# COMMERCE ACT 1986: BUSINESS ACQUISITION

# SECTION 66: NOTICE SEEKING CLEARANCE

Date: 27 January 2022

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
Wellington

Pursuant to section 66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.


# Part A: Summary of Application

## 1. Executive Summary

1.1 This clearance application concerns the proposed acquisition by Sika AG, via its wholly-owned subsidiary Sika International AG (the **Applicant**), of 100% of the shares in LSF11 Skyscraper HoldCo S.à r.l. (the **Target**), (the **Proposed Transaction**).

1.2 Sika AG is the ultimate parent company of the Sika group of companies, including the Applicant (together referred to as "**Sika**"). The Target is the ultimate parent company of the MBCC group of companies (together referred to as "**MBCC Group**").

1.3 Sika and MBCC Group (the **Parties**, each a **Party**) principally overlap in the supply of chemical admixtures in New Zealand. Chemical admixtures are ingredients that are added to improve the properties of concrete, cement or mortar[1] (e.g., reducing their water content or extending their workability). Chemical admixtures are added to a batch of concrete in controlled amounts immediately before or during mixing to produce some desired modification to the properties of the concrete in its final form (as set out further in Section 10 below). The Parties also have some minor overlap in relation to the supply of other construction material-related areas, namely concrete works, premix mortars, flooring, expansion joints, sealants and fiber, as set out further below.

*Summary of competition analysis: no substantial lessening of competition in any relevant market*

1.4 The Proposed Transaction will not give rise to a substantial lessening of competition in any New Zealand market (horizontal or otherwise) as:

(a) the availability of imports (predominantly from Australia) will continue to significantly constrain the merged entity;

(b) customers are large players with significant resources who will continue to exercise significant countervailing power and impose downward pressure on chemical admixture pricing;

(c) barriers to entry and expansion in the national market for the supply of chemical admixtures are low and switching between suppliers is easy and low cost;

(d) new entry is highly likely, sufficient in extent and timely enough to constrain the merged firm and prevent it from being able to raise prices or reduce service quality, with large customers' volume requirements sufficient to justify the low investment costs associated with establishing a physical presence in New Zealand;

(e) the merger does not result in any change in the level of vertical integration in the market;

(f) the merger will not result in any coordinated effects given, inter alia, the competitive constraint posed by imports, the countervailing power of customers and the low barriers to entry; and

(g) the merger will not cause a material reduction in competitive constraints.

[1] Note the Parties do not overlap in the supply of mortar admixtures in New Zealand.

## Part B: The Parties

### 2. The Applicant: Sika

2.1 Sika AG is the ultimate parent company of Sika Group, which is a globally active specialty chemicals group headquartered in Switzerland. Sika develops and produces, in particular, chemical-based admixtures ("**chemical admixtures**"), mortars, sealants and adhesives, damping and reinforcing materials, structural strengthening systems, industrial flooring as well as roofing and waterproofing systems which are used in the building sector and by manufacturing industries.

2.2 Sika has more than 25,000 employees and subsidiaries in more than 100 countries. It manufactures its products in over 300 factories worldwide. Sika AG's shares are publicly traded on the Swiss stock exchange (SIX). As a publicly listed company with widely held shares, Sika AG is not subject to sole or joint control by any of its shareholders. Key data on Sika's shares, including significant shareholders, is available at https://www.sika.com/en/investors/shares/key-data-on-sika-shares.html.

2.3 For the most recent audited financial year (calendar year 2020), Sika AG's consolidated revenue was CHF 7,877.5 million. For the most recent financial reports for Sika AG, including the 2020 Annual report and 2021 Half-Year report, please refer to https://www.sika.com/en/investors/reports-publications/financial-reports.html.

2.4 Sika has been active in the New Zealand market for approximately 60 years. Sika operates in New Zealand via its subsidiary Sika (NZ) Limited (**Sika NZ**). Sika NZ currently operates two chemical admixture production plants in New Zealand, one in Auckland and one in Christchurch. Sika manufactures a full range of chemical admixture solutions in New Zealand and typically supplies this full range to each of its customers,[2] including for use in concrete and cement applications. Sika's activities in chemical admixtures for mortar products are de minimis in New Zealand.[3]

2.5 Sika also supplies other construction-related products in New Zealand. These products include concrete works, premix mortars, flooring, expansion joints, sealants, fiber and silica fume. **Annex 1** sets out a list of the other construction-related products that Sika supplies to customers in New Zealand. For the reasons set out further below, there are no material overlaps in these product markets.

2.6 Further information in relation to Sika can be found at https://nzl.sika.com/en/home.html.

2.7 Contact details for Sika:

| | |
|---|---|
| *Address* | Sika AG<br>Zugerstrasse 50<br>6341 Baar<br>Switzerland |
| *Contact person* | [redacted] |
| *Email Address* | [redacted] |
| *Telephone* | [redacted] |

[2] On occasions where a customer dual sources, Sika will supply only a selection of admixture solutions to that customer. For example, Bowers & Son Limited is supplied by Sika for ready-mix and GCP Applied Technologies for precast.

[3] For example, Sika's 2020 revenues attributable to sales of chemical admixtures for mortar products in New Zealand amounted to approximately [redacted]. Sika's mortar chemical admixture products are typically small pack items that are sold to building contractors and DIY end-users, rather than ready-mix producers. Sika's Cavex 800g product (which derived revenues in New Zealand of approximately [redacted] in 2020) is Sika's only mortar admixture product that ready-mix producers may purchase if required]. Cavex is an expansion agent that is put into grout that is used to fill the voids in masonry block wall construction.

| | |
|---|---|
| *Website* | https://nzl.sika.com/en/home.html |

2.8 Please direct all correspondence and notices for Sika to:

| | |
|---|---|
| *Address* | Bell Gully<br>Barristers and Solicitors<br>PO Box 4199<br>Auckland 1140 |
| *Attention* | Glenn Shewan / Penny Pasley |
| *Email Address* | glenn.shewan@bellgully.com /<br>penny.pasley@bellgully.com |
| *Telephone* | +64 9 916 8726 / +64 9 916 8674 |

## 3. The Target: MBCC Group

3.1 MBCC Group produces and distributes chemical admixtures and construction systems for new constructions, maintenance, repair and renovation of residential and commercial buildings, as well as infrastructure. It is specialised in the manufacture of concrete repair and protection systems, performance grouts, waterproofing systems, sealants, performance flooring systems, as well as wood and fire protection products, and manufactures chemical admixtures.

