that these patents will be part of the Divestment Business.

⁵⁸⁸ Parties' response to RFI 3.

that are not protected by a patent, which are also those that are not currently supplied to third-party competitors. We note that these polymers can be procured from other third-party suppliers of polymers.

9.202 As such, we would expect the Polymer Supply Agreement to contain terms that:

- (a) give the Divestment Business the ability to refuse to supply volumes, such that supplying polymers to the Retained Business would not materially restrict the Divestment Business's ability to source polymers for its own operations (including for the purpose of its expansion) and the ability to supply the Retained Business with lower volumes in circumstances where the Divestment Business's ability to produce has been materially impacted, eg in the event of a plant outage; and
- (b) limit the Polymer Supply Agreement to the supply of polymers that are protected by patents or put in place effective ring-fencing mechanisms, or ring-fence access to any information related to these polymers that might allow reverse engineering the underlying technology. We consider that this may be an area where the Monitoring Trustee may assist.

9.203 We would also require the final terms of the Polymer Supply Agreement to require the CMA's approval prior to its execution.

9.204 Finally, in terms of *whether the Divestment Business would have access to all the key inputs necessary in order to compete effectively*, we consider that the Parties' approach under the Parties' Remedy Proposal (as amended in accordance with our specifications above) provides the Divestment Business with the access to all the key inputs it requires, without any lasting reliance on the Merged Entity.

- *Procurement and raw materials – our conclusions*

9.205 We conclude that the Merged Entity should procure written confirmation from [X] that it will continue to supply the Divestment Business on the same terms as it currently supplies MBCC.

9.206 We also conclude that, in the event any supplier contracts shared between the Divestment Business and the Retained Business cannot be split prior to completion of the divestiture transaction, all such contracts should remain with the Divestment Business. In this scenario, the Divestment Business and the Retained Business should enter into a transitional supply arrangement lasting up to two years (or longer subject to prior CMA approval), to enable the Merged Entity to secure a new contract with the supplier or to make

alternative supply arrangements. We conclude that the final terms of any such transitional supply arrangements should be subject to CMA approval.

9.207 We conclude that any agreements for the supply of polymers by the Retained Business to the Divestment Business (ie the Reverse Polymer Supply Agreement) should be on arm's length terms and should not restrict the Divestment Business from sourcing similar products from alternative suppliers. In line with our normal practice, the CMA will approve the terms of such agreements between the purchaser and the Divestment Business prior to the completion of any divestiture transaction.

9.208 In relation to the temporary supply arrangement for the Divestment Business to supply polymers and chemical admixtures to the Retained Business for up to two years (or longer subject to prior CMA approval), ie the Polymer Supply Agreement, we conclude that the final terms of that agreement must be approved by the CMA, prior to its execution, and contain terms which do not place any obligations on the Divestment Business to supply the Retained Business with polymers which the Divestment Business needs for its own business. In this regard, we would require the Polymer Supply Agreement to:

- (a) give the Divestment Business the ability to refuse to supply volumes, such that supplying polymers to the Retained Business would not materially restrict the Divestment Business's ability to source polymers for its own operations (including for the purpose of its expansion), and the ability to supply the Retained Business with lower volumes in circumstances where the Divestment Business's ability to produce has been materially impacted, eg in the event of a plant outage; and
- (b) limit the Polymer Supply Agreement to the supply of polymers that are protected by patents or put in place effective ring fencing mechanisms or ring-fence access to any information related to these polymers that might allow reverse engineering the underlying technology. We consider that this may be an area where the Monitoring Trustee may assist.

9.209 Overall, subject to the issues outlined above, we conclude that the Divestment Business would have the supply of raw materials it would need to enable it to be an effective competitor.

(f) Personnel

9.210 We considered whether there were any composition risks arising under the Parties' Remedy Proposal in relation to the personnel, including management, R&D and technical staff who will form part of the Divestment Business. We consider the risk of staff departures and staff retention during the divestiture

process, and the mitigating actions we could take, when we turn to asset risks later in this chapter.

- *Personnel – Parties’ proposal*

9.211 The Parties told us that the scope of the European Divestment Business in relation to personnel would not give rise to composition risk given that:⁵⁸⁹

- (a) a ‘clear’ approach had been developed to ensure that the European Divestment Business had all the personnel it needed and that contributed to the European Divestment Business;
- (b) all R&D FTEs of MBCC’s EBA business (and in particular those personnel who contributed to R&D for the European Divestment Business [✂]) would remain with the European Divestment Business; and
- (c) IT employees would remain part of the Divestment Business.

9.212 The Parties stated that the MBCC Group and the European Divestment Business were currently structured as follows:

- (a) MBCC Group was led by a global leadership team consisting of the CEO (J. Fabritius), CFO (H. Grevener) and COO (H. Heising) who were collectively responsible for the global strategy of the MBCC Group (including the Divestment Business and the Retained Business) and were accountable to the company’s Board and shareholders;⁵⁹⁰
- (b) at the level below the global leadership team, the customer-facing side of the organisation was led by three regional Presidents who reported directly to the CEO, and were responsible for setting the strategy and direction of the business activities in respective regional markets and were referred to as ‘operational management’;⁵⁹¹ and
- (c) the remainder of the organisation was organised along functional lines, where: (i) there were different individuals at a global level who were responsible for setting the global sales and marketing strategy for the EBC business and the European Divestment Business; but otherwise (ii) there was no separation of responsibility between EBA and EBC products for the other parts of the functional organisation.⁵⁹²

⁵⁸⁹ Parties’ submission on the Parties’ Remedy Proposal, Appendix, paragraph 4.2 and 4.5.

⁵⁹⁰ Parties’ submission on the Parties’ Remedy Proposal, Appendix, paragraph 5.3.

⁵⁹¹ Parties’ submission on the Parties’ Remedy Proposal, Appendix, paragraph 5.4.

⁵⁹² Parties’ submission on the Parties’ Remedy Proposal, Appendix, paragraphs 5.6 to 5.8.

9.213 Under the Parties' Remedy Proposal, the Parties told us that the Divestment Business would consist of staff currently working in EBA-related roles in the Divestment Business perimeter, (including seconded staff), shared personnel, as well as the Key Personnel as identified by the Parties.⁵⁹³ The Parties told us that the Divestment Business would also include all R&D FTEs of MBCC's European EBA business, including the [X]. The Parties have also identified 'Optional Shared Personnel' [X].^{594, 595}

9.214 Specifically, the Parties submitted that:⁵⁹⁶

- (a) [X] would remain with the European Divestment Business;⁵⁹⁷
- (b) [X] would be transferred to the Retained EBC Business; and
- (c) of the FTEs [X]:
 - (i) [X] would either be included in the Divestment Business or be available to the purchaser to add to that business (**Optional Shared Personnel**), subject to limited exceptions;
 - (ii) the COO, whose current role mainly supported the Retained Business but also included the global management of support functions including IT, operations, supply chain, EHS and legal; certain R&D functions;⁵⁹⁸ and strategic decision-making for the MBCC Group⁵⁹⁹ would also be available to the Divestment Business at the option of the purchaser;⁶⁰⁰ and
 - (iii) [X], would also remain with the Divestment Business.⁶⁰¹

- *Personnel – third-party evidence*

9.215 Third-party evidence indicates that it is important that not only senior management, but also key technical and sales personnel, are included within the scope of the Divestment Business:

- (a) One potential purchaser told us that it was important that key people on R&D (including the Head of R&D), development and sales were part of

⁵⁹³ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 5.1.

⁵⁹⁴ However, Optional Shared Personnel [X].

⁵⁹⁵ Parties' submission on the Parties' Remedy Proposal, paragraph 6.17.

⁵⁹⁶ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 4.5.

⁵⁹⁷ Excluding leavers.

⁵⁹⁸ Parties' response to RFI 1, paragraph 52(c).

⁵⁹⁹ Parties' response to RFI 1, paragraph 53.

⁶⁰⁰ Parties' response to RFI 1, paragraph 60.

⁶⁰¹ The [X] also include certain FTEs at the global/regional level, eg personnel working in IP roles, as well as top-level management positions. [X].

the Divestment Business and that it [REDACTED]. This third party noted that [REDACTED].⁶⁰²

- (b) One potential purchaser told us that all personnel that worked in any way in the EBA business and were critical should be included in the Divestment Business. This third party noted that most of the personnel working in the EBA business was specialised (ie worked exclusively for the EBA business) but some were shared between the EBA and EBC businesses. This third party considered that these shared staff should also be part of the Divestment Business, as proposed by the Parties under their proposed remedy. This third party also told us that the senior MBCC team was very experienced and capable, and [REDACTED].⁶⁰³
- (c) One competitor considered the following staff to be key to ensuring the Divestment Business could compete effectively: concrete technicians who performed trials; R&D personnel; sales personnel; general managers and managing directors. This third party also told us that it would be easiest to recruit sales personnel and that concrete technicians were hard to recruit and had skills which took a long time to develop. This competitor explained that it might be easier for MBCC to recruit staff, given its position as one of the main competitors in the admixtures market.⁶⁰⁴
- (d) One potential purchaser told us that the Divestment Business appeared to have the 'right quality and number' of personnel, including staff with the necessary experience, within the business.⁶⁰⁵ It added that, in addition to the senior management team, it was important to ensure that the relevant personnel working in 'shared service areas', such as central IT and finance, were also included in the Divestment Business, so that no extensive TSAs were required.⁶⁰⁶
- (e) One customer told us that it would want to ensure that there was 'continuity' in terms of the staff who worked in MBCC's laboratories and their know-how; and in relation to local management and the people who held the 'commercial relationships' given that these relationships underpinned product developments.⁶⁰⁷
- (f) One competitor told us that there was a shortage of experienced people within the chemical admixtures sector, as it was quite a niche market, and

⁶⁰² Note of a Remedies Call with a Third Party [REDACTED].

⁶⁰³ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁰⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁰⁵ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁰⁶ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁰⁷ Note of a Remedies Call with a Third Party [REDACTED].

that it would be difficult to replace technical staff who had ‘decades’ worth of experience’ and the understanding of the customers’ processes. This third party also told us that without the right staff, innovation would be ‘stifled’.⁶⁰⁸

- (g) A customer told us that management staff would be important for driving the business, and that in terms of customer-facing staff, it would be ideal if it could deal with the same MBCC individuals it was currently dealing with as they would have an understanding of its needs.⁶⁰⁹
- (h) Another potential purchaser told us that the inclusion of all personnel currently employed by the Divestment Business would ensure that the Divestment Business could operate on a standalone and viable basis from day one. It added that as the future global management team would comprise existing senior management executives, the Divestment Business would have continuity of expertise and experience within the chemical admixtures market.⁶¹⁰

9.216 Third parties also expressed concerns with the [REDACTED] during the CMA’s investigation and the implementation of the Parties’ proposed remedy. We consider the risk of [REDACTED] during the divestiture process, and the mitigating actions we could take, when we turn to asset risks later in this chapter.

- *Personnel – our assessment*

9.217 We currently consider that the Parties’ approach to determining which staff at the global, regional and national level should form part of the Divestment Business has largely resulted in the Divestment Business having the staff it would need to compete effectively, including MBCC’s global management team and the relevant staff dedicated to the EBA business, including R&D and technical staff. We note, in this respect, that:

- (a) the Divestment Business would have a formal management team structure in place, which we consider would ensure continuity in the strategic and operational management of the Divestment Business;
- (b) the inclusion of the relevant R&D and [REDACTED] would ensure continuity in terms of the Divestment Business’s activities in R&D, innovation and product development; and

⁶⁰⁸ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁰⁹ Note of a Remedies Call with a Third Party [REDACTED].

⁶¹⁰ Third Party response to Remedies Notice [REDACTED].

- (c) many of the staff [X], these roles are largely functional in nature, limited to [X]. For many of the [X].

9.218 In relation to the European Divestment Business, in particular, we note that:

- (a) there is a total of [X] shared staff who will stay with the Retained Business – made up of [X] staff involved in global or regional headquarter operations and [X] staff involved in local operations;⁶¹¹
- (b) [X]⁶¹² will stay with the Retained Business are not engaged in [X]. We do not consider these staff to be strictly necessary for the Divestment Business to compete effectively, but [X];
- (c) in relation to staff working at each of the European Divestment Business's shared production sites, [X]. We therefore do not consider [X] from the scope of the Divestment Business to represent a material composition risk;
- (d) [X] part of the Retained Business in Europe, but who will be [X].⁶¹³ These employees relate mainly to [X]. We take comfort that the purchaser will [X], and in this regard, we would expect the Parties to use its best endeavours to ensure that all such staff [X].

9.219 As the Parties have proposed to allocate a [X] to the Divestment Business. We consider whether this would have an adverse impact on the financial resilience and viability of the Divestment Business later in this chapter as part of our assessment on the Divestment Business's financial resilience (see paragraphs 9.250 to 9.273 below).

- *Personnel – our conclusions*

9.220 Based on our assessment above, we conclude that the Divestment Business includes the key strategic, commercial or technical staff necessary to operate the business effectively and on a standalone basis.

(g) *Premises (production sites, warehouses and offices)*

9.221 In relation to premises and sites, under the Parties' Remedy Proposal, the Divestment Business will have 36 production sites, as well as over 30

⁶¹¹ Parties' response to the RWP, paragraph 4.2.

⁶¹² This figure has been updated since the RWP due to reallocation.

⁶¹³ The Parties clarified that [X] are involved in the local operations of the Divestment Business, rather than global or regional headquarter operations: Parties' response to the RWP, paragraph 4.2.

standalone warehouses and around 20 standalone offices (including the whole of MBCC's current headquarters in Mannheim, Germany).⁶¹⁴

9.222 We note that, while all premises within the Divestment Business's geographic perimeter will form part of the Divestment Business, there are a small number of sites which are shared with the Retained EBC Business, which the Parties will include within the scope of the Divestment Business, and transfer out the Retained EBC Business. We set out the Parties' proposals in more detail below, before setting out our assessment and conclusions on their proposals for these shared sites.