3.2 MBCC Group is currently controlled by Lone Star Funds, which acquired MBCC Group (as a carve-out) from BASF in 2020. MBCC Group's business has two main segments, namely:

(a) **'EBA'**[4], which is specialised in the manufacture of chemical admixtures for concrete and other cementitious materials; and

(b) **'EBC'**[5], (Construction Systems) which produces concrete repair and protection systems (including bonding agents, structural reinforcement, resin-based grouts, injection resins, impregnations and corrosion control / protection, ancillaries), sealants, adhesives, waterproofing, premix mortars, industrial flooring, and ETICS as well as wood and fire protection products for new constructions, maintenance, repair and renovation of residential and commercial buildings, as well as infrastructure.

3.3 The direct Target, LSF11 Skyscraper HoldCo S.à r.l., is a holding company established in Luxembourg. Its only activity is holding and administering the shares in the MBCC Group of entities. In particular, it has no business activities in the relevant markets or otherwise. A chart showing MBCC Group's corporate structure is set out at **Annex 2.**

3.4 MBCC Group employs approximately 7,500 people worldwide.

*MBCC Group's New Zealand business*

3.5 MBCC Group (formerly BASF) has been active in New Zealand for just over 40 years. MBCC Group operates in New Zealand via its subsidiary, MB Solutions New Zealand Limited (**MBCC NZ**) and also under its 'Master Builders Solutions' brand.[6] MBCC NZ currently operates one chemical

[4] "EB" stands for "Europaische Bauchemie". "A" stands for "Admixtures". EBA is a legacy name for this part of the business.
[5] "C" stands for "Construction Systems". Equally, EBC is a legacy name for this part of MBCC Group's business. Construction Systems include concrete repair and protection systems, performance grouts, waterproofing systems, sealants, performance flooring systems, as well as wood and fire protection products for new constructions, maintenance, repair and renovation of residential and commercial buildings, as well as infrastructure.
[6] MBCC Group's global 'Master Builders Solutions' brand offers chemical solutions for new construction, maintenance, repair, and renovation of structures. The portfolio includes chemical admixtures, concrete repair and protection solutions, waterproofing solutions, performance grouts and performance flooring solutions. See https://www.master-builders-solutions.com/en-gb#mbs.

admixture production plant in Albany, Auckland, from which it distributes chemical admixture products to customers around New Zealand. MBCC Group's core focus in New Zealand is the supply of chemical admixtures and MBCC NZ typically supplies the full range of chemical admixture solutions to its customers. MBCC Group does not currently supply chemical admixtures for mortar or cement applications in New Zealand.[7]

3.6 MBCC Group does supply a small amount of other construction-related products in New Zealand, albeit that this is a very minor aspect of its operations, making up [redacted]% of its total sales in New Zealand. These products include concrete works, premix mortars, industrial flooring, expansion joints, sealants, fiber, and silica fume. **Annex 1** sets out a list of the other construction-related products that MBCC Group supplies to customers in New Zealand.

3.7 Further information in relation to MBCC Group can be found at https://www.mbcc-group.com/.

3.8 Contact details for MBCC Group:

| | |
|---|---|
| *Address* | MB Solutions New Zealand Ltd., 45C<br>William Pickering Drive, Albany Auckland,<br>New Zealand, 0632 |
| *Contact person* | [redacted] |
| *Email Address* | [redacted] |
| *Telephone* | [redacted] |
| *Website* | https://www.mbcc-group.com/ |

3.9 Please direct all correspondence and notices for MBCC Group to:

| | |
|---|---|
| *Address* | Russell McVeagh<br>Level, 30 Vero Centre<br>48 Shortland St<br>Auckland 1010 |
| *Attention* | Troy Pilkington / Petra Carey |
| *Email Address* | troy.pilkington@russellmcveagh.com /<br>petra.carey@russellmcveagh.com |
| *Telephone* | +64 9 367 8108 / +64 9 367 8831 |

## 4. Trade or industry associations

4.1 Relevant trade or industry associations that the Parties have involvement with are set out at **Annex 3**.

[7] MBCC Group does not have any revenues in New Zealand from mortar chemical admixtures. MBCC Group also does not supply chemical admixtures for cement in New Zealand and has not, to the best of its knowledge, previously sought to supply cement chemical admixtures in New Zealand.

## Part C: The Proposed Transaction

### 5. Transaction structure

5.1 As set out above, the Proposed Transaction involves the Applicant acquiring 100% of the shares in the Target in accordance with the Sale and Purchase Agreement (**SPA**) entered into between Sika AG and Lone Star Funds (the **Vendor**) on 10 November 2021. The SPA is attached as **Annex 4** of this application.

5.2 The Proposed Transaction is conditional on the receipt of necessary merger control clearance by the relevant competition authorities, namely those set out in Figure 1 below.[8] Post-closing filings will also be made in Chile, Egypt and Indonesia. The Parties expect to complete the Proposed Transaction as soon as the conditions to closing set out in the SPA have been fulfilled, and plan to close the Proposed Transaction as quickly as possible within 2022.

5.3 Time is of the essence in this case, as Sika is exposed to certain on-market financial penalties contained in the SPA.[9] In addition, Sika is keen to ensure that the MBCC Group's business, and its employees, are incorporated as soon as possible subject to clearances. There are no other closing conditions under the SPA, except for merger control clearances, so as to reduce the potentially negative impacts of business volatility and increasing employee uncertainty that arise in long transition periods. In particular, this is because MBCC Group's business is particularly vulnerable to deterioration and in need of stability (it is still in transition since its 2020 spin-off from BASF). Furthermore, it is crucial to realise supply chain security as well as other efficiencies for the Parties as soon as possible.

5.4 Figure 1 below sets out the jurisdictions in which the Proposed Transaction is or will be notified, and the dates or expected dates that the relevant agencies have been or will be notified.