- *Premises (production sites, warehouses and offices) – Parties' proposal*

9.223 Under the Parties' Remedy Proposal, the Parties told us that all production sites used to manufacture EBA products in the Divestment Business perimeter (and those used to manufacture EBC products in Australia and New Zealand), would remain with the Divestment Business.⁶¹⁵

9.224 In relation to the European Divestment Business in particular, the Parties told us that:

(a) in relation to its production sites:

- (i) the European Divestment Business would operate a total of 17 production sites⁶¹⁶ in 15 countries, of which, only three sites, namely ([X]), manufactured both EBA and EBC products, where EBC production accounted for [X]%, [X]% and [X]% of the sites' output respectively (the **Shared Production Sites**),⁶¹⁷ which would be owned (not leased) by the Divestment Business;⁶¹⁸ and
- (ii) in relation to these three shared sites,⁶¹⁹ they would be vacated by the Retained EBC Business with contract manufacturing agreements

⁶¹⁴ Parties' submission on the Parties' Remedy Proposal, Table 1.

⁶¹⁵ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 3.1.

⁶¹⁶ 13 of these sites are owned by MBCC Group and the legal title to the freehold will remain with the European Divestment Business. The remaining four sites, namely ([X]), are leased and the lease agreement will be assigned to the Divestment Business. Source: Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 3.5.

⁶¹⁷ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 3.5.

⁶¹⁸ Parties' submission on the Parties' Remedy Proposal, Annex 3.

⁶¹⁹ In addition, we note that there are two sites, namely Swinton (UK) and Rødekro (Denmark), which are essentially fully dedicated to EBA production, but where de minimis EBC volumes are produced. Production of these de minimis EBC volumes will be ceased at the Rødekro site prior to closing of the sale of the Divestment Business; The Swinton site will continue to manufacture the majority (around 90%) of its current powder output under a single toll manufacturing arrangement relating to EBC products that will be retained by the Divestment Business. The remaining around 10% of existing power production is split between EBA powders which will be retained by the Divestment Business and EBC powders which will be transferred to the Redditch site which will be part of the Retained Business: see Parties' Remedy Proposal, Appendix, paragraph 3.8, 3.21-3.22 and footnote 115.

put in place for a short period after closing⁶²⁰ – the Parties told us that these contract manufacturing agreements to the Retained Business would be in place for a temporary period (up to two years), until Sika organised alternative manufacturing capacity at its own facilities or arrangements for alternative sources of supply, and therefore, would not create lasting links and dependencies between the Divestment Business and the Retained Business;⁶²¹ and

(b) in relation to warehouses:⁶²²

- (i) the European Divestment Business would have 36 warehouses in total (including all 17 warehouses co-located at production sites, as well as 19 standalone warehouses); and
- (ii) the Retained EBA Business would vacate all of the shared warehouses (the **Shared Warehouses**), leaving them for the Divestment Business to use exclusively; and

(c) in relation to offices:⁶²³

- (i) the European Divestment Business included 30 offices; and
- (ii) of which 22 offices were currently shared between EBA and EBC (the **Shared Offices**), and the Retained EBC Business would take steps to vacate those offices for exclusive use by the Retained Business, eg in relation to the Mannheim headquarters, which was shared between the Divestment Business and the Retained EBC Business, the Retained EBC Business would vacate the Mannheim headquarters within a period of [X] after the closing of the sale to the Purchaser.⁶²⁴

- *Premises (production sites, warehouses and offices) – third-party evidence*

9.225 No third parties expressed concerns about the scope of the Divestment Business in relation to the production facilities, warehouses or offices that the Parties propose to divest, nor the viability or effectiveness of any shared sites.

- *Premises (production sites, warehouses and offices) – our assessment*

9.226 Based on the above, and in relation to production sites, we note that all production sites related to the EBA business are included in the Divestment

⁶²⁰ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 4.2 and 4.5.

⁶²¹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 11.4.

⁶²² Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 4.7.

⁶²³ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 4.9.

⁶²⁴ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 4.2 and 4.5.

Business and consider that the inclusion of the Shared Production Sites within the scope of the Divestment Business will ensure that the Divestment Business will not have less production capacity than what MBCC's EBA business currently has.

9.227 However, given that the production sites, warehouses and offices, which are shared between the EBA and EBC businesses will form part of the Divestment Business, we considered whether that could have the effect of materially increasing the Divestment Business's cost base such that it would undermine its ability to compete effectively.

9.228 In this regard, the Parties told us that the Divestment Business's cost base would not be materially affected by any underutilised staff or assets (including R&D assets), and that in particular, in relation to the minority of production sites and warehouses that were currently shared, any lost economies of scale would be just [X] of FY22 EBITDA margin, or less than €[X] of additional costs (based on the Divestment Business's FY22 revenues of €[X]).⁶²⁵ In relation to the additional costs for the Divestment Business of taking on the Shared Offices, the Parties estimated the total cost Impact at €[X].⁶²⁶

9.229 The Parties submitted, in relation to each category of sites, that:

- (a) For production sites, there were no concerns that the purchaser of the European Divestment Business would be left with underutilised production assets, because the machinery used in the production processes for EBA and EBC products was different and the European Divestment Business would only retain equipment and machinery associated with the production of EBA products. The Parties added that the level of production of EBA products at shared sites was within the range of production volumes at EBA-dedicated sites.⁶²⁷
- (b) For warehouses, the Parties told us that there would be no material impact arising from the proposed separation given that:⁶²⁸
 - (i) warehouse costs were a 'very' small component of total costs of EBA products (total warehouse costs were estimated to account for [X]% of total production costs and less than [X]% of total sales);⁶²⁹ and

⁶²⁵ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 4.13.

⁶²⁶ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraphs 12.25 and 12.28.

⁶²⁷ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 12.13.

⁶²⁸ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 12.15.

⁶²⁹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 12.16.

(ii) a number of shared offices either had [X], which the purchaser could [X], avoiding around €[X] in costs (or [X]% of the total estimate of €[X]).⁶³⁰

(c) For shared offices, the Parties told us that the European Divestment Business would face minimal lost economies of scale, some of which could be recaptured within a short period of time.⁶³¹ The Parties told us that the reduction in any economies of scale from spreading the fixed costs of leasing and operating offices over a smaller employee base would account for around €[X] (comprised of €[X] of lease costs and €[X] of operating costs), which would be equivalent to [X]% of FY22 revenues for the European Divestment Business.⁶³²

9.230 In the context of the Divestment Business's standalone EBITDA of around €[X], we do not consider these additional costs arising from the inclusion of these shared sites in the scope of the Divestment Business, to be sufficiently material that it would undermine the competitiveness of the Divestment Business. In particular, given that the Shared Production Sites operate at a similar level of EBA production volumes to the Divestment Business's EBA-dedicated production sites, we consider it necessary for the Divestment Business to have the benefit of the additional production capacity provided for by the Shared Production Sites to enable the Divestment Business to maintain the production volumes the MBCC business currently benefits from, and potentially to provide scope for its expansion. Finally, given that the Shared Production Sites will be owned by the Divestment Business (rather than leased), the inclusion of these Shared Production Sites would not give rise to additional rental lease payments for the Divestment Business after the Retained EBC Business vacates those sites.

9.231 The overall impact of all of additional costs of the Shared Production Sites and all the other shared assets on the Divestment Business is considered in our assessment of the Divestment Business's financial resilience later in this chapter.

9.232 In relation to the Parties' proposal for the Shared Production Sites to supply the Retained EBC Business using the EBC plants on each site for a period of up to [X] under contract manufacturing agreements (the **Toll Manufacturing Agreements**), we do not have material concerns in relation to these arrangements. This is because the Divestment Business will have exclusive

⁶³⁰ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraphs 12.25 and 12.28.

⁶³¹ The Parties told us that a number of shared offices either had [X], avoiding around €[X] in costs (or [X]% of the total estimate of €[X]).

⁶³² Parties' submission on the Parties' Remedy Proposal, paragraphs 12.25 and 12.28.

use of its Shared Production Sites; and any risks associated with the Retained EBC Business vacating the Shared Production Sites and being supplied under the Toll Manufacturing Agreements lie primarily with Sika. Furthermore, these agreements will be temporary (ie [X] or longer subject to prior CMA approval) and will not therefore result in an ongoing relationship between the Merged Entity and the Divestment Business.

9.233 For completeness, we consider that the final terms of any Toll Manufacturing Agreement should be approved by the CMA prior to completion of the divestiture.

9.234 In relation to the Parties' proposal to vacate the Shared Offices of the Divestment Business, we have no material concerns with the Parties' proposal and consider that in each case, the Parties should take steps to ensure that an orderly and timely transition is made, such that it would not disrupt the operations of the Divestment Business and that all confidential information relating to the Divestment Business is appropriately ringfenced and safeguarded. We consider that this may be an area where the Monitoring Trustee may assist.

- *Premises (production sites, warehouses and offices) – our conclusions*

9.235 Based on our assessment above, we conclude that:

- (a) the Divestment Business will have all of the production sites related to the EBA business, including the production capacity of the Shared Production Sites, and therefore, the Divestment Business will continue to have the same production capacity as it currently has;
- (b) the additional costs arising from the inclusion of shared sites (production sites, warehouses and offices) in the scope of the Divestment Business, are not sufficiently material to undermine the competitiveness of the Divestment Business; and
- (c) we have no material concerns in relation to the Parties' proposed Toll Manufacturing Agreements in relation to the Shared Production Sites, subject to CMA approval of their final terms.

- (h) *EBC separation issues*

9.236 The Parties' Remedy Proposal concerns the divestiture of a part of the MBCC Group business, ie the Divestment Business. We consider that separation risks need to be considered particularly closely in the context of a partial divestiture remedy. The extent to which any separation risks arise is largely

dependent on the structure of the transaction, and the degree of integration between the business to be divested and retained.

- *EBC separation issues – our assessment and conclusions*

9.237 We consider that the structure of the Parties' Proposed Remedy, whereby the Retained Business is carved-out from the Divestment Business is an important mitigant against broader separation risks. Nevertheless, we have considered various separation risks relating to:

(a) intangible assets, such as those identified in relation to:

- (i) patents, IP and know-how (see paragraphs 9.80 to 9.106 above);
- (ii) branding and trademarks (see paragraphs 9.134 to 9.169 above); and
- (iii) polymer supply arrangements (see paragraphs 9.183 to 9.209); and

(b) tangible assets, such as those identified in relation to:

- (i) personnel (see paragraphs 9.217 to 9.220 above); and
- (ii) premises (see paragraphs 9.226 to 9.235 above for production sites, warehouses and offices, and paragraphs 9.115 to 9.121 for R&D facilities).

9.238 Having considered these risks, we consider that we are satisfied that the Parties' Remedy Proposal (as amended where necessary in line with our specifications above) adequately addresses these risks.

9.239 In relation to the transitional arrangements between the Divestment Business and the Retained Business, which will continue for a short period of time following completion of the sale of the Divestment Business, we note the Parties are proposing the following arrangements:

(a) *Transitional arrangements for the Retained Business to supply the Divestment Business:*

- (i) temporary polymer supply from the Retained Business in China primarily to the ANZ Divestment Business, ie under the Reverse Polymer Supply Agreement;
- (ii) TSAs relating to Finance, HR and IT services, and limited requirements for fleet management in North America specifically (the **Back-Office TSAs**) for up to [X] (or longer subject to prior CMA approval);

- (iii) temporary supply of certain UGC products for a period of up to two years (shorter or longer, at the election of the purchaser) (the **UGC Supply Agreement**);
- (iv) temporary supply of certain EBC products (including U-Crete, MasterSeal, MasterFlow, MasterEmaco and MasterTop) to the ANZ Divestment Business for a period of up to two years (shorter or longer, at the election of the purchaser) (the **ANZ EBC Supply Agreement**); and
- (v) temporary supply of powder products and powder intermediaries to the N. American Divestment Business for a period of up to two years (shorter or longer, at the election of the purchaser) (the **N. American Powder Supply Agreement**).

(b) *Transitional arrangements for the Divestment Business to supply the Retained Business:*

- (i) the contract manufacturing agreements of the Shared Production Sites for a period of up to [X] (or longer subject to prior CMA approval) under the Toll Manufacturing Agreements; and
- (ii) temporary supply of certain polymers and admixture/finished EBA products for up to [X] (or longer subject to prior CMA approval), ie the Polymer Supply Agreement.

9.240 We have already discussed above the transitional arrangements whereby the Divestment Business supplies the Retained Business under the Toll Manufacturing Agreements (see paragraphs 9.232 to 9.235), and under the Polymer Supply Agreement (see paragraphs 9.193 to 9.203 and paragraph 9.208).

9.241 In relation to the Parties' transitional arrangements whereby the Retained Business will supply goods and/or services to the Divestment Business, we discussed above the arrangements for the Retained Business to supply polymers to the Divestment Business (primarily to the ANZ Divestment Business) under the Reverse Polymer Supply Agreement in paragraphs 9.190 to 9.192 above.

9.242 We now turn to a discussion on the Back-Office TSAs; the UGC Supply Agreement; the ANZ EBC Supply Agreement; and the N. American Powder Supply Agreement.

9.243 In relation to the Back-Office TSAs, the Parties told us that:⁶³³

- (a) there would be three TSAs between the Retained Business and the Divestment Business relating to back-office functions (Finance, HR and IT);
- (b) these TSAs would be in place for a limited period of 12 months until the purchaser could organise its own provision or migrated the data to its own systems, and that the 12-month transition period was a maximum period, and might be shortened at the option of the purchaser; and
- (c) additionally, one TSA for a period of up to [X] would enable the Divestment Business to continue to access fleet management services in North America.

9.244 We consider that the Parties' proposed scope of the services to be provided under the Back-Office TSAs appears to be narrow in scope, and limited to back-office functions, rather than strategic or commercial capabilities or functions, which should form part of the Divestment Business.

9.245 We therefore consider the scope of the TSAs to have a limited impact on the effectiveness of the divestiture remedy, such that they would not materially increase the implementation risks of this remedy. We would expect these issues to be discussed as part of any sale process, and with the eventual purchaser (as necessary).

9.246 The final terms of any Back-Office TSA should be subject to the CMA's approval prior to completion, as part of the CMA's wider purchaser and transaction approval process. We would also seek to ensure that under any Back-Office TSAs, the purchaser is satisfied with the scope of the services being offered, its terms and with its proposed duration, and to ensure that the data relating to the Divestment Business is appropriately ring-fenced from the Retained Business (and the Merged Entity more widely), and safeguarded to ensure that all such data and information are fully transferred to the Divestment Business before the end of the Back-Office TSAs, and to ensure that where such information is confidential or commercially sensitive to the Divestment Business, that the Retained Business (and the Merged Entity) does not retain or have access to that information. We consider that this may be an area where the Monitoring Trustee may assist.

9.247 In relation to the UGC Supply Contract, the Parties told us that:⁶³⁴

⁶³³ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 11.6.

⁶³⁴ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 11.6.

- (a) the Divestment Business currently sourced certain products used for the UGC business ([X]) from the [X], which would transfer to the Retained EBC Business;
- (b) under the UGC Supply Contract, the Retained Business would supply the Divestment Business with these UGC products for a period of up to two years (shorter or longer, at the election of the purchaser);
- (c) the UGC Supply Contract would provide that the Divestment Business would continue to be supplied with these UGC products to enable it to supply its UGC customers until it was able to secure an alternative supply arrangement for [X]; and
- (d) there were numerous alternative suppliers of [X] for UGC applications in Europe.⁶³⁵

9.248 Based on the evidence available, and in particular, given its time-limited nature and our understanding that there are alternative suppliers of these UGC products with whom the Divestment Business can arrange alternative supply arrangements, we do not have material concerns in relation to the Parties' proposed UGC Supply Contract.

9.249 For completeness, we would require the final terms of the UGC Supply Contract to be approved by the CMA, prior to completion of the divestiture. In relation to the ANZ EBC Supply Agreement and the N. American Powder Supply Agreement, we note that these proposed agreements may be assessed in more detail by other competition authorities.

(i) Financial resilience

9.250 We also considered the financial resilience and viability of the Divestment Business. During our assessment of the personnel and production sites which form part of the Divestment Business above, we noted that the Parties' proposed approach to the allocation of assets shared between the Divestment Business and the Retained Business balanced the allocation of assets considerably in favour of the Divestment Business, and that this would invariably result in increasing the cost base of the Divestment Business.

9.251 In this regard, we have sought to understand the materiality of the additional costs allocated to the Divestment Business, and considered whether this

⁶³⁵ For example, Evonik Operations, BYK-Chemie, Brenntag, Huntsman, LANXESS, BCD Chemie, and Wacker. Source: Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 11.6.

could undermine the financial resilience or viability of the Divestment Business.

9.252 As part of our assessment, we have considered:

- (a) the materiality of the cost impact on the Divestment Business arising from the Parties' proposed carve-out of the Retained EBC Business and the additional allocation of costs to the Divestment, where we consider the Divestment Business's stand-alone financial information, including its forecasts; and
- (b) the scale of the Divestment Business, including whether there are benefits of any scale for the Divestment Business, and in particular in relation to its ability to compete effectively in the UK.

- *Financial resilience – Parties' proposal*

9.253 The Parties estimated that, in total, the additional cost incurred by the Divestment Business that was currently shared with the wider MBCC Group organisation was 'small' at only €[X]. The Parties noted that, even accounting for these additional costs – many of which might be recoverable depending on the identity of the purchaser (eg in terms of further central cost synergies), the Divestment Business, on a standalone basis, would be highly competitive with a total FY22 EBITDA margin of [X]%. Furthermore, the Parties estimated that the impact on total unit costs from the reduced economies of scale would be small, at only [X]%.⁶³⁶

9.254 The Parties told us that the future management of the Divestment Business was motivated to grow the profitability of the Divestment Business and expected this margin to increase towards [X]% over the next [X]. The Parties stated that the Divestment Business – before the impact of any additional costs arising from the Parties' proposed carve-out and separation measures – had a current EBITDA margin of [X]% and that the future management expected that this margin would be achievable within [X].⁶³⁷

9.255 The Parties also submitted that the Parties' Remedy Proposal to divest the Divestment Business in Europe (including the UK), Australia/New Zealand and the United States/Canada to a single purchaser would guarantee that the Divestment Business would continue to benefit from significant economies of scale, and that these economies of scale would enable the Divestment

⁶³⁶ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 12.10.

⁶³⁷ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 5.26.

Business to be an effective and financially resilient competitor with an incentive to operate at scale across these three major regions.⁶³⁸

9.256 In this regard, the Parties told us that each of the countries/regions within the geographic perimeter of the Divestment Business currently accounted for a significant proportion of MBCC Group's global sales and significantly contributed to MBCC Group's profitability.⁶³⁹

9.257 At its response hearing, Sika told us that the Divestment Business's stand-alone profitability was estimated to be [X]% (EBITDA margin), after taking into account the [X] reduction as a result of 'erring on the side of caution' in terms of allocating assets to the Divestment Business, which consequently had an impact on its cost base. Sika submitted, however, that on a stand-alone basis, the Divestment Business's management team expected EBITDA margin to improve to around [X]%, excluding any potential margin uplift arising from any cost synergies which a purchaser might be able to achieve.⁶⁴⁰

- *Financial resilience – third-party evidence*

9.258 Third-party evidence broadly suggests that the standalone EBITDA margins of the Divestment Business, including in the UK, are not out of step with the EBITDA margin of other competitors in the supply of admixtures and that the scope of the Divestment Business gives it the assets and capabilities to be a financially viable competitor:

(a) One potential purchaser told us that EBITDA margins depended on various factors and its observation was that the gross margin of the Divestment Business [X], and that the past 18 months had been an 'unusual environment'. However, this third party considered that the Divestment Business's EBITDA margin appeared to be [X].⁶⁴¹

(b) One competitor told us that the EBTDA margin of the different suppliers of admixtures varied and depended on the size and set-up of their operations. It added that an admixtures supplier would need a minimum EBITDA margin of 10 to 15% to be viable.⁶⁴²

(c) A potential purchaser told us that it would expect EBITDA margins for a stand-alone chemical admixtures business in the UK to be between 10

⁶³⁸ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraphs 4.2 and 4.5.

⁶³⁹ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraph 5.27.

⁶⁴⁰ Parties' response to Remedies Notice, paragraph 5.29.

⁶⁴¹ Note of a Remedies Call with a Third Party [X].

⁶⁴² Note of a Remedies Call with a Third Party [X].

and 15%. It told us that while the Divestment Business operated at the lower end of this range, this could partly be as a result of the way the Divestment Business had been carved out resulting in a higher cost base for the Divestment Business. This third party noted, however, that a potential purchaser would have some reassurance in the fact that the Divestment Business contained all the 'right people'.⁶⁴³

- (d) A competitor told us that based on its experience and from looking at its competitors' financial reports (where publicly available), a typical EBITDA margin for a UK stand-alone chemical admixtures business would be in 'double-digits'. It added that one of the factors which could affect stand-alone EBITDA margins would be whether the business had its own manufacturing operations, which would incur higher operating expenses than a business which only had trading operations.⁶⁴⁴ This third-party also noted that for a 'mature business' with its own manufacturing capabilities which was not looking to expand, then capex would be more about maintaining that investment and improving operational efficiency, and considered capex of around 2% of revenues to be appropriate for a 'steady business'.⁶⁴⁵
- (e) Another potential purchaser told us that the Divestment Business generated an EBITDA which it considered to be 'attractive' and gave any potential purchaser the headroom to compete on price in the future and to successfully grow and expand the business.⁶⁴⁶

9.259 We also sought views from third parties on whether there were any benefits of scale in competing in this market, and their views on whether the Divestment Business would have the scale needed to compete effectively. In particular, in relation to the scale of the Divestment Business and the impact of any possible loss of economies of scale resulting from the separation of the Divestment business, third-party evidence suggests that, while economies of scale and scope can be material (eg in relation to R&D), the MBCC EBA business (separated from the EBC) can be financially viable on its own and the Divestment Business will have the necessary geographic reach and scale to be an effective competitor:

- (a) One potential purchaser told us that scale mattered on the R&D side and that there were material scale benefits arising from the Parties operating on a global scale. This third party noted, however, that the Divestment

⁶⁴³ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁴⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁴⁵ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁴⁶ Third Party response to Remedies Notice [REDACTED].

Business would include almost the [REDACTED] of the MBCC's EBA business at global level and that the highest value and most innovative products were included in the Divestment Business.⁶⁴⁷

- (b) One potential purchaser told us that the admixture business of a large player could be viable on its own, without being operated alongside a large range of non-admixtures products. This third party also noted that the fact that the Divestment Business would not include part of MBCC's EBA business in the Asia Pacific and Middle East did not undermine its ability to compete in, for example Europe. This third party noted that, if the Divestment Business was supported by a global infrastructure and R&D capability, then it could also compete in the UK. This third party told us that it would prefer for the Divestment Business to have more critical mass.⁶⁴⁸
- (c) A potential purchaser told us that having 'scale and size' would be an 'advantage' for the Divestment Business as it would need the scale to cover its costs.⁶⁴⁹ It added that based on its experience in the chemicals sector, the Divestment Business would need 'sufficient weight and coverage' to be able to support and 'carry the costs' of the R&D that would be required. It also noted that a potential purchaser of the Divestment Business, as part of its due diligence, would have to consider whether the Divestment Business covered enough geographies that would enable it to have scale, the capabilities and 'development potential'.⁶⁵⁰
- (d) A competitor told us that there were 'clearly advantages' from operating across various European markets, eg in terms of operating in different business cycles; having different revenue streams and routes to market; having access to 'broader resources'; scale benefits in relation to procurement costs (by negotiating raw material prices on a European basis and leveraging its higher volumes); and from an innovation perspective. This competitor noted, however, that a smaller size EBA business could be 'nimble' and have greater flexibility in terms of its operations, eg move more quickly in terms of bringing innovation to the market and managing its cost base more easily by changing its supply chain.⁶⁵¹

⁶⁴⁷ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁴⁸ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁴⁹ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁵⁰ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁵¹ Note of a Remedies Call with a Third Party [REDACTED].

- (e) One customer told us that ‘undoubtedly’, the larger the company, the more revenues that could be directed towards product development, which would be an important part of the business’s offering. This third party added that there could be some benefits for MBCC’s UK admixtures business from being able to ‘glean’ knowledge through its broader global business. This third party’s view was that any UK admixtures business needed to be of a certain size to support the cost of having the relevant production capabilities and sites. This third-party considered, however, that it was not necessary for a UK admixtures business to be a global business.⁶⁵²
- (f) One potential purchaser told us that the inclusion of Australia, Canada, EEA, New Zealand, Switzerland, the UK and the United States in the perimeter of the Divestment Business provided exposure to different underlying market growth drivers, competitive dynamics and macroeconomic conditions, providing a helpful diversification which added to the stability of the Divestment Business and to its viability as a successful, growing business in the future. This third party added that the scope of the Divestment Business further positioned 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 therefore, supporting its competitive position in the future as well.⁶⁵³
- (g) Another potential purchaser told us that the scope of the Divestment Business offered it sufficient scale to compete with the Merged Entity in the UK and globally.⁶⁵⁴

- *Financial resilience – our assessment*

9.260 In assessing the financial resilience of the Divestment Business, we have considered:

- (a) the financial impact on the Divestment Business arising from the Parties’ proposed carve-out of the Retained EBC Business with the additional allocation of costs to the Divestment Business;

⁶⁵² Note of a Remedies Call with a Third Party [REDACTED].

⁶⁵³ Third Party response to Remedies Notice [REDACTED].

⁶⁵⁴ Third Party response to Remedies Notice [REDACTED].

- (b) whether the Divestment Business will lose any benefits economies of scale that MBCC may currently have that enhance its ability to compete effectively in the UK;
- (c) whether the expected EBITDA margin of the Divestment business will allow it to compete effectively in the UK; and
- (d) the overall trading performance of the Divestment Business.

- 9.261 In relation to *the first question*, the Parties estimated the total impact of the additional allocation of costs arising from the carve-out of the Retained EBC Business and the allocation of shared staff and site costs to the Divestment Business, to have the effect of reducing the Divestment Business's annual FY22 EBITDA margin by [~~3~~] to [~~3~~]% (or an EBITDA of €[~~3~~]).
- 9.262 We currently consider that the Parties' estimate of the increase in the Divestment Business's cost base as a result of the carve-out of the Retained EBC Business appears to be reasonable, and based on assumptions which we consider to be erring on the side of caution.
- 9.263 In relation to *the second question*, the Parties told us that all of the inputs required to operate the Divestment Business were sourced within the geographical perimeter of the Divestment Business.⁶⁵⁵ The Parties also noted that none of the contracts included in the Divestment Business currently benefited from cost synergies by virtue of being negotiated as part of the wider MBCC Group. The Parties added that the relevant contracts were [~~3~~]. The Parties also submitted there to be no scale benefits in terms of procurement costs and they had identified 'very limited current synergies' relating to procurement costs for raw or intermediate inputs. Therefore, the Parties told us that they expected the purchaser would be able to secure equivalent pricing on the key inputs into production.⁶⁵⁶
- 9.264 While third-party evidence suggests that economies of scale can be material, in particular in respect of R&D, third parties also noted that the Divestment Business appeared to have the necessary geographic reach and scale to be an effective competitor.
- 9.265 Based on our assessment above, we consider that the Divestment Business will have the necessary size and scale to make the significant investments in R&D (whether globally, regionally or at a local level) necessary to continue to be competitive in the UK and in the other markets it operates.

⁶⁵⁵ Parties' response (dated 2 November 2022) to RFI 1 (dated 27 October 2022), paragraph 10.

⁶⁵⁶ Parties' response (dated 2 November 2022) to RFI 1 (dated 27 October 2022), paragraph 10.