**Figure 1 - Overseas competition agencies notified**

| Jurisdiction | Agency | Date of notification |
|---|---|---|
| Australia | Australian Competition and Consumer Commission | redacted |
| Brazil | Conselho Administrativo de Defesa Economica | redacted |
| Canada | Competition Bureau/Bureau de la concurrence | redacted |
| China | State Administration for Market Regulation | redacted |
| Colombia | Superintendence of Industry and Commerce | redacted |
| European Union | European Commission | redacted[10] |
| Japan | Fair Trade Commission | redacted |
| Mexico | Comisión Federal de Competencia Económica | redacted |
| Morocco | Moroccan Competition Council | redacted |
| Russia | Federal Antimonopoly Service of Russia | redacted |

[8] Note, Sika has also provided a briefing paper to the Competition and Markets Authority in the United Kingdom on 30 November.
[9] Notably, pursuant to [redacted].
[10] A briefing paper has been submitted in the EU on 15 November and a draft Form CO has been submitted on 3 December.

| | | |
|---|---|---|
| Saudi Arabia | General Authority for Competition | redacted |
| Serbia | Serbian Competition Authority | redacted |
| Thailand | Trade Competition Commission | redacted |
| Turkey | Rekabet Kurumu | redacted |
| Ukraine | Anti-Monopoly Committee | redacted |
| USA | Department of Justice | redacted |

5.5 After closing of the Proposed Transaction, the Target will be an indirectly wholly-owned subsidiary of Sika AG.

## 6. Rationale

*Sika*

6.1 The Proposed Transaction will enable Sika to diversify its global product portfolio and geographic footprint (e.g., through the addition of production sites globally), to reach a wider global customer base and provide customers with a broader product offering. In isolation, the New Zealand business is not a significant element of the transaction rationale, as the MBCC Group's New Zealand revenues account for only a minimal proportion of its global turnover.[11]

6.2 Further, a central part of the global rationale for the Proposed Transaction is to drive the sustainability transformation and innovation of the construction industry further and faster. Cement and concrete manufacturers have committed to reducing the CO2 emissions associated with their products, but face challenges in meeting their sustainability goals. Chemical admixtures can help reduce the environmental footprint of cement in concrete applications while also reducing production costs and improving the performance of cement- and concrete-based building materials.

*MBCC Group*

6.3 For MBCC Group, the purpose of the Proposed Transaction is to join forces with Sika in becoming an enabler of more sustainable solutions in the construction industry, and to strengthen their offering of products and services across the entire construction lifecycle.

6.4 By combining two complementary portfolios, the Parties aspire to enable and accelerate sustainable construction for the benefit of their stakeholders including, among others, clients, employees, shareholders and future generations.

## 7. Clearance sought

7.1 This application seeks clearance in New Zealand for the Applicant to acquire 100% of the shares in the Target from the Vendor.

[11] In FY 2020, MBCC Group's New Zealand sales accounted for 0.22% of its total global sales.

## Part D: Background to the admixture industry and relevant products

### 8. Background to the admixture industry

8.1 Cement is the basic ingredient of concrete. Cement is manufactured through a chemical combination of calcium, silicon, aluminium, iron and other ingredients. Concrete is made from mixing five basic components: cement, water, sand, aggregates and admixtures. Other components often used in the mix include colour additives and fibers. The concrete industry in New Zealand produces around 3.8 to 4.2 million cubic meters of concrete annually.[12]

8.2 Chemical admixtures are well-established, commoditised and mostly off-patent products. Whilst chemical admixtures play a role in the preparation and usage of cement, concrete and other products, they represent a very small proportion of the value chain (for example, roughly between 1% and 5% of a total batch of ready-mix concrete). Sika estimates that the chemical admixture consumption in New Zealand amounted to over 14 million kg of admixture in 2020, with an estimated sales value of approximately NZ$24 million.[13]

### 9. Background to products relevant to this application

9.1 Admixtures are ingredients used to modify and improve the properties of concrete, cement and mortar and to provide it with some specific qualities. The Australian Standard '*AS 1478.1-2000 Chemical Admixtures for Concrete, Mortar and Grout - Admixtures for Concrete'* and its New Zealand equivalent '*NZS 3113:1979 Specification for Chemical Admixtures for Concrete* [Withdrawn]'[14] define an admixture as a material, other than water, aggregate and cementitious materials, used as an ingredient of concrete, and added to the batch in controlled amounts immediately before or during its mixing to produce some desired modification to the properties of the concrete.[15]

9.2 A wide variety of materials comply with this definition but not all are recognised as admixtures. Some are used to produce special types of concrete, e.g. pigments to produce coloured concrete, fibers in fiber concrete and polymers in polymer concrete. True admixtures are used to impart certain desired characteristics to the fresh or hardened concrete. Increased workability, acceleration or retardation of the rate of hydration of cements, and added resistance to freezing and thawing are examples of these effects. Cement additives are materials added to cement for the optimisation of the cement properties and the cement grinding process.

9.3 Generally, there are two main types of admixtures: chemical and mineral.[16] Both types of admixtures are used to achieve specific physical results (e.g. hardening). There are differences between chemical and mineral admixtures:

(a) Chemical admixtures chemically modify the properties of fresh[17] and hardened concrete / mortar / cement and provide specific qualities in various operations. Chemical admixtures include (super) plasticizers; air entrainers; water reducers; retarders; accelerators and specialty admixtures.

(b) Mineral admixtures are based on minerals. Their physical properties reduce permeability, increase strength and influence other properties. Mineral admixtures affect the nature of the hardened concrete / mortar / cement through hydraulic or pozzolanic activity. Mineral

[12] See https://cdn.ymaws.com/concretenz.org.nz/resource/resmgr/docs/cnz/c_2019-20_annual_report.pdf.
[13] Based on Sika's estimated total market volume for 2020.
[14] This standard was withdrawn in 2006 and thus no longer applies in New Zealand. There has been no replacement standard in New Zealand.
[15] See https://concretenz.org.nz/page/admixtures.
[16] For completeness, neither party competes in the mineral admixture market in New Zealand (with the exception of de minimis amounts of silica fume). Neither party supplies blast furnaces slag or natural pozzolans in New Zealand and these materials are considered cement substitutes (Holcim and Golden Bay Cement supply these in New Zealand). However, Sika does supply silica fume in New Zealand. Silica fume is added to concrete during the mixing process to improve the long-term durability of the structure. MBCC also supplies a [redacted] of silica fume in New Zealand. Further information is set out at Figure 4.
[17] Fresh concrete refers to concrete that has not set/hardened.

concrete admixtures are cementitious materials and include ground granulated blast furnaces slag (GGBFS), natural pozzolans (such as volcanic ash), fly ash, stone dust and silica fume.