- 9.266 In relation to *the third question*, the Divestment Business is expected to generate an EBITDA in FY22 of €[X] on a stand-alone basis (ie including the full allocation of any additional shared costs arising from the carve-out of the Retained EBC Business), representing a [X]% increase on prior-year EBITDA. The Divestment Business is expected to generate an EBITDA margin of around [X]% (slightly lower than the [X]% EBITDA margin (on a like-for-like basis) generated in the prior year).⁶⁵⁷
- 9.267 The Divestment Business's FY22 EBITDA margin will be slightly below the [X]% EBITDA margin many third parties indicated should be the minimum EBITDA margin a standalone chemical admixtures business should expect to generate. We note, however, the Divestment Business's management team's expectations that the Divestment Business's EBITDA margins could be further enhanced. For example, MBCC told us that the Divestment Business management team was confident that it could enhance its stand-alone EBITDA margin from [X]%,⁶⁵⁸ and noted that the way the Divestment Business was put together and the approach taken to allocate more costs (eg in terms of staff costs) to the Divestment Business did have the impact of increasing its operating cost base and lowering its EBITDA margin.⁶⁵⁹ Sika also submitted that the Divestment Business's management team expected EBITDA margin to improve to around [X]%, excluding any potential margin uplift arising from any cost synergies which a purchaser might be able to achieve.⁶⁶⁰
- 9.268 We also note that Sika told us that while the significant increase in the cost of raw materials resulting from the conflict in Ukraine over the past 18 months had added [X] to EBITDA margins, this could be passed on to customers.⁶⁶¹ In this regard, MBCC also told us that cost rises over the past two years had been 'unprecedented', and that it took time to pass on these cost increases to customers. MBCC added, however, that it expected the Divestment Business's 'margin situation' to improve (as well as for other players) because the raw material costs were 'plateauing' and more stability was expected compared to the last two year.⁶⁶²
- 9.269 Given the evidence above, we consider at this stage that – notwithstanding the cost of the carve-out of the Retained Business and the allocation of shared cost to the Divestment Business, with a consequent reduction in EBITDA margin – the net impact on the Divestment Business's standalone

⁶⁵⁷ Parties' response to RFI 1, Annex Q2.

⁶⁵⁸ MBCC Response Hearing (7 November 2022), response to 'Purchaser risks' section.

⁶⁵⁹ MBCC Response Hearing (7 November 2022), response to q.23.

⁶⁶⁰ Parties' response to Remedies Notice, paragraph 5.29.

⁶⁶¹ Sika Response Hearing (7 November 2022), response to q.10.

⁶⁶² MBCC Response Hearing (7 November 2022), response to q.10.

EBITDA margin has not been sufficiently material to undermine its overall financial viability, resilience of competitiveness in the UK chemical admixtures market. Furthermore, we note that a purchaser of the Divestment Business may have some scope to reduce these additional costs further.

9.270 We also note that the relatively modest [X] EBITDA margin impact of the carve-out of the Retained EBC Business needs to be balanced against the benefits of mitigating the composition risk arising from the separation of the Retained EBC Business from the Divestment Business to ensure that the Divestment Business has all the assets it requires to compete effectively. In this case, given that the Divestment Business continues to generate a standalone EBITDA margin of over [X]%, we currently consider that the benefit of doing so has not been outweighed by its cost.

9.271 The considerable interest from potential purchasers for the Divestment Business suggests that the standalone EBITDA margins of the Divestment Business do not seem to be a major issue for these potential purchasers and/or that there are opportunities to improve margins in future.

9.272 In relation to *the third question*, we currently consider that the Divestment Business' current trading performance does not raise material concerns. We note that the Divestment Business is expected to generate annual revenues of €[X] in FY22, an increase of [X]% on its prior year annual revenues of €[X]. Of these €[X] revenues in FY22, around €[X] relates to the sale of chemical admixtures, which represents an increase of [X]% on prior year chemical admixtures revenues of €[X].⁶⁶³

- *Financial resilience – our conclusions*

9.273 Based on the above, we conclude that the carve-out of the Retained EBC Business and the allocation of shared assets (and costs) in favour of the Divestment Business has not had a material impact on the Divestment Business such that it would undermine its competitiveness or its ability to compete effectively. We also conclude that Divestment Business is a profitable business, with the size and scale to have the financial resilience and resources to continue to make significant investments in R&D and remain competitive.

⁶⁶³ Parties' response to RFI 1, Annex Q2.

Scope of the divestiture package – our conclusions

- 9.274 Based on the above, we conclude that it is appropriate for the divestiture of the Divestment Business to be implemented by way of a sale to a suitable purchaser of 100% of the shares in the MBCC legal entities which hold the Divestment Business.
- 9.275 We also found, at this stage, that the Divestment Business comprises all of the assets and capabilities required to enable it to compete effectively in the UK chemical admixtures market and restore the loss in the competitive constraint arising from the Merger.
- 9.276 We currently do not consider it necessary to consider a broader scope for the Divestment Business, subject to the following main additional conditions:
- (a) the Merged Entity not using any existing MBCC product suffixes, except those exclusively used for EBC products;
 - (b) the Merged Entity putting in place effective ring-fencing mechanisms to prevent access by the Merged Entity to any patent or know-how of the Divestment Business;
 - (c) the Merged Entity to procure written confirmation from [X] that it will continue to supply the Divestment Business on the same terms as it currently supplies MBCC;
 - (d) any Polymer Supply Agreement should contain terms that would not materially restrict the Divestment Business's ability to source polymers for its own operations (including for the purpose of its expansion); and
 - (e) limit the Polymer Supply Agreement to the supply of polymers that are protected by patents or put in place effective ring-fencing mechanisms or ring-fence access to any information related to these polymers that might allow reverse engineering of the underlying technology.

Criteria and availability of suitable purchasers

- 9.277 Having concluded that the scope of the divestiture package should be the Divestment Business, we now consider the risks that the Divestment Business may be sold to a weak or otherwise inappropriate purchaser or that a suitable purchaser may not be available. These risks, if not properly addressed, could undermine the effectiveness of any divestiture remedy.

9.278 We would normally mitigate these risks by satisfying ourselves that a potential purchaser meets the CMA's normal purchaser suitability criteria, ie that it:⁶⁶⁴

- (a) is independent of Sika (and the Merged Entity);
- (b) has the necessary capability to compete;
- (c) is committed to competing in the relevant markets; and
- (d) will not create further competition concerns

(together, the **Purchaser Suitability Criteria**).

9.279 We note that in this case, the Parties have already taken steps to market the Divestment Business to potential purchasers, subject to regulatory approvals of the Parties' Remedy Proposal and then the ultimate purchaser of the Divestment Business.

9.280 In this regard, as mentioned in paragraph 9.41 above, a total of [X] potential purchasers (comprising both [X] and [X] buyers) requested and received a process letter in relation to the ongoing sale process. From those, [X] potential purchasers submitted a non-binding offer on [X].⁶⁶⁵ [X] potential purchasers were shortlisted by the Parties on [X].

9.281 In our Remedies Notice, we invited views on whether there were any specific factors to which the CMA should pay particular regard in assessing purchaser suitability and whether there were risks that a suitable purchaser was not available.

9.282 In particular, we invited views on:⁶⁶⁶

- (a) whether a company which currently purchases chemical admixtures for use in its own operations (eg a concrete producer) would be a suitable purchaser, eg whether such a purchaser could and/or would effectively compete to supply chemical admixtures to its competitors (eg in concrete) and whether it would raise any other concerns; and
- (b) whether there were any other specific types of purchasers which should be ruled out, for example a financial buyer; a supplier of raw inputs required in the manufacture of chemical admixtures; or any other

⁶⁶⁴ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 5.21.

⁶⁶⁵ Parties response to Remedies Notice, paragraph 2(e).

⁶⁶⁶ [Remedies Notice](#), paragraphs 52 and 53.

company currently active in any other part of the supply chain of the Divestment Business.

9.283 We set out below the views of the Parties and third parties first on the criteria for a suitable purchaser, and then on the availability of a suitable purchaser.

Criteria for suitable purchasers

- *Parties' views on criteria for suitable purchasers*

9.284 The Parties told us that the CMA's standard purchaser criteria were appropriate in the assessment of a proposed purchaser and that no modification was required.⁶⁶⁷

9.285 Regarding financial buyers, the Parties told us that there was a [X] number of financial buyers who could easily demonstrate their suitability by invoking evidence such as:⁶⁶⁸

- (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 (eg 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 Parties' Remedy Proposal.

9.286 The Parties told us that it would be inappropriate to rule out financial buyers as an entire class of purchaser and that financial buyers should be considered

⁶⁶⁷ Parties response to Remedies Notice, paragraph 5.30.

⁶⁶⁸ Parties response to Remedies Notice, paragraph 5.34.

on the merits against the CMA's purchaser criteria on a case-by-case basis.⁶⁶⁹

9.287 At its response hearing, Sika told us that [REDACTED],⁶⁷⁰ [REDACTED].⁶⁷¹

9.288 In relation to potential purchasers who were vertically integrated heavy building materials companies, eg which had significant upstream activities in cement and/or aggregates and downstream activities (eg in concrete) and who would also purchase chemical admixtures for their downstream activities (the **Downstream Purchasers**), Sika submitted that:

- (a) they had an in-depth understanding of what customers of chemical admixtures needed given their downstream activities, and therefore, there would be little doubt as to their capability to compete;⁶⁷² and
- (b) [REDACTED], and that while the Divestment Business's customers would have questions over firewalls to safeguard their information, these risks were 'manageable'.⁶⁷³

9.289 With a more nuanced position, MBCC told us that if the Divestment Business was acquired by a Downstream Purchaser, then the Divestment Business's customers would be [REDACTED].⁶⁷⁴

9.290 Sika told us that [REDACTED].⁶⁷⁵

9.291 In relation to potential purchasers who were active on any part of the chemical admixtures supply chain:

- (a) The Parties told us that these potential purchasers would have a pre-existing understanding of the markets in which the Divestment Business would operate.⁶⁷⁶
- (b) Each of the Parties told us that [REDACTED].⁶⁷⁷ In their response to the RWP, the Parties told us that:⁶⁷⁸
 - (i) [REDACTED] was a significant supplier of raw materials to Sika, and that [REDACTED] supplied Sika with [REDACTED] (a key raw material and input into PCE

⁶⁶⁹ Parties' response to Remedies Notice, paragraph 5.35.

⁶⁷⁰ Sika Response Hearing (7 November 2022), response to q.12.

⁶⁷¹ Sika Response Hearing (7 November 2022), response to q.16.

⁶⁷² Parties' response to Remedies Notice, paragraph 5.35.

⁶⁷³ Sika Response Hearing (7 November 2022), response to q.16.

⁶⁷⁴ MBCC Response Hearing (7 November 2022), response to q.19.

⁶⁷⁵ Sika Response Hearing (7 November 2022), response to q.16.

⁶⁷⁶ Parties' response to Remedies Notice, paragraph 5.35.

⁶⁷⁷ MBCC Response Hearing (7 November 2022), response to q.14 and Sika Response Hearing (7 November 2022).

⁶⁷⁸ Parties' response to the RWP, paragraph 5.1(e).

polymer production), the supply of which was forecast to materially increase in FY23 especially in Europe and the USA; and

(ii) [REDACTED] supplied MBCC with [REDACTED] (used in polymer production in Treviso), [REDACTED] in Germany and other raw materials in Turkey and the US, although the volumes supplied were 'immaterial'.

(c) Sika told us that [REDACTED] and considered that it would expect '[REDACTED]' if the Divestment Business was acquired by a [REDACTED].⁶⁷⁹

- *Third parties' views on criteria for suitable purchasers*

9.292 With regards to the criteria that should be taken into account when assessing the suitability of potential purchaser, third-party evidence indicates that it is important that a potential purchaser shows willingness to invest in the Divestment Business, in particular in R&D, as well as the commitment to grow the Divestment Business.

9.293 Many third-parties also expressed concerns with the suitability of Downstream Purchasers, in particular because other admixtures customers would be reluctant to share sensitive information with their competitors downstream. Third parties also questioned the commitment of some financial buyers to developing the Divestment Business long-term. Third parties expressed no or limited concerns with the suitability of chemical and polymer producers as potential purchasers of the Divestment Business. Looking at the third-party evidence in more detail:

(a) One potential purchaser considered that the success of the Divestment Business depended on continuing investment, including in R&D. This third party noted that a purchaser should act in the long-term interest of the business and be willing to invest, not just reduce costs.⁶⁸⁰

(b) One competitor told us that a potential purchaser should not have any material presence in the supply of admixtures. This third party also expressed concerns with the suitability of Downstream Purchasers, eg if CRH were to acquire the Divestment Business, then Heidelberg-Hanson might not want to buy admixtures from its competitor, and Heidelberg-Hanson might be considering alternative suppliers of chemical admixtures. This third party expressed no concerns in relation to financial buyers or upstream polymer suppliers.⁶⁸¹

⁶⁷⁹ Sika Response Hearing (7 November 2022), response to q.16.

⁶⁸⁰ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁸¹ Note of a Remedies Call with a Third Party [REDACTED].

- (c) One potential purchaser told us that while an acquisition of the Divestment Business by an existing supplier of chemical admixtures could raise potential competition concerns, similar concerns would likely not arise if the Divestment Business were to be acquired by a financial buyer.⁶⁸²
- (d) Another potential purchaser told us that a purchaser should be ‘big enough’ and sufficiently ‘chemically-aware’ with the ‘right’ financial background and strength and noted that a Downstream Purchaser with activities downstream from the Divestment Business would probably not be ‘favourably looked at’ by the Divestment Business’s customers, as they might have concerns about the prices being charged. This third party added that the Divestment Business would need a ‘degree of sustainability’ and that it was unclear whether a financial buyer would be able to provide that, in particular because payback on R&D would in most cases take five to seven years, and that it was not a one- to two-year ‘payback situation’. This third party suggested that a financial buyer might be looking to sell the business over the next three to five years and would focus their expenditure on making the business attractive for the next sale. It also considered that a financial buyer could lack the ‘depth of knowledge’ in some of the areas of manufacturing in the admixture sector.⁶⁸³
- (e) One customer told us that:
- (i) in order for the proposed remedy to be effective, the purchaser of the Divestment Business should have an understanding of how the market would develop in the future and should be motivated to invest and expand the Divestment Business, as well as to develop products;⁶⁸⁴
 - (ii) in relation to a Downstream Purchaser: (a) these purchasers would focus on developing admixtures for their own concrete business rather than on admixtures required for other customers’ concrete business (eg a Downstream Purchaser would develop admixtures which worked particularly well with their concrete products, but less well with its competitors’ concrete products);⁶⁸⁵ and (b) admixtures customers might also have concerns with sharing their confidential

⁶⁸² Note of a Remedies Call with a Third Party [REDACTED].