9.4 Mineral admixtures are generally cheaper than chemical admixtures, but have to be used in much larger quantities (generally >5% of the total concrete). Mineral admixtures produce a denser concrete by virtue of the cementitious materials and are used for long-term durability of the concrete structure. Chemical and mineral admixtures have differing applications and are seen as complementary goods, rather than substitutes. Producers of mineral admixtures are generally different from producers of chemical admixtures. Due to these two product categories' different characteristics, customers generally specifically require either chemical or mineral admixtures. The Parties are both active in chemical admixtures, and are not active in mineral admixtures (with the exception of de minimis amounts of silica fume). Mineral admixtures (with the exception of silica fume) are therefore not considered further in this application.

9.5 The Parties and their competitors all supply the core varieties of chemical admixtures, namely:

(a) **water-reducing admixtures**, which are used to reduce the required water content for a concrete mixture by about 5 to 10%;

(b) **retarding admixtures**, which slow the setting rate of concrete and are used to counteract the accelerating effect of hot weather on concrete setting;

(c) **accelerating admixtures**, which increase the rate of early strength development, reduce the time required for proper curing and protection and speed up the start of finishing operations;

(d) **plasticizers and superplasticizers**, which reduce water content by 12 to 30% and can be added to concrete with a low-to-normal slump and water-cement ratio to make high-slump flowing concrete;

(e) **corrosion-inhibiting admixtures**, which fall into the specialty admixture category and are used to slow corrosion of reinforcing steel in concrete; and

(f) **air-entraining admixtures,** which are used to relieve internal pressure on the concrete by providing tiny chambers for water to expand into when it freezes.

9.6 It is common for a combination of chemical admixture solutions to be used in any given batch of concrete, cement or mortar, since the chemical admixture solutions serve different purposes.[18] To achieve the desired performance outcome, the mix of chemical admixture solutions need to be compatible with each other (for example, it should not be assumed that admixtures used individually in concrete will be additive when they are used in combination). For this reason, and to limit risk, customers usually purchase all of their needs for a given project from one supplier. Each chemical admixture supplier offers a full range of chemical admixtures to address the above solutions in relation to concrete in New Zealand. Customers regularly demand the full range of solutions, as various chemical admixtures are needed for one given application. Therefore, Sika does not consider that any further sub-segmentation of chemical admixtures is appropriate.

9.7 As each chemical admixture supplier offers a full range of chemical admixtures in New Zealand, customers can purchase their full admixture requirements from one single chemical admixture supplier. However, Sika notes that customers are not obliged to buy from a single supplier and can and do elect to dual or multi-source, for example, for different projects or end-customers. For example, Bowers & Son Limited is currently supplied by both Sika and GCP Applied Technologies (**GCP**).[19] Furthermore, for certain major construction projects with very specific requirements, it is not uncommon for customers to opt for another chemical admixture supplier's products where

[18] Note, dry mortar producers do not use formulated admixtures as they buy admixture raw materials in powder form directly from third party suppliers and blend the dry ingredients themselves.

[19] As discussed in further detail in Figure 6, please note that on 6 December 2021, Saint-Gobain announced that it would be acquiring GCP.

another chemical admixture supplier's product has been specified for that project by the building contractor. For example, [redacted]. Accordingly, even where customers do not currently dual / multi-source in New Zealand, the mere threat that customers might elect to switch either their full or partial chemical admixture supply requirements to a competitor is a very credible competitive constraint.

## 10. Suppliers

10.1 As noted above, the most important chemical inputs into the production of chemical admixtures are the so-called "performance polymers", being the performance polymers for superplasticizers, namely polycarboxylate ether polymers ("PCE"), naphthalene sulfonates ("NSF") and melamine sulfonates ("MSF"). These produce a water reducing effect, increasing the density and stability of the concrete..

10.2 Both Parties purchase their polymers from offshore and mix these to produce their chemical admixture range in their New Zealand plants (i.e., they do not produce their own polymers in New Zealand). Most raw materials are imported to New Zealand in liquid (concentrated) or powder form. MBCC Group [redacted]. In Sika's case, virtually all raw materials are imported [redacted].

## 11. Production process

11.1 The production of chemical admixtures is not a complex process and has been described as akin to following a recipe (e.g., it involves stirring chemicals in the water, testing the admixture and pumping it out). Although the formulation of chemical admixture products is technical, it does not need to be carried out locally, and such technical support can be offered offshore (e.g., from Australia), with local production plants simply "following the recipe" (i.e., blending the ingredients).

11.2 Raw material inputs (polymers) are formulated and manufactured overseas and none of the chemical admixture suppliers in New Zealand produce these chemical inputs in New Zealand. To the extent that the Parties produce chemical admixtures locally (rather than importing them from overseas production plants) they simply import the raw materials and mix the ingredients to manufacture chemical admixtures. There is minimal equipment required to establish an admixture production plant in New Zealand and blending and storage equipment can be readily purchased for relatively low investment costs. For example, [redacted] [redacted]. Admixture production staff do not require any formal or technical qualifications.

11.3 Sika does not use bulk tankers except when supplying grinding aid chemical admixtures to its customer Golden Bay Cement (**GBC**) (a New Zealand cement producer). All chemical admixture suppliers typically use IBC tanks (as depicted below) for transporting chemical admixtures, whether locally produced or imported.

| **Admixture production plant** | **IBC tanks used for importing raw materials and finished products** | **Trucks are used to transport admixtures** |
|---|---|---|
|  |  |  |

## 12. Chemical admixture end-users

12.1 As set out further below, chemical admixture products are materially identical across customer segments. Suppliers use the same basic equipment and processes to service each customer type. It can be useful to describe the six broad categories of chemical admixture end-users that the Parties and their competitors supply to in New Zealand:

(a) **Ready-mix concrete producers**: Ready-mix concrete is a building product used for residential, commercial and infrastructure purposes. It is made from mixing cement, water, sand, aggregates, admixtures and other additives. Ready-mix is typically delivered in concrete mixer trucks. Direct sales to ready-mix concrete producers represents around 90% of both Parties' customer base in New Zealand.

(b) **Precast concrete producers**: Precast concrete essentially consists of concrete wall panels, beams and columns which are manufactured by setting concrete in a cast of the appropriate size and shape. Generally every precast producer is set up adjacent to a ready-mix plant.[20] Precast end-users typically purchase their concrete directly from the usually adjacent ready-mix producer.

(c) **Shotcrete producers**: Manufacture sprayed concrete technologies, including both wet and dry spray processes that are used in tunnelling, mining and major construction projects. Shotcrete producers generally do not produce their own concrete but purchase their requirements from ready-mix producers. The one current exception in New Zealand being OceanaGold Macraes Mine, which has set up its own concrete production.

(d) **Cement producers**: Cement additives are materials added to cement for the optimisation of the cement properties and the cement grinding process. Cement additives are classified into different product groups such as grinding aids, strength enhancers and performance enhancers. Sales to cement producers represent under [redacted] of Sika's total admixture sales. MBCC Group does not supply chemical admixtures to any cement producers in New Zealand.

(e) **Building contractors**: Many of the construction projects in New Zealand are directly supplied by ready-mix producers. Building contractors may issue formal tenders for large infrastructure / tunnelling projects (such as the Waterview Tunnel, City Rail Link and airport projects) in which admixture suppliers compete.

(f) **Building merchants** (admixtures for indirect distribution): For small building projects and DIY use.

12.2 The Parties generally supply the same products across these customer groups, irrespective of their segmentation. There is also a high degree of supply-side substitutability. For example, chemical admixtures for ready-mix and precast production are supplied by all chemical admixture suppliers in New Zealand, and produced (i.e. mixed) using the same basic equipment.

12.3 More specifically, each of the chemical admixture types set out above in paragraph 9.5 are produced (either in New Zealand or offshore for export to New Zealand) using the exact same equipment and personnel. To produce a product, the relevant inputs are loaded into the mixing tank according to the recipe for that product. The product is mixed and dispensed into IBCs (see 11.2 above). These are handled using forklifts and transported on trucks (and in some instances onto ships for coastal shipping). Once that product has been made, the same tank is used for a different product. Accordingly, producers can switch production almost instantaneously between

[20] One exception is Hynds Pipe Systems Limited who are not active in ready-mix concrete (their admixture supplier is MC Bauchemie).

the different products and can increase or decrease output of each product at will (subject to overall capacity constraints of the manufacturing facility).

12.4 The Figure 2 below highlights some of New Zealand's largest chemical admixture end-users, including key ready-mix concrete producers and cement producers. Each of the end-users listed below (excluding HR Cement Limited) account for greater than 1% of the total volume of admixture consumed in New Zealand in 2020.

**Figure 2 key admixture customers in New Zealand**

| Name | Overview of key customers' operations |
|---|---|
| Firth Industries Limited (**Firth**) | Firth, a division of Fletcher Building Limited, produces and distributes ready-mixed concrete from 52 fixed sites throughout New Zealand. |
| Allied Concrete (**Allied**) | Allied is a member of the HWR Group of transport companies. It is a major supplier of ready-mix concrete throughout New Zealand. It operates 50 ready-mix concrete plants spread throughout New Zealand, 33 of which are joint venture operations with Holcim (New Zealand) Ltd. |
| Bridgeman Concrete Limited (**Bridgeman**) | Bridgeman is a ready-mix supplier throughout the North Island. It has five ready-mix plants including in Hamilton, Tauranga, and Rotorua. HR Cement Limited holds a circa 30% share in Bridgeman. |
| Higgins Concrete Limited (**Higgins Concrete**) | Higgins Concrete is a family owned company that provides concrete and service across the lower North Island and upper South Island. Alongside Higgins Concrete, the wider Higgins group also own Counties Ready Mix in Drury, Supacrete in Tauranga, and five Hirock quarries located around the lower North Island. |
| Atlas Concrete Ltd (**Atlas Concrete**) | Atlas is a producer of ready-mixed concrete, and of sands and gravels, in the Auckland region. |
| Bowers Brothers | Bowers Brothers is a ready-mix and masonry block supplier with four ready-mix plants in Waikato. It is an independent company to Bowers & Sons. |
| Golden Bay Cement (**GBC**) | GBC is a wholly-owned subsidiary of Fletcher Building. GBC provides cement to the Fletcher subsidiary (Firth) and to external customers from its factory near Whangarei. |
| HR Cement Limited (**HR Cement**) | HR Cement is one of New Zealand's two cement manufacturers. HR Cement manufactures out of its factory in Tauranga by grinding imported clinker. |

12.5 The Parties each serve one of the biggest two ready-mix concrete producers in New Zealand, Allied and Firth (who together account for 60% of the ready-mix market in New Zealand; the top five account for 80%). [redacted].

12.6 There are two cement manufacturers in New Zealand, GBC and HR Cement. GBC manufactures cement from raw materials in New Zealand, whereas HR Cement grinds clinker, an intermediate product, into cement and distributes it to customers in New Zealand. [redacted].

12.7 Customers commonly source a full range of chemical admixture solutions from one supplier in New Zealand. However, customers remain free to elect to dual or multi-source chemical admixture products from multiple suppliers, as each supplier in New Zealand stocks the full 'core' range of admixture solutions commonly met in practice. By way of example, Bowers & Son is supplied by Sika and GCP. Hynds Precast (Pokeno) is currently supplied by MC Bauchemie and is partly

supplied by Sika and MBCC Group. Stevenson Concrete has awarded Sika one of its plants on a trial basis, but is generally supplied by MBCC Group.

12.8 Customers are highly price-driven in New Zealand, with price being the key aspect on which chemical admixture suppliers compete. Price is seen as the primary consideration for smaller customers. There is no meaningful price difference for imported vs locally produced products, including for smaller customers.

12.9 Larger customers also take quality and service standards into consideration, including in particular, the service standards in relation to the provision and maintenance of equipment used to dispense the chemical admixtures. However, third-party electrical contractors can be used to provide these maintenance services.[21] Technical support can be provided remotely.

12.10 Testing of other chemical admixture suppliers' products is a common feature of the market. Customers frequently trial and test admixture products offered by Sika, MBCC Group, GCP and Mapei. Sika is aware that [redacted]. Accordingly, Sika sees each of these players as a credible threat, with all of them having a high degree of competence and technical capability. **Annex 5** highlights the [redacted].