⁶⁸³ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁸⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁸⁵ Note of a Remedies Call with a Third Party [REDACTED].

information with the Divestment Business if it was owned by a Downstream Purchaser;⁶⁸⁶

- (iii) in relation to financial buyers, this category of purchaser might be overly focused on 'price and costs' in order to sell the Divestment Business in the future. This purchaser noted that if a financial buyer made changes to the Divestment Business which would 'dilute' the Divestment Business's 'polymer innovation' capabilities, it would need to reconsider whether it would wish to deal with the Divestment Business. This third party added that if a financial buyer were to acquire the Divestment Business, five years would be a reasonable time period for a financial buyer to hold on to its investment;⁶⁸⁷ and
- (iv) in relation to the suitability of a chemical company as a purchaser of the Divestment Business, this would depend on whether the Divestment Business's polymer development would be restricted or whether it would be made available to the 'open market'.⁶⁸⁸ Overall, this third party told us that if the Divestment Business had everything it needed to compete, it would not have serious concerns if a purchaser was not one of the 'main players' currently operating in chemical admixtures. It added that if the purchaser of the Divestment Business intended to close down factories, it would have concerns.⁶⁸⁹

(f) One competitor told us that:

- (i) a purchaser would need to have a long-term commitment to the market, and should be interested in the whole Divestment Business, rather than have an interest in only certain products or certain customers;⁶⁹⁰
- (ii) if the Divestment Business was owned by a Downstream Purchaser, then innovation would likely be 'stifled' and there would be issues around foreclosure of other concrete and cement producers' access to the Divestment Business's admixtures and about whether it would supply the 'best products' and at the most competitive price.⁶⁹¹ Therefore, this third party considered that operating the Divestment

⁶⁸⁶ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁸⁷ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁸⁸ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁸⁹ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁹⁰ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁹¹ Note of a Remedies Call with a Third Party [REDACTED].

Business without such vertical integration would allow for more innovation and ‘fair competition’;⁶⁹²

(iii) in relation to financial buyers, a financial buyer would likely own the Divestment Business for between two and five years and would only seek to improve the business in order to sell the business to another purchaser, creating some uncertainty;⁶⁹³ and

(iv) it would have no concerns if a ‘polymer producer’ were to acquire the Divestment Business, noting that BASF supplied raw materials to various admixtures businesses.⁶⁹⁴

(g) One customer told us that:

(i) a purchaser of the Divestment Business would need to have ‘credibility’, and ideally be a purchaser with whom this customer could develop a ‘significant relationship’. It added that a smaller admixtures competitor could be suitable as the acquisition of the Divestment Business would fit well with its business;⁶⁹⁵

(ii) it would not be keen to work with the Divestment Business if it was acquired by a Downstream Purchaser, eg because it would not want to share its confidential information with the Divestment Business and it would also be suspicious about the price being charged;⁶⁹⁶

(iii) in relation to financial buyers, this category of purchaser would not provide certainty or guarantees of a long-term commitment and they would be unlikely to invest in the business for the longer term. This third party added that this uncertainty would be ‘destabilising’ for customers;⁶⁹⁷ and

(iv) it had no concerns in relation to the suitability of a polymer or chemicals producer as a purchaser of the Divestment Business.⁶⁹⁸

(h) One potential purchaser told us that it considered that it was important that a suitable purchaser had the appropriate experience, as well as the operational and financial resources to support the global footprint of the

⁶⁹² Note of a Remedies Call with a Third Party [REDACTED].

⁶⁹³ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁹⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁹⁵ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁹⁶ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁹⁷ Note of a Remedies Call with a Third Party [REDACTED].

⁶⁹⁸ Note of a Remedies Call with a Third Party [REDACTED].

Divestment Business to ensure effective competition and growth post-divestment. This third party added that:⁶⁹⁹

- (i) in its view, a financial buyer with the relevant sector expertise and the financial and global operational capabilities to support the Divestment Business would be particularly suitable; and
 - (ii) in relation to the suitability of a Downstream Purchaser, the CMA should make a distinction between larger and smaller downstream customers, whereby smaller downstream customers had neither the ability nor incentive to engage in a customer foreclosure strategy. It therefore considered that it would not be appropriate to rule out smaller downstream customers (or their owners) with relevant experience as a potentially suitable purchaser.
- (j) Another potential purchaser told us that a financial buyer with a demonstrated commitment to growing the Divestment Business would be a suitable purchaser. It added that given the nature of the business activities and the fact that the Divestment Business included the transfer of key management personnel, there was no need for the buyer to be an industry participant or an operator in the same or an adjacent market.⁷⁰⁰
- (j) Another potential purchaser told us that:⁷⁰¹
- (i) any potential purchaser must have sufficient financial resources to support the growth and development of the Divestment Business; and
 - (ii) financial buyers were suitable in this case given that the Divestment Business had been comprehensively designed to operate as a standalone business, in particular, the Divestment Business included all currently employed personnel and senior management, thereby transferring all required expertise.
- (k) A third party told us that it was common for vertically integrated suppliers to supply downstream competitors within the building materials industry, eg construction companies wishing to develop a new type of concrete with specific characteristics would need to interact with suppliers at all levels of the value chain (including cement, ready-mix concrete and admixtures suppliers) and while these suppliers were often vertically integrated, this did not, in its experience, translate into any reluctance from downstream customers to source from such suppliers. Therefore, it considered that

⁶⁹⁹ Third Party response to Remedies Notice [REDACTED].

⁷⁰⁰ Third Party response to Remedies Notice [REDACTED].

⁷⁰¹ Third Party response to Remedies Notice [REDACTED].

there was no credible basis for ruling out downstream cement / concrete / mortar suppliers from being considered as potentially suitable purchasers.⁷⁰²

Availability of suitable purchasers

- *Parties' views on availability of suitable purchasers*

9.294 As mentioned in paragraph 9.42 above, the Parties have already commenced a sale process for the Divestment Business and received non-binding offers on [REDACTED]. Sika stated that it had not ruled out any potential purchaser at the outset of its sale process, and that it had approached nearly every potential purchaser.⁷⁰³

9.295 The Parties told us that [REDACTED] non-binding offers were made by: [REDACTED].⁷⁰⁴

9.296 On [REDACTED], Sika told us that it would progress [REDACTED] potential purchasers through to the second round of the sale process for the Divestment Business, namely: [REDACTED].⁷⁰⁵

9.297 The Parties submitted that given the level of interest from such a wide variety of potential buyers, they expected that all of the purchasers advanced to the second stage of the auction would meet the purchaser approval criteria of each of the six competition regulators. In this regard, the Parties told us that this was one of the criteria against which the bidders' initial submissions were evaluated. The Parties told us that it was 'not plausible that out of this wide pool of interested buyers, not a single one would be found suitable by all regulators'.⁷⁰⁶

9.298 In response to our question of whether any of the [REDACTED] shortlisted potential purchasers currently had any commercial or financial links with either of the Parties, which would give rise to antitrust filing requirements or could otherwise delay the Parties' proposed regulatory timeline, the Parties told us that:⁷⁰⁷

- (a) in relation to the [REDACTED] bidders (ie [REDACTED]), while each of Sika and MBCC had a number of commercial and supply links with [REDACTED], the products subject to these agreements were commodity products commonly sold by chemical

⁷⁰² Third Party response to Remedies Notice [[REDACTED]].

⁷⁰³ Sika Response Hearing (7 November 2022), response to q.14.

⁷⁰⁴ Sika's 'NBO Summary'.

⁷⁰⁵ Sika email to the CMA (9 November 2022).

⁷⁰⁶ Parties' submission on the Parties' Remedy Proposal, paragraph 13.8.

⁷⁰⁷ Parties' response to RFI 3, paragraphs 20 to 23.

admixture producers, and therefore, these supply arrangements, in of themselves, would not trigger antitrust filings that would delay the Parties' proposed regulatory timeline; and

- (b) in relation to the [X] buyers, the Parties had not identified any commercial links between the Divestment Business and these [X] (including any commercial links between these [X] and the Divestment Business), which would lead to filing requirements in and of themselves in any of the countries within the Divestment Business perimeter.

- *Third parties' views on availability of suitable purchasers*

9.299 No third parties expressed concerns that there would not be purchasers interested in acquiring the Divestment Business.

- *Our assessment on the criteria and availability of a suitable purchaser*

9.300 We set out below our assessment of:

- (a) the criteria for a suitable purchaser; and
- (b) the availability of a suitable purchaser.

- *Criteria for a suitable purchaser*

9.301 Based on our assessment above, we consider that the application of our usual criteria for purchaser at paragraph 9.278 above, within the specific context of this Merger would enable the CMA to address all aspects of the key concerns raised by the Parties and third parties.

9.302 We note the views in relation to the importance of ensuring that the purchaser is committed to investing into the future of the business, in particular in R&D. We consider that these areas are covered by our Purchaser Suitability Criteria, which assesses (among others) the purchaser's commitment to the relevant markets and its financial capabilities.

9.303 In relation to the suitability of a financial buyer, we note the Parties' view that this class of purchaser should not be ruled out.

9.304 Some third parties, however, expressed concerns with potential financial buyers, in particular expressing doubts about their long-term commitment to the Divestment Business and investment into R&D, which would undermine their suitability given: (a) the importance of certainty/continuity for both customers and staff; and (b) the need to ensure that the purchaser was incentivised to invest for the long-term viability and competitiveness of the

Divestment Business, for example by investing in ongoing fundamental research that may not have identifiable payoffs and where, any benefits may take many years to materialise.

- 9.305 We currently consider that each financial buyer should be considered on its own merits on a case-by-case basis in light of the Purchaser Suitability Criteria and that it is not appropriate to rule out all possible financial buyers at this stage, noting in particular, that chemical admixture businesses have in the past been successful under financial buyer ownership, including MBCC, which is currently owned by Lone Star, and CHRYSO, which until September 2021, was owned by Cinven. However, in order for us to approve a financial buyer, we would need to be confident that any financial buyer could demonstrate its longer-term commitment to the Divestment Business, including providing evidence of its business plans for the Divestment Business and its commitment to investing in the Divestment Business, including, but not limited to, its ongoing R&D and innovation activities. We would also expect a financial buyer to provide evidence of its past track record demonstrating its longer-term commitment and to investing in R&D and innovation.
- 9.306 In relation to the suitability of Downstream Purchasers, we note that, while Sika submitted that such purchasers would have a pre-existing understanding of the market and an incentive to continue to operate the Divestment Business as a competitive and viable force in the market,⁷⁰⁸ Sika [REDACTED].
- 9.307 We understand that Sika [REDACTED]. In light of the third-party evidence set out above, we currently consider that Downstream Purchasers should be ruled out as a suitable purchaser given the following prima facie concerns that if the Divestment Business were owned by a Downstream Purchaser:
- (a) it would not have the incentive to supply chemical admixtures to its competitors (eg in the supply of concrete) or could degrade the product or prioritise its own needs when supply is constrained;
 - (b) it may have both the incentive and ability to optimise its admixtures to work best with their other products, gaining a competitive advantage over their competitors and distorting competition in the supply of cement or aggregates (upstream), as well as in the supply of concrete (downstream);
 - (c) the advantage gained by the Downstream Purchaser arising from being vertically integrated in relation to both chemical admixtures and downstream products (eg concrete) may be sufficient to result in

⁷⁰⁸ Parties response to Remedies Notice, paragraph 5.35.

foreclosure concerns, eg its chemical admixture competitors losing key customers;

- (d) other customers may not wish to buy admixtures from the Divestment Business, because they will need to share commercially sensitive information about their activities with a competitor; and
- (e) the prospect that these possible vertical foreclosure concerns may trigger merger control investigations in multiple jurisdictions and have implications on the timely completion of the divestiture transaction.

9.308 We note that third parties expressed no concerns in relation to other potential purchasers who may be categorised as ‘strategic’ or ‘trade’ buyers, including chemical and polymer suppliers. We consider that the suitability of chemical and polymer suppliers, as well as any other category of potential purchaser (other than Downstream Purchasers) should be assessed in light of the Purchaser Suitability Criteria, as part of which we will consider any existing agreements between such purchasers and the Parties.

9.309 To the extent further regulatory approvals may be required for the acquisition of the Divestment Business by a potential purchaser, the Parties should carefully take into account when choosing which potential purchasers to submit for the CMA’s approval, whether the time required to obtain such regulatory approvals would ensure the timely completion of the divestiture remedy. We consider that this is a factor that the CMA should consider in its purchaser approval assessment.

- *Availability of a suitable purchaser*

9.310 In relation to the likely availability of a suitable purchaser, we note that third parties did not express concerns that a purchaser could not be found. The attractiveness of the Divestment Business as a potential acquisition package also appears to be corroborated by the interest from potential purchasers that Sika has received to date at the non-binding offer stage.

9.311 We note that Sika has progressed [REDACTED] potential purchasers ([REDACTED]) through to the second round of the sale process for the Divestment Business, namely: [REDACTED].⁷⁰⁹

9.312 We note that the potential purchaser will need to show its interest in acquiring the Divestment Business in all regions covered by the Parties’ Remedy Proposal and cannot raise competition concerns in any of these jurisdictions.

⁷⁰⁹ Sika email to the CMA (9 November 2022).

In theory, this may further reduce the number of potential purchasers. We take comfort, however, in the fact that [X] potential purchasers have been progressed through to the second round of the sale process. We also take comfort from the potential availability of [X] other non-indicative bids from purchasers who were not Downstream Purchasers, who had not been progressed to the second round of the sale process.

- 9.313 In any case, we would note that the CMA's guidance on remedies states that in relation to whether divestiture is feasible, substantial uncertainty as to whether a suitable purchaser will emerge will generally not be sufficient for the CMA to conclude that any form of divestiture remedy is not feasible. The CMA has found that it is normally possible to implement divestiture remedies, despite such uncertainties, given flexibility in the disposal price,⁷¹⁰ eg if a Divestiture Trustee is appointed (see also paragraphs 9.383 to 9.390 below).
- 9.314 As such, we currently consider that there is a low risk that a suitable purchaser for the Divestment Business will not be identified.
- 9.315 At this stage, and based on our assessment above, we have not seen evidence to suggest that a suitable purchaser cannot be found nor that we should have material doubts about the marketability of the Divestment Business, and therefore, we consider that it would not be necessary to require an upfront buyer (ie require a purchaser by the date the CMA accepts final undertakings or makes a final order).
- 9.316 There may be, however, procedural benefits of adopting an upfront buyer structure in this case if it better aligns our remedies process with the remedies process of the other competition authorities. For example, under an upfront buyer divestiture remedy, the CMA will normally approve a suitable purchaser of the divestment business and the relevant transaction agreements prior to the acceptance of final undertakings or the making of a final order, such that the Parties can make all arrangements for completion of the sale of the Divestment Business to take place at the same time as the acceptance of final undertakings or the making of a final order.
- 9.317 At this stage, and based on the Parties' proposed timetable for the divestiture process of the Divestment Business, the Parties currently anticipate completing the sale of the Divestment Business in early [X]. Based on our statutory deadlines for publishing the final report and then accepting final undertakings or making a final order, the statutory deadline to accept final undertakings or make a final order falls on 18 April 2023. On this basis,

⁷¹⁰ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.51.

completion of the sale of the Divestment Business would take place after the date we accept final undertakings or make a final order.

9.318 While we consider it likely that completion of the sale of the Divestment Business will take place after any acceptance of final undertakings (or the making of a final order), for the purpose of providing greater procedural flexibility to anticipate the possibility if current circumstances were to change, of formally approving the sale to a purchaser and the transaction agreements prior to our acceptance of final undertakings (or making of a final order), and to align our remedies process with those of the other competition authorities, we will reserve the right to adopt an ‘upfront buyer’ structure, which would enable the Parties to seek formal CMA approval of the purchaser and the transaction documents prior to the acceptance of any final undertakings (or the making of a final order).

- *Conclusions on the criteria and availability of suitable purchasers*

9.319 In order to ensure that a full divestiture remedy achieves its intended effects, we conclude that we would wish to satisfy ourselves that a potential purchaser meets the CMA’s Purchaser Suitability Criteria (as set out in paragraph 9.278 above).

9.320 We also conclude that:

- (a) we would not rule out financial buyers at this stage, but that each financial buyer should be considered on its own merits on a case-by-case basis in light of the Purchaser Suitability Criteria, eg a suitable financial buyer should be able to demonstrate its longer-term commitment to the Divestment Business, including providing evidence of its business plans for the Divestment Business and its commitment to investing in the Divestment Business, including, but not limited to, its ongoing R&D and innovation activities;
- (b) Downstream Purchasers should be ruled out as a suitable purchaser given our prima facie concerns in relation to their ownership of the Divestment Business; and
- (c) the suitability of any other category of potential purchaser should be assessed in light of the Purchaser Suitability Criteria.

9.321 To the extent further regulatory approvals may be required for the acquisition of the Divestment Business by a potential purchaser, to ensure that divestiture can complete within the agreed timescales (discussed later in this chapter), we conclude that the time required to obtain such regulatory approvals should

also be a factor that the CMA will consider in its purchaser approval assessment.

9.322 In terms of the availability of a suitable purchaser, we conclude that there is a low risk that a suitable purchaser for the Divestment Business will not be identified. We note that some potential purchasers may be subject to non-streamlined regulatory review in other jurisdictions and that this may have a knock-on effect on the timely implementation of this divestiture remedy, and consequently on any asset risk. This is considered in more detail below.

9.323 We also conclude that we should keep open the possibility of adopting an upfront buyer structure to provide ourselves with greater procedural flexibility to anticipate the possibility of formally approving the sale to a purchaser and the transaction agreements prior to our acceptance of final undertakings (or making of a final order), and to align our remedies process with those of the other competition authorities.

Ensuring an effective divestiture process and mitigating asset risks

9.324 When considering asset risk, the CMA will seek to ensure an effective divestiture process that will protect the competitive potential of any divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale. The process should also allow prospective purchasers to make an appropriately informed acquisition decision.⁷¹¹ As such, the CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with divestiture, including the timeframe within which to complete the divestiture and the need to appoint a Monitoring Trustee / expand the scope of the role of the Monitoring Trustee (if already appointed).

9.325 As mentioned in paragraphs 9.57 and 9.216 above, [REDACTED]. Given our view that the key employees, including sales and technical staff, were important for the ability for the Divestment Business to compete effectively, [REDACTED].

9.326 The circumstances of this case raise the following issues for consideration in relation to the divestiture process:

- (a) timings on the completion of the Merger and the divestiture of the Divestment Business;
- (b) the need for additional interim measures during the divestiture process;

⁷¹¹ [Merger Remedies](#): CMA87 (December 2018), paragraph 5.33.

- (c) the appropriate timescale for divestiture to take place; and
- (d) whether, and under what circumstances, there is a need to appoint an external and independent trustee to complete a divestiture (**Divestiture Trustee**) to mitigate the risk that the divestiture does not complete within the agreed timescales.

Timings on the completion of the Merger and the divestiture of the Divestment Business

9.327 The Merger is currently an anticipated Merger. During a phase 2 investigation into an anticipated merger, the Act prevents the merging parties from acquiring any shares in the target business without the CMA's consent pending final determination of the reference, eg when the CMA accepts final undertakings or makes a final order, or when the CMA clears the reference where an SLC is not found.⁷¹²

- *Parties' proposal*

9.328 The Parties currently anticipate completion of the Merger to take place on the [REDACTED].⁷¹³

- *Our assessment*

9.329 While the Parties' latest timetable anticipates completion of the Merger and all three Share Sale transactions relating to the sale of the Divestment Business to take place [REDACTED], given the Parties' [REDACTED] and the Parties' proposal to have [REDACTED] to implement the sale of the Divestment Business, we considered whether there may be a possibility that the Parties may seek CMA approval for [REDACTED].

9.330 We would have concerns if the Divestment Business [REDACTED], in particular given the potential risk of disruption to the ongoing operations of the Divestment Business, noting that the Divestment Business has a number of global functions, eg in relation to global management and R&D (eg Trostberg) which are held within the European Divestment Business), ie it is a single, integrated business, rather than as three separate businesses divided along regional lines. We therefore consider that completion of the sale of the shares in the Divestment Business should take place on the [REDACTED].

9.331 In relation to the timing of completion of the Merger, and whether its completion could take place prior to completion of the divestiture of the

⁷¹² CMA guidance on 'Interim measures in merger investigations' (CMA108), December 2021, paragraph 2.19.

⁷¹³ Sika Response Hearing (7 November 2022), response to q.20.

Divestment Business, we note that the risk of pre-emptive action, eg action which might undermine the CMA's remedies, is generally much lower in an anticipated merger than in a completed merger.⁷¹⁴

9.332 In this case, we consider that completion of the Merger should take place either on [REDACTED], for the following reasons:

- (a) in the event the [REDACTED], and under a scenario where completion of the sale of the Divestment Business is materially delayed, this increases the risk of pre-emptive action and the risk that confidential and proprietary information relating to the Divestment Business is inadvertently shared with Sika (notwithstanding the fact that this could be in potential breach of any CMA interim measures in place at the time);
- (b) Sika's announcement of the Merger alone [REDACTED]; and
- (c) [REDACTED], we would in any case, seek to prevent any integration of the Retained Business with Sika's business to ensure that, to the extent a purchaser identifies any assets omitted from the scope of the Divestment Business, such assets are not integrated in the Retained Business and are easy to 'claw-back' to the Divestment Business.

9.333 In their response to the RWP, the Parties noted that, while in earlier versions of the Parties' proposed timetable for the Share Sales of the Divestment Business a '[REDACTED]' was envisaged, resulting in [REDACTED], this was no longer the case.⁷¹⁵

9.334 The Parties told us in their response to the RWP that, while the Share Sale of the Divestment Business would be implemented by way of [REDACTED]:⁷¹⁶

- (a) completion of these [REDACTED] Share Sales would take place on [REDACTED]; and
- (b) these [REDACTED] Share Sales would also complete on [REDACTED].

9.335 The Parties told us that in terms of sequencing the various transactions, [REDACTED]:⁷¹⁷

- (a) [REDACTED];
- (b) [REDACTED]; and

⁷¹⁴ CMA guidance on 'Interim measures in merger investigations' (CMA108), December 2021, paragraph 2.19.

⁷¹⁵ Parties' response to the RWP, paragraph 2.2.

⁷¹⁶ Parties' response to the RWP, paragraph 2.3.

⁷¹⁷ Parties' response to the RWP, paragraph 2.6.

(c) [REDACTED]; and

(d) [REDACTED].

9.336 The Parties told us that in order to give the CMA additional comfort on timing, the Parties would commit as part of any final undertakings, to take all necessary steps to complete the [REDACTED] Share Sales of the Divestment Business, the Reverse Carve-Out and the Merger itself within [REDACTED], and that its plans for doing so would be subject to review by the Monitoring Trustee. The Parties added that closing all parts of these transactions in [REDACTED] was entirely achievable from a practical perspective.⁷¹⁸

9.337 We consider that the Parties' proposal, as outlined above, to complete the Share Sale transactions, the Reverse Carve-Out and the Merger [REDACTED], would eliminate any meaningful delays between: (a) completion of the Merger and the Share Sale transactions; and (b) completion of each of the three Share Sale transactions. We also consider that the role of the Monitoring Trustee could be expanded to review the Parties' plans for ensuring that this is achieved.

- *Our conclusions*

9.338 Based on the above, we conclude that (except with the prior written consent of the CMA):

- (a) completion of the [REDACTED] Share Sales of the Divestment Business [REDACTED];
- (b) completion of the Merger should take place [REDACTED] (as currently planned by the Parties), or should current circumstances change, [REDACTED];
- (c) once the process for closing the various transactions has commenced, the process should be irrevocable, such that all the steps necessary to enable completion would automatically take place and cannot be reversed; and
- (d) the Monitoring Trustee should review the Parties' plans for ensuring that completion of the sale of the Divestment Business and the Merger takes place on the same date.

⁷¹⁸ Parties' response to the RWP, paragraphs 2.4 and 2.9.

Need for additional interim measures

- 9.339 In the circumstances of this case, we note the third-party evidence which indicated that Sika's announcement of the Merger has had a [REDACTED] (see paragraphs 9.57 and 9.216 above and also the further third-party evidence set out in paragraph 9.352 below). As we set out below, the Parties also acknowledged that MBCC [REDACTED] (see paragraphs 9.348 to 9.350 below).
- 9.340 We also note our views on the importance of key staff to the ability of the Divestment Business's to compete effectively, and the risk that [REDACTED].
- 9.341 Therefore, we have imposed an Interim Order on MBCC, aimed at requiring MBCC to take steps to ensure the maintenance and preservation of the assets of the Divestment Business, and to take all reasonable steps to encourage all key staff to remain with the Divestment Business. Under these interim measures, we issued written directions to MBCC to appoint a Monitoring Trustee to monitor the asset risk, [REDACTED].
- 9.342 In our Remedies Notice, we invited views on the risks that the competitive capability of a divestiture package would deteriorate before completion of divestiture, and whether a Monitoring Trustee should be appointed to oversee the divestiture process and to ensure that the operations and assets to be divested were maintained and properly supported during the course of the process.⁷¹⁹
- 9.343 We set out below the views of the Parties and third parties before setting out our conclusions.

- *Parties' views*

- 9.344 The Parties told us that there was no risk that the competitive capability of the Divestment Business would deteriorate before completion of the divestiture, given that:⁷²⁰
- (a) there would not be a [REDACTED], which had to take place within [REDACTED] of the [REDACTED];
 - (b) a [REDACTED] to ensure staff motivation and retention throughout the period;
 - (c) a Hold Separate Manager and a Monitoring Trustee would be appointed to ensuring the preservation of the Divestment Business globally (including the UK).

⁷¹⁹ Remedies Notice, paragraph 56(b).

⁷²⁰ Parties response to the Remedies Notice, paragraph 5.43.

9.345 MBCC told us that there was no change in the way its business was being run and [REDACTED], including since Sika announced the Merger. MBCC also confirmed that the announcement or the Merger had not changed its [REDACTED].⁷²¹

9.346 In relation to staff retention during the remedies implementation period, the Parties told us that:

(a) 'most' Key Personnel employed by the European Divestment Business [REDACTED];

(b) [REDACTED];⁷²² and

(c) [REDACTED]⁷²³ [REDACTED]:

(i) [REDACTED]; and

(ii) [REDACTED].⁷²⁴

9.347 However, we note that MBCC told us that while it considered [REDACTED].⁷²⁵

9.348 The Parties explained, in relation to the UK in particular, that:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED]; and

(d) [REDACTED].⁷²⁶

9.349 Sika told us that, while MBCC's UK business was in an '[REDACTED]', it did not consider a Monitoring Trustee was necessary before the remedies implementation period and proposed to continue to monitor the [REDACTED].⁷²⁷

9.350 MBCC told us that while some [REDACTED] since Sika announced its acquisition of MBCC in November 2021, all of the [REDACTED].⁷²⁸

9.351 Prior to our decision to impose interim measures and require the appointment of a Monitoring Trustee, the Parties had offered to appoint a Hold Separate Manager and a Monitoring Trustee to ensure the preservation of the

⁷²¹ MBCC Response Hearing (7 November 2022), response to q.24.

⁷²² Parties' submission on the Parties' Remedy Proposal, Appendix, paragraphs 5.43 and 5.45.

⁷²³ Or [REDACTED] in select instances.

⁷²⁴ Parties' submission on the Parties' Remedy Proposal, Appendix, paragraphs 5.46 and 5.47.

⁷²⁵ MBCC Response Hearing (7 November 2022), response to q.23.

⁷²⁶ Parties' response to RFI 2.