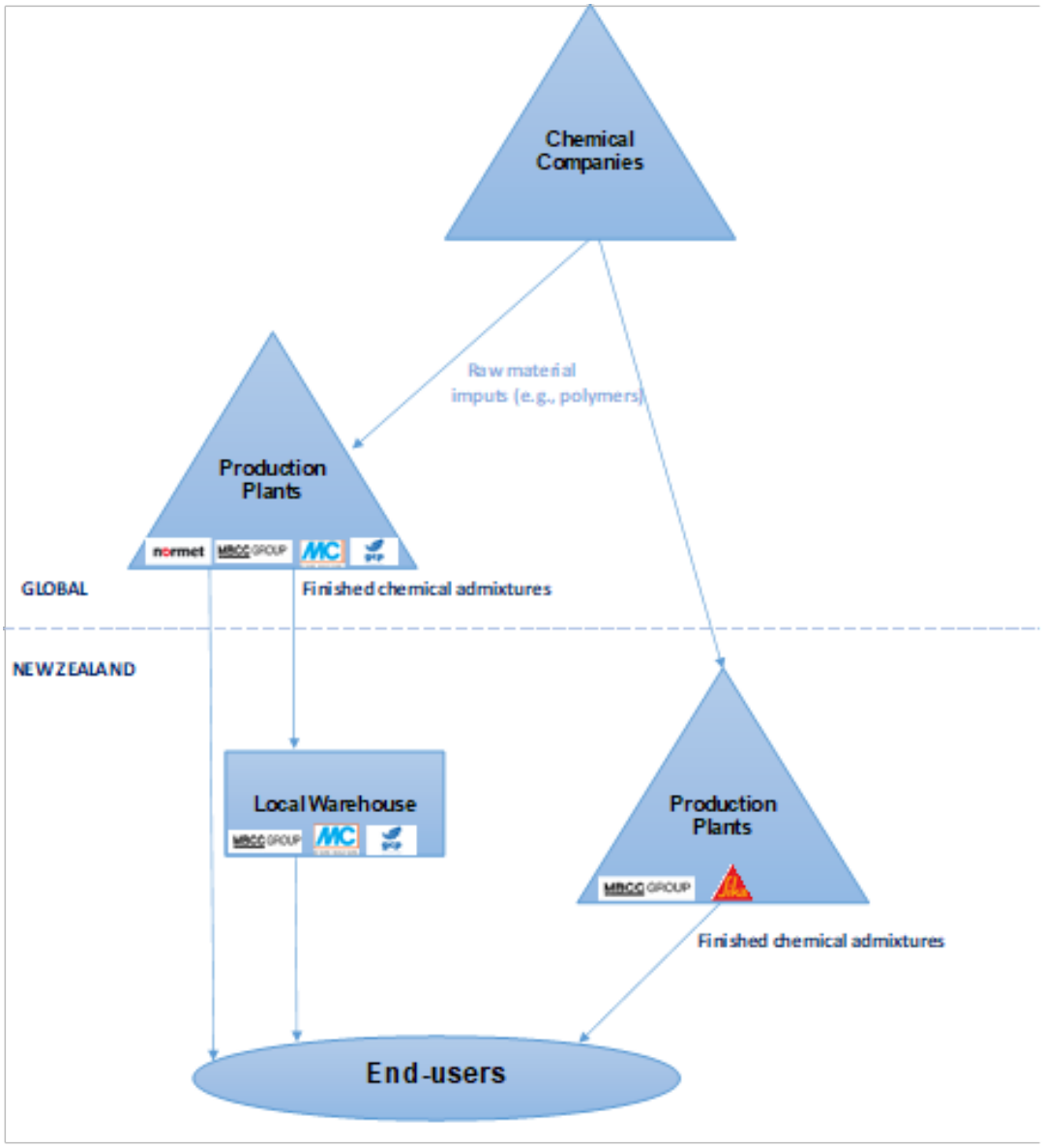
12.11 Supply agreements and contracts with suppliers are not necessarily a common feature of the market in New Zealand, being more common in Australia. [redacted]. However, [redacted]. Accordingly, there are often no legal / contractual limitations for customers to switch chemical admixture suppliers. Sika understands that currently, [redacted].

12.12 The bargaining power of customers is very strong, as they are easily able to change chemical admixture supplier at no cost to themselves. The chemical admixture supplier owns and services all tanks and dispensing equipment and when a customer changes chemical admixture supplier the chemical admixture supplier simply purchases the equipment from the previous supplier (i.e., 'buys out' the prior supplier) at an amount that reflects depreciation of the assets. A small, basic, cement or concrete plant would typically require three (volume) chemical admixtures that require dispensing systems: an air entrainer, a water reducer and an accelerator. The cost to set this up would be around NZ$10,000. A large cement or concrete plant would typically have eight lines, costing approximately NZ$30,000. Please refer to **Annex 6**, which sets out the purchase price / invoice issued to GCP when Bridgeman switched from Sika to GCP in 2019/2020. In particular, the invoice illustrates that the set-up cost to supply Bridgeman was approximately [redacted]. These costs are absorbed by the chemical admixture supplier and not the ready-mix customer. Accordingly, there are no material switching costs for chemical admixture customers once initial testing has been completed.

12.13 Figure 3 below illustrates the chemical admixture supply chain and (general) routes to market. The diagram shows the chemical admixture supply-chain based on a production model (as adopted by the Parties) and an importation model (as adopted by GCP for example). We note that Figure 3 does not depict every route to market, there are alternative routes (for example, the use of toll manufacturing).

[21] Sika understands that [redacted].

**Figure 3 – Chemical admixture supply chain**



## Part E: Relevant Markets

13. **Horizontal overlap between the Parties**

13.1 As noted above, the Parties' activities in New Zealand predominantly overlap in the supply of **chemical admixtures**.