⁷²⁷ Sika Response Hearing (7 November 2022), response to q.24.

⁷²⁸ MBCC Response Hearing (7 November 2022), response to q.22.

Divestment Business globally after the Parties' Proposed Remedy was accepted, and during the implementation period.⁷²⁹ The Parties also did not object to the inclusion of standard hold-separate obligations during the remedy implementation period.⁷³⁰

- *Third parties' views*

9.352 As mentioned above in paragraph 9.215 above, third-party evidence indicates that the inclusion of key employees (ie including key sales and technical staff) was important for the competitiveness of the Divestment Business. There was also a broad consensus from third parties that there were concerns with the [REDACTED] during the investigation of the Merger and the remedies implementation period, noting that [REDACTED] the Merger was announced. Other asset risks were identified by some third-parties, such as the possible reduction of investment in R&D. We set out the third-party evidence below:

- (a) One potential purchaser (and also a customer) told us that it was concerned about the [REDACTED]. It considered that the long sale process was leading to [REDACTED] and that this was a key risk it would look at more closely during the due diligence process.⁷³¹
- (b) One potential purchaser told us that [REDACTED] had increased after the Merger was announced and the Merger (and any divestment process) needed to be concluded as soon as possible as [REDACTED] was key and that MBCC's staff had been in a state of 'limbo' for an extended period of time, having gone through MBCC's acquisition by Lone Star and now Sika.⁷³²
- (c) One competitor told us that a '[REDACTED]'. This competitor also told us that there was a risk that [REDACTED].⁷³³
- (d) One potential purchaser told us that, during the remedies implementation period,⁷³⁴ there would always be '[REDACTED]'. This third party also noted that there could also be a risk as 'vital ongoing sustenance spend' might not be made for the Divestment Business, and that 'basic day-to-day attention' to the operation of the Divestment Business would drop. This third-party noted that the more protracted the remedies process was, the higher that risk.⁷³⁵

⁷²⁹ Parties' response to the Remedies Notice.

⁷³⁰ Parties' response to the Remedies Notice, paragraph 5.43.

⁷³¹ Note of a Remedies Call with a Third Party [REDACTED].

⁷³² Note of a Remedies Call with a Third Party [REDACTED].

⁷³³ Note of a Remedies Call with a Third Party [REDACTED].

⁷³⁴ Note of a Remedies Call with a Third Party [REDACTED].

⁷³⁵ Note of a Remedies Call with a Third Party [REDACTED].

- (e) One customer told us that there was an industry-wide ‘shortage of qualified people’ in the chemical admixtures sector and a lot of [REDACTED]. This customer also noted that it was important that that ‘production continuity’ was ‘guaranteed’ during the period of any uncertainty resulting from any divestiture process.⁷³⁶ This third-party added that MBCC’s product development had slowed down in recent years, although this might be attributable to a number of factors which were impacting the chemical admixtures sector more widely, such as the COVID pandemic and the shortage of technically qualified staff in the UK.⁷³⁷
- (f) One competitor told us that MBCC [REDACTED],⁷³⁸ [REDACTED].⁷³⁹
- (g) One customer told us that one of the areas of asset risk was [REDACTED].⁷⁴⁰ This third party added that, since the announcement of the Merger, MBCC [REDACTED]⁷⁴¹ [REDACTED].⁷⁴² This third party therefore considered that divestiture should be completed quickly in order to [REDACTED].⁷⁴³

9.353 One potential purchaser however told us that there did not appear to be any material risk of deterioration of the Divestment Business since Sika’s acquisition of MBCC remained anticipated. It added that the Parties’ proposed alignment of regulatory timetables across multiple jurisdictions meant that regulatory approvals were intended to be [REDACTED].⁷⁴⁴

9.354 Third parties did not provide direct comments in relation to the need for a Monitoring Trustee or a Hold Separate Manager.

- *Our assessment*

9.355 Our current view is that the main asset risk for the Divestment Business is the need to retain key staff (including key technical and sales staff) and to ensure the continuation of sufficient investment in R&D. While we note that [REDACTED],⁷⁴⁵ [REDACTED] since Sika’s announcement of the Merger.

9.356 We also note that beyond the [REDACTED].⁷⁴⁶

⁷³⁶ Note of a Remedies Call with a Third Party [REDACTED].

⁷³⁷ Note of a Remedies Call with a Third Party [REDACTED].

⁷³⁸ Note of a Remedies Call with a Third Party [REDACTED].

⁷³⁹ Note of a Remedies Call with a Third Party [REDACTED].

⁷⁴⁰ Note of a Remedies Call with a Third Party [REDACTED].

⁷⁴¹ Note of a Remedies Call with a Third Party [REDACTED].

⁷⁴² Note of a Remedies Call with a Third Party [REDACTED].

⁷⁴³ Note of a Remedies Call with a Third Party [REDACTED].

⁷⁴⁴ Third Party response to Remedies Notice [REDACTED].

⁷⁴⁵ For example, see Annex 38, [REDACTED].

⁷⁴⁶ Parties’ response to RFI 2, Annex Q8.

- 9.357 Given the need to address these assets risks in a timely manner and to ensure the effectiveness of a possible divestiture remedy and in light of the high level of concern raised in relation to [X], we have imposed interim measures, including the appointment of a Monitoring Trustee. Even if the Parties could produce [X], we consider that a Monitoring Trustee will be better placed to confirm the accuracy of that information, monitor and anticipate any risks based on that information, advise the CMA on any necessary action, and if necessary, take action following the CMA's directions.
- 9.358 We consider that under a remedy requiring the divestiture of the Divestment Business, there would be a continuing need to preserve its independence and competitive capability throughout the divestiture process. As the CMA's guidance on remedies recognises, although 'merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves'.⁷⁴⁷
- 9.359 As such, and as is the CMA's standard practice, should the CMA's final remedy decision require a divestiture remedy, we consider that the final undertakings or the final order should include the CMA's standard provisions ensuring the preservation of the Divestment Business until completion of its divestiture.
- 9.360 We note that the current scope of the Monitoring Trustee's engagement will primarily focus on [X] within the Divestment Business, including the steps taken by the Parties to ensure [X].
- 9.361 Given that the sale process of the Divestment Business is already underway, eg prior to the acceptance of any final undertakings (or the making of a final order), we considered whether the scope of the Monitoring Trustee's engagement should be expanded to be involved in certain aspects of the divestiture process, as appropriate and consistent with our guidance (eg in relation to ensuring that the Parties are taking steps to ensure timely completion of the divestiture, and to report on any material developments which could have an impact on its timely completion), and if so, when that engagement should be expanded.
- 9.362 At this stage, we have not identified any material risks arising from how the Parties have run the sale process to date to necessitate monitoring or oversight from the Monitoring Trustee until we either accept final undertakings

⁷⁴⁷ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 5.4.

or make a final order. However, we will keep this under review, and should circumstances change, we will consider expanding the scope of the Monitoring Trustee's role prior to the acceptance of final undertakings or the making of a final order, to implement these changes to the scope of the Monitoring Trustee's engagement.

- 9.363 To the extent that a Monitoring Trustee will be required by the other competition authorities (eg we note that the European Commission expects to require the appointment of a Monitoring Trustee at a later date once remedy commitments offered by the Parties are accepted), we recognise that there may be procedural and administrative benefits of appointing a single Monitoring Trustee firm that could meet the requirements of all competition authorities. In this regard, we will liaise with the Parties and the other competition authorities to ensure that either the Monitoring Trustee appointed under our interim measures, or an alternative Monitoring Trustee, would satisfy the requirements of all six competition authorities.
- 9.364 For the avoidance of doubt, as part of any final undertakings or final order, we would expect the inclusion of the CMA's standard terms for expanding the Monitoring Trustee's engagement to monitor the Parties' compliance with their divestiture obligations under any final undertakings (or final order).
- 9.365 In this regard, we consider that once final undertakings are accepted (or a final order is made), the Monitoring Trustee should be involved in certain aspects of the divestiture process (as appropriate), consistent with the CMA's guidance on remedies,⁷⁴⁸ in order to monitor the Parties' compliance with its divestiture obligations under any final undertakings or final order in relation to a divestiture remedy (as well as their asset maintenance obligations) and to ensure an efficient divestiture process. The Monitoring Trustee's role would include (but not be limited to):
- (a) monitoring Sika's progress in relation to the divestiture process;
 - (b) reviewing Sika's plans to complete the sale of the Divestment Business and the Merger on the same date (see paragraph 9.338 above);
 - (c) monitoring during the divestiture process, the conduct of both Sika and MBCC to ensure timely completion of the divestiture.
- 9.366 We would adjust the Monitoring Trustee's mandate to reflect these new functions.

⁷⁴⁸ See also [Merger Remedies](#): CMA87 (13 December 2018), paragraphs 4.43 and 5.38.

9.367 Separately, we assessed whether there is a need to appoint an independent interim manager with executive powers to manage the Divestment Business during the divestiture process (**Hold Separate Manager**).

9.368 While we note the Parties have proposed a Hold Separate Manager, on the basis of our current understanding that the existing management team of the Divestment Business will remain in place during any divestiture process and intend on continuing to stay with the Divestment Business following its divestiture, we consider that it would not be necessary at this stage to appoint a Hold Separate Manager. The CMA will, however, reserve its rights to appoint a Hold Separate Manager during the divestiture process if the current circumstances were to change materially.

- *Our conclusions*

9.369 Based on the above, we conclude that:

- (a) the final undertakings or the final order should include the CMA's standard provisions ensuring the preservation of the Divestment Business until completion of its divestiture;
- (b) in order to monitor the Parties' compliance with its divestiture and asset maintenance obligations under any final undertakings or final order in relation to a divestiture remedy and to ensure an efficient divestiture process, the Monitoring Trustee's role would be expanded to monitor the Parties' compliance with these obligations – we also conclude that should there be a change of circumstances to necessitate oversight and monitoring of the sale process by the Monitoring Trustee prior to the acceptance of final undertakings (or the making of a final order), we will reserve the right to do so under our current interim measures;
- (c) we would expect the Parties to take steps to ensure that either the current Monitoring Trustee appointed under our interim measures, or an alternative Monitoring Trustee can be appointed, who would satisfy the requirements of all six competition authorities; and
- (d) it would not be necessary at this stage to appoint a Hold Separate Manager, but that the CMA will reserve its rights to appoint a Hold Separate Manager during the divestiture process if the current circumstances were to change materially.

Timescales for divestiture to complete

9.370 We considered what might be an appropriate timescale in which Sika should fully implement the sale of the Divestment Business, which would normally run from the CMA's acceptance of final undertakings or the CMA making a final order (for which the statute provides a period of up to 12 weeks after the final report, which can be extended by a further six weeks if the CMA has special reasons for doing so)⁷⁴⁹ until legal completion of an effective divestiture (ie a sale to a purchaser approved by the CMA) (the **Initial Divestiture Period**).

9.371 We also consider how our remedies implementation process may run alongside the other competition authorities' remedy implementation processes.

9.372 We set out below the view of the Parties and third parties before we set out our assessment and conclusions.

- *Parties' views*

9.373 The Parties told us that they had developed a timetable in order to align the regulatory processes in the six jurisdictions and that under their proposed timetable, the CMA's formal purchaser approval process would occur simultaneously with that of the European Commission and overlapped with similar processes in the other jurisdictions. The Parties told us that their timeline would 'comfortably' fit within the six-month maximum initial divestiture period that was acceptable to the CMA.⁷⁵⁰

9.374 The Parties told us that it was running a two-stage controlled auction process, where up to [X] bidders would be progressed to the second phase of the sale process, where the bidders could undertake more detailed due diligence, with the aim of negotiating a near final draft of a share purchase agreement by [X] and completing the second phase by no later than [X].⁷⁵¹ Sika told us that an [X].⁷⁵² We also note that the Parties are currently proposing to complete the sale of the Divestment Business in early [X].

9.375 The Parties told us that an appropriate Initial Divestiture Period should be six months in accordance with the CMA's practice and guidance. The Parties told us that while there were factors which indicated a shorter Initial Divestiture

⁷⁴⁹ This period may be extended once by up to six weeks (Section 41A(2) of the Act) if the CMA considers there are special reasons for doing so, see also [Merger Remedies: CMA87](#) (13 December 2018), paragraph 4.68.

⁷⁵⁰ Parties' response to Remedies Notice, paragraph 5.42.

⁷⁵¹ Parties' submission on the Parties' Remedy Proposal, paragraphs 13.2 and 13.3.

⁷⁵² Sika Response Hearing (7 November 2022), response to q.18.

Period given the progress made by the Parties to date on the sale process, the Parties did not control the exact timeline of the regulatory review processes required for the sale of the Divestment Business, and therefore, the normal six-month period would be appropriate. The Parties added that there was no risk that the Divestment Business would deteriorate during this time period.⁷⁵³

- *Third parties' views*

9.376 As mentioned above when we considered the third-party evidence under our assessment of the asset risks associated with the Parties' Remedy Proposal, third-party evidence indicated the importance of completing the divestiture within a short period to mitigate any asset risks, in particular the [REDACTED].

- *Our assessment*

9.377 In considering an appropriate Initial Divestiture Period, the CMA's guidance on remedies states that the CMA 'will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence'. The CMA's guidance on remedies also states that the Initial Divestiture Period will normally not exceed six months.⁷⁵⁴

9.378 We note that the Parties have already developed a timetable in order to align the regulatory progress in the six jurisdictions. Based on our review of the Parties' latest proposed timetable and given the indicative timings of the other competition authorities' processes, we consider that there is scope for that alignment to take place, in particular in relation to the approval of the relevant transaction documents and the purchaser.

9.379 In this case, we consider that the following factors indicate why we should adopt a shorter Initial Divestiture Period than the CMA's standard six months:

- (a) based on the third-party evidence, we consider that there are material risks associated with a protracted sale process, [REDACTED]; and
- (b) we note the Parties' view that completion of the sale of the Divestment Business could comfortably fit within a six-month Initial Divestiture Period. We also note that the Parties' sale process has already [REDACTED], and given that binding bids are due by [REDACTED], we would expect all remaining potential

⁷⁵³ Parties' response to RFI3, response to Q1.

⁷⁵⁴ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 5.41.

purchasers to have largely completed their due diligence process on the Divestment Business, with any outstanding areas of due diligence largely limited to confirmatory due diligence. Even if, purely hypothetically, we were to accept final undertakings on [X] (which we consider highly unlikely, in particular given the minimum 15-day period of public consultation we are required to do on the draft undertakings, or 30 days for a final order), we do not consider it necessary to provide the Parties until [X] to complete the sale of the Divestment Business.

9.380 At this stage, should a divestiture remedy be required, based on our statutory timetable, and assuming the final report is published on our statutory deadline date of 24 January 2023, we have until 18 April 2023 to accept final undertakings or make a final order (assuming no extensions to our statutory deadlines). Given that the Parties currently plan to complete the sale of the Divestment Business in early [X], and balancing that with the asset risks associated with a protracted sale process, we consider that rather than providing an Initial Divestiture Period which starts from the acceptance of final undertakings or the making of a final order, we consider that completion of the sale of the Divestment Business should take place by [X]. To the extent that a longer period may be required, eg to accommodate the regulatory processes of the other authorities or at the request of potential purchasers if they consider it necessary to have a longer period to close the transaction, the CMA will consider the evidence for granting a short extension.

9.381 In their response to the RWP, the Parties raised no objections to requiring the sale of the Divestment Business to complete by [X], and told us that the Parties' Remedy Proposal was 'completely aligned' with the CMA's provisional view on the timing of completion of the sale of the Divestment Business, ie that the sale of the shares [X] of the Divestment Business should take place [X] (by [X]).⁷⁵⁵

- *Our conclusions*

9.382 Based on our assessment above, we conclude that divestiture of the Divestment Business should take place by [X] (the **Divestment Period**), and that the CMA will consider granting a short extension if required to accommodate the other competition authorities' regulatory processes and/or the requests of potential purchasers.

⁷⁵⁵ Parties' response to the RWP, paragraph 2.3.

Appointment of a Divestiture Trustee

9.383 We consider below whether there is a need for the appointment of a Divestiture Trustee, either from the outset of the divestiture process or, more conventionally, should the CMA have any concerns that Sika will not achieve an effective disposal within the Divestment Period.

- *Our assessment*

9.384 The ability to appoint a Divestiture Trustee enables the CMA to manage risks that the merger parties take an unacceptably long period of time to achieve a sale.

9.385 We consider that our purchaser approval process would mitigate the risk of an unsuitable purchaser acquiring the Divestment Business. However, it would not mitigate the risk that an effective divestiture may not be achieved in a timely manner. For example, if the CMA were to reject all of the potential purchasers shortlisted by Sika during a divestiture process, this could have significant implications on the timely completion of this remedy.

9.386 We consider that the possibility of CMA intervention by way of a Divestiture Trustee appointment would ensure that Sika considers very carefully the CMA's Purchaser Suitability Criteria when shortlisting potential purchasers for the CMA's approval. We consider that this would provide Sika with stronger incentives to run an efficient process and reduce its incentives to target potential purchasers whom it perceives to be weaker competitors, or less likely to be committed to the long-term competitiveness or viability of the Divestment Business.

9.387 However, currently, we do not see a need to require a Divestiture Trustee from the outset of the divestiture process, provided that Sika engages constructively with the process, for example in relation to its proposed timetable for divestiture.

- *Our conclusions*

9.388 Based on the above, to ensure a timely completion of this remedy, we conclude that under this divestiture remedy, the CMA should reserve its right to appoint a Divestiture Trustee.

9.389 We also conclude that the CMA should exercise the power to appoint a Divestiture Trustee, in particular, if:

- (a) Sika fails to complete the divestiture process within the Divestment Period and/or the CMA reasonably believes that there is a risk that the divestiture

process would be delayed or fail to complete within the Divestment Period;

- (b) Sika is not engaging constructively with the divestiture process; and/or
- (c) there is further and material deterioration in the Divestment Business during the divestiture process.

9.390 We further conclude that, in line with the CMA's normal practice,⁷⁵⁶ if appointed, a Divestiture Trustee should be tasked with completing the sale of the Divestment Business to a potential purchaser approved by the CMA and at no minimum price.

Conclusions on effectiveness of a divestiture remedy

9.391 Based on our assessment above, we set out below our conclusions on the effectiveness of a divestiture remedy requiring the divestiture of the Divestment Business, having regard to the various dimensions of a remedy's effectiveness set out in paragraph 9.11 above.

9.392 We would expect a divestiture of the Divestment Business, as we have specified, to restore on its completion the market structure and dynamic rivalry expected in the absence of the Merger, and therefore, have an immediate and comprehensive effect in addressing our SLC and its resulting adverse effects.

9.393 In relation to the practicality of implementing the divestiture remedy, we would be able to specify clearly the scope of the divestiture package by requiring the sale of 100% of the shares in the relevant MBCC legal entities containing all of the Divestment Business, including all of its assets and activities. We would also expect a remedy requiring the divestiture of the Divestment Business to involve little risk of omitting any key assets that may be necessary to ensure its standalone viability and competitive capability and therefore ensure the Divestment Business's ongoing ability to exert an effective competitive constraint on the Merged Entity in the relevant UK chemical admixtures market.

9.394 We also considered the practical issues relating to the potential composition, purchaser and asset risks normally associated with a divestiture remedy and have reached our conclusion that the design of our remedy as we have specified above fully addresses these risks. We have set out above our conclusions on the criteria for a suitable purchaser and the procedural safeguards which should be put in place to ensure an effective divestiture

⁷⁵⁶ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 5.43.

process. We consider the likelihood of achieving a successful divestiture and consider the risk of not finding a suitable purchaser to be low. Therefore, with regard to the practicality of this remedy, we conclude that it would be capable of effective implementation and require minimal ongoing monitoring after its full implementation.

9.395 In relation to the risk profile of a divestiture remedy we have specified above, given that a divestiture of the Divestment Business would address the SLC and its resulting adverse effects at source, we conclude that there is a high degree of certainty that this remedy would achieve its intended effect. We therefore consider that the risks in terms of the effectiveness of this divestiture remedy are low.

9.396 In summary, we conclude that the divestiture of the Divestment Business to a suitable purchaser would be effective in addressing the SLC. We would expect this remedy to be a timely and low risk solution to the SLC we have identified, with extremely limited future monitoring requirements on the CMA or others.

Conclusions on effective remedies

9.397 Based on our assessment of the effectiveness of a prohibition remedy and a divestiture remedy, we conclude that the following remedy options would be effective in remedying the SLC and its resulting adverse effects:

(a) prohibition of the Merger; and

(b) a divestiture of the Divestment Business as we have specified above.

9.398 Having identified effective remedies for the SLC, we next consider whether there are any RCBs which we need to take into account, before considering the issue of proportionality.

Assessment of relevant customer benefits

9.399 The Act allows the effect of a proposed remedy on RCBs to be taken into account.⁷⁵⁷ RCBs are defined by the Act as benefits to relevant customers (current and future customers) in the form of: (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not in the market(s) in which the SLC has occurred or may occur) or (b) greater innovation in relation to such goods or services'.⁷⁵⁸ The Act

⁷⁵⁷ [Section 41\(5\)](#) of the Act.

⁷⁵⁸ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.17 and s.30 of the Act.

provides that a benefit is only an RCB if it accrues or may be expected to accrue from the merger and would be unlikely to accrue without the merger ‘or a similar lessening of competition’.⁷⁵⁹

9.400 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy and may be taken into account in our assessment of the proportionality of a remedy. An effective remedy to an SLC might be considered disproportionate if it prevents customers from realising any RCBs arising from the Merger, where these benefits outweigh the SLC and any resulting adverse effects.

9.401 The CMA may modify a remedy to ensure retention of RCBs or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy which retains RCBs, or it may decide that no remedy is appropriate.⁷⁶⁰

Submissions on RCBs

9.402 The burden of proof of whether RCBs arise from a merger is on the merging parties: ‘[t]he merger parties will be expected to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and demonstrate that these fall within the Act’s definition of such benefits’.⁷⁶¹

9.403 In this case, the Parties have not put forward any RCBs for consideration.

9.404 We conclude that no RCBs arise from the Merger. Consequently, we have not modified our view of the appropriate remedies in light of any RCBs that would be eliminated by the remedies that we have found to be effective.

Assessment of the proportionality of our preferred remedies

9.405 In this section, we set out our assessment of, and conclusions on, the proportionality of the remedy options we have concluded would be effective in addressing the SLC.

Proportionality assessment framework

9.406 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective.

⁷⁵⁹ [Section 30](#) of the Act.

⁷⁶⁰ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.16.

⁷⁶¹ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.20.

If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive. In addition, the CMA will seek to ensure that no effective remedy is disproportionate in relation to the SLC and its adverse effects.⁷⁶²

9.407 To fulfil this requirement, we first consider whether there are any relevant costs associated with each effective remedy option. When considering relevant costs, the CMA's considerations may include (but are not limited to):⁷⁶³

- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
- (c) the loss of any RCBs that may arise from the Merger which are foregone as a result of the remedy.

9.408 The costs of a remedy may be incurred by a variety of parties, including the merger parties, third parties, the CMA and other monitoring agencies. As the merger parties have the choice of whether to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties, the CMA and other monitoring agencies.⁷⁶⁴

9.409 Having identified the least costly effective remedy, we then consider whether even the least costly effective remedy will result in disproportionate costs that far exceed the scale of the SLC and resulting adverse effects. In doing so, we are required to compare the level of harm which is likely to arise from the SLCs with the relevant costs of the proposed remedy. In cases where all feasible remedies are likely to be disproportionate, the CMA may conclude that no remedial action should be taken. In practice, such instances are extremely rare.⁷⁶⁵

Submissions on proportionality

9.410 In their response to our Remedies Notice, the Parties told us that a prohibition of the Merger would be 'manifestly' disproportionate to the SLC given:⁷⁶⁶

⁷⁶² [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.6.

⁷⁶³ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.10.

⁷⁶⁴ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.8.

⁷⁶⁵ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.53.

⁷⁶⁶ Parties' response to the Remedies Notice, paragraph 3.2.

- (a) the availability of a ‘fully effective divestment remedy’ in the form of the Parties’ Remedy Proposal, which represented a comprehensive solution to the SLC by effectively removing any overlap between the Merged Entity and the Divestment Business in chemical admixtures, and did not give rise to any composition, purchaser or asset risks that would impair its effectiveness; and
- (b) that the SLC related to just one segment within MBCC’s overall business, where MBCC’s revenues from the supply of chemical admixtures in the UK were just £[£] in 2021, and prohibition would prevent Sika from acquiring the remaining MBCC business globally, which was ‘valued multiple times that’, and where no competition concerns were identified.

9.411 In relation to the Parties’ Remedy Proposal however, Sika told us that after the sale of the Divestment Business, the Retained Business would remain as a ‘very attractive’ acquisition for the Merged Entity, and that there was still a ‘compelling’ case for its integration.⁷⁶⁷

Our assessment of proportionality

9.412 The appropriate remedy and whether it is effective and proportionate will be determined by having regard to the particular circumstances of the case.

9.413 In this case, we have concluded that prohibition of the Merger and the divestiture of the Divestment Business as we have specified above would represent effective remedies. A divestiture of the Divestment Business would clearly be a more proportionate remedy to prohibition of the Merger, noting Sika’s view on the benefits of retaining the Retained Business for the Merged Entity.

9.414 In this particular case, the Parties have not submitted any evidence in relation to the costs of any divestiture remedy. We have not found any costs to third parties arising as a result of the Parties’ Proposed Remedy.

9.415 We therefore consider that the Parties’ Proposed Remedy will not give rise to relevant costs or produce adverse effects that are disproportionate to the aim of comprehensively remedying the SLC and its resulting adverse effects.

9.416 We conclude that the harm arising from the SLCs (including their cumulative effect over time) is likely to be significant and have a widespread impact on customers.

⁷⁶⁷ Sika Response Hearing (7 November 2022), ‘Opening Statement’.

9.417 We did not consider that the SLC is time-limited, and therefore we would expect these adverse effects to persist under the relevant Merger situation.

Conclusions on proportionality

9.418 Having identified an effective remedy in the form of the divestiture of the Divestment Business as specified in this chapter, we considered its proportionality to the SLC and its resulting adverse effects.

9.419 We have found that the Parties' Proposed Remedy is the least onerous effective action to achieve the legitimate aim of comprehensively remedying the SLC and its resulting adverse effects. Based on our conclusions that the Merger is likely to lead to significant and sustained adverse effects and that there are no relevant costs which we should take into account, we conclude that the Parties' Proposed Remedy would not produce adverse effects which are disproportionate to the aim pursued.

9.420 We therefore conclude that the Parties' Proposed Remedy would be proportionate to the SLC and its resulting adverse effects.

Remedy implementation issues

9.421 Having identified our preferred divestiture remedy, we now consider how it should be implemented.

9.422 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings pursuant to section 82 of the Act if the Parties wish to offer them, or by making a final order under section 84 of the Act. Either the final undertakings or the final order must be implemented within 12 weeks of publication of our final report (a deadline which can be extended once by up to six weeks under exceptional circumstances),⁷⁶⁸ including the period for any formal public consultation on the draft undertakings or order as specified in Schedule 10 of the Act.

9.423 In line with the CMA's guidance on remedies, once a remedy has been fully implemented in line with the conclusions set out in this final remedy decision, we conclude that the Merged Entity should be prohibited from subsequently acquiring the Divestment Business or acquiring any material influence over it. The CMA's guidance on remedies states that the CMA will normally limit this prohibition to a period of 10 years.⁷⁶⁹ We find no compelling reason to depart

⁷⁶⁸ [Section 82](#) and [section 84](#) of the Act, read with section 41A(2) of the Act.

⁷⁶⁹ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 5.10.

from the guidance in this case by seeking a shorter or longer prohibition period.

Final decision on remedies

9.424 We conclude that the divestiture of the Divestment Business as specified above, would be an effective and proportionate remedy to address comprehensively the SLC and its resulting adverse effects.