*Other areas of overlap with minor market share increments*

13.2 In addition to chemical admixtures (the main overlap area), there are discrete overlaps between the Parties in other construction material-related areas, including:

(a) **Concrete works**: encompass a variety of products that are used for concrete surface treatment or to repair concrete structures, in particular to fill cracks and voids, to protect concrete structures against chemicals and corrosion, and to allow the application of coatings.[22]

(b) **Premix mortars**: a building material, usually made of sand, binders (like cement) and various additives (for example, pigments or waterproof compounds) that is used to bind construction materials together or to fill the gap between them, and which is premixed at the factory. In particular, construction mortars are used for various building construction purposes (e.g. casting and setting, masonry, plastering, floor levelling and concrete repair), while tile-fixing mortars are used for fixing tiles, both on substrate (adhesive mortars) and as sealants between tiles (grouts).[23]

(c) **Industrial Flooring**: encompasses floors produced to withstand constant traffic and mechanical wear along with abuse from things such as corrosive liquids, high temperatures and impacts that are used in industrial and commercial buildings, including pharmaceutical and food sector production plants, public building and parking decks.[24]

(d) **Expansion joints**: used in pavements to provide for thermal and moisture-induced movement of the slab.[25]

(e) **Sealants**: substances used to block the passage of fluids through the surface of joints or openings used in insulation, gap-filling, ensuring waterproofness, and covering holes and cracks.[26]

13.3 In addition there are two further de minimis overlaps between the Parties' activities in New Zealand:

(a) **Fibers**: materials added to improve the durability and toughness performance of concrete and mortar.[27]

(b) **Silica fume:** a mineral admixture that is added to concrete during the mixing process to improve the long-term durability of the structure.[28]

[22] European Commission, 22.07.2015, COMP/M.7498 - *Compagnie de Saint Gobain/Sika*, Para.112 et seq; European Commission, 27.03.2019, Case/M.9276 - Sika / Financiere Dry Mix Solutions, Para. 93 et seq.
[23] European Commission, 27.03.2019, Case/M.9276 - *Sika / Financiere Dry Mix Solutions*, Para.10 et seq.; European Commission, 22.07.2015, COMP/M.7498 - *Compagnie de Saint- Gobain / Sika*, Para.17.
[24] European Commission, 22.07.2015, COMP/M.7498 - *Compagnie de Saint Gobain/Sika*, Para. 131.
[25] European Commission, 27.03.2019, Case/M.9276 - *Sika / Financiere Dry Mix Solutions*, Para. 120.
[26] European Commission, 27.03.2019, Case/M.9276 - *Sika / Financiere Dry Mix Solutions*, Para. 120. The main fields of application for sealants are insulation, gap-filling, ensuring waterproofness, and covering holes and cracks.
[27] The addition of fibers in concrete help reduce shrinking cracks, increase strength and energy absorption and reduce dangerous spalling at high temperatures.
[28] There are also other mineral admixtures like fly ash, blast furnace slag and gypsum that are mineral-based additives, but we have not considered this in the market size below because they are not substitute products for silica fume and neither MBCC Group nor Sika supply such products in New Zealand.

13.4 Figure 4 below contains the Parties estimated market shares for each of these product categories.

**Figure 4 – Other product overlaps with minor market share increments (based on 2020 sales figures)**

| Category | MBCC Group sales (EUR converted to NZD)[29] | Sika sales (CHF converted to NZD)[30] | Estimated total market size (NZD)* | MBCC Group share | Sika share | Combined share |
|---|---|---|---|---|---|---|
| **Concrete works**[31] | redacted | redacted | redacted | redacted | redacted | redacted |
| **Premix mortars**[32] | redacted | redacted | redacted | redacted | redacted | redacted |
| **Industrial Flooring**[33] | redacted | redacted | redacted | redacted | redacted | redacted |
| **Expansion joints** | redacted | redacted | redacted | redacted | redacted | redacted |
| **Sealants**[34] | redacted | redacted | redacted | redacted | redacted | redacted |
| **Fiber** | redacted | redacted | redacted | redacted | redacted | redacted |
| **Silica fume** | redacted | redacted[35] | redacted | redacted | redacted | redacted |

* The total market sizes have been estimated based on the knowledge of Sika NZ's sales team and reflects Sika's best estimate of the total annual sales revenue for each of the relevant product categories (taking into consideration the relevant products offered by the Parties and their competitors in New Zealand).

13.5 As the table above illustrates, the Proposed Transaction will result in only a very small ([redacted]%) market share increment in each of these product categories, due to MBCC Group's very small presence in New Zealand. The Parties' combined market shares will remain well below 20%, with the exception of the industrial flooring and expansion joints product categories, in which case MBCC Group's presence in New Zealand is very minor ([redacted]% for industrial flooring and [redacted]% for expansion joints). At least six significant competing suppliers will remain in each market post-Transaction. Accordingly, these product categories are not addressed further in this application.

*Market for chemical admixtures*

13.6 The Commission does not appear to have previously considered the market for chemical admixtures in the past, although this market has been considered by the European Commission (**EC**).[36] The Parties share the view of the EC and, for the reasons set out below, consider that the

[29] Converted to NZD at the exchange rate of 1.617221 at 18 November 2021.

[30] Converted to NZD at the exchange rate of 1.5388719 at 18 November 2021.

[31] Competitors include Drycon, Mapei, Construction Chemicals, RLA and Fosroc.

[32] Competitors include Drycon, Mapei, Ardex, Construction Chemicals and Cemix.

[33] Competitors include Ardex, Flowcrete, Altex, Mapei, and Nuplex.

[34] Competitors include Merz, Bostik, Selley's, Soudal and 3M.

[35] Converted to from EUR to NZD at the exchange rate of 1.617221 at 18 November 2021.

[36] We note that the Commission has recently considered and cleared the merger between Cemix Products Limited (part of Concrete Group) of Drymix N.Z. Limited (in receivership and liquidation) and its related entities (see Concrete Group Limited and Drymix [2021] NZCC 6). In that decision, the parties supplied a range of bagged concrete, mortar and asphalt products, which were the key areas of overlap. Annexure 4 of the Consent Application indicates that Cemix does also supply approximately eight admixture products in New Zealand. However, the market for admixture was not considered by the Commission.

impact of the Proposed Transaction would best be assessed by reference to the national market for the supply of chemical admixture solutions.

*Single market for full range of chemical admixture solutions*

13.7 The EC has previously considered the market for chemical admixtures.[37] The EC has found that chemical and mineral admixtures constitute separate product markets. The reasons for this distinction were the different product characteristics, important price differences, lower performance of mineral admixtures, and different technologies and qualities. The Parties' business activities primarily overlap in the area of chemical admixtures in New Zealand. As noted above, there is a de minimis overlap in silica fume (a mineral admixture), but otherwise there are no other mineral admixture overlaps in New Zealand.

13.8 The Parties share the EC's view that chemical admixtures are not substitutable with other products and therefore constitute a distinct product market. Mineral and chemical admixtures differ significantly in price, performance and characteristics. The technology that is involved using the admixtures is different, as is the quality.

13.9 Within chemical admixtures, the EC excluded any further segmentation as it found that customers typically source the full range of the admixtures they require from a single supplier. This is also generally true in New Zealand as customers typically source their full range of chemical admixtures from one supplier, as each supplier generally offers the full range of chemical admixtures commonly required by customers.[38] Further, the EC has excluded the relevance of a potential distinction between different uses of chemical admixtures (such as concrete chemical admixtures, cement chemical admixtures or mortar chemical admixtures) because of a high degree of supply side substitutability between the different chemical admixtures for those uses.[39]

13.10 The Parties submit that there should be no further delineation of chemical admixtures by use or sub-category, due to the high degree of supply side substitutability between these products. Both Parties and their competitors typically supply the full range of chemical admixture solutions to their respective customers and customers regularly demand the full range, as various admixtures are needed for one given concrete application.

13.11 Further, the Parties are of the view that concrete accessories[40], other additives[41], injection resins[42], third party polymers and mineral admixtures are excluded from the relevant market for chemical admixtures because these products are not added during the production / mixing process or at the jobsite.

*Geographic dimension – market is national*

13.12 The EC in its previous cases has left open whether the relevant geographic market is EEA-wide or narrower.[43] The EC last carried out its competitive assessment on a national market basis (as the narrowest plausible market).[44] Notwithstanding the Parties' view that the geographical markets

[37] EC, 27.7.2020, COMP/M.9736 - *Lone Star / BASF Construction Chemicals (EB) Business*, Para. 18; EC, 24.5.2006, COMP/M.4177 - *BASF / Degussa*, Para. 14 et seqq.
[38] As noted at paragraph 9.7, customers are not obliged to buy from a single supplier and can elect to dual or multi-source, mixing products from different suppliers in one concrete mix.
[39] See *Lone Star / BASF Construction Chemicals (EB) Business*, para. 18; EC decision COMP/M.7498 - *Compagnie de Saint Gobain/Sika*, paras. 104.
[40] Any products (chemical or otherwise) that are used in or around concrete production or placing (form release oils, surface retarders, finishing aids, curing agents, cleaning agents, etc.).
[41] Additives that are neither chemical nor mineral (i.e. synthetic fibers, steel fiber, pigments & concrete colors (powder, granulated or slurry)) and which are added to the concrete or mortar during the production / mixing of concrete or at the jobsite.
[42] Injections are used to fill and seal cracks and voids that have occurred, for example, from corrosion or damage during seismic activity and physical impact. Injection resins usually consist of polyurethane foam resins, polyurethane resins, acrylate resins, or epoxy resins.
[43] See EC decision COMP/M.9736 - *Lone Star / BASF Construction Chemicals (EB) Business*, para. 21; EC decision COMP/M.4177 - *BASF/Degussa*, paras. 29 et seqq.
[44] See EC decision COMP/M.9736 - *Lone Star / BASF Construction Chemicals (EB) Business*, para. 21.

might be wider than national (as is discussed in more detail below in relation to imports), the Parties proceed on the basis of a national market in this case, as:

(a) generally each chemical admixture supplier services all their customers' plants around New Zealand;

(b) MBCC Group operates one chemical admixture plant in Auckland, from where it distributes its chemical admixtures to customers around New Zealand;

(c) Similarly, GCP and MC Bauchemie both supply customers throughout New Zealand, although Sika understands that GCP has two warehouses (one in the North Island and one in the South Island);

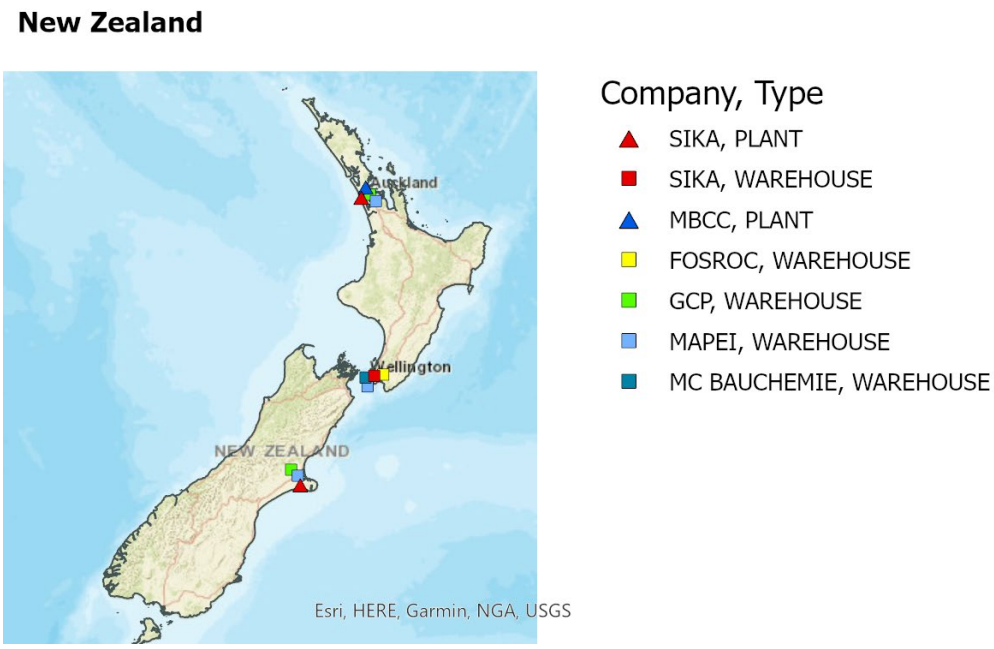
(d) Normet supplies customers in New Zealand without a local presence;

(e) Although Sika has chemical admixture plants in Auckland and Christchurch, its chemical admixture products are supplied on a national basis, including, in some cases, transporting raw materials and admixtures between the North and South Island (freight is shipped in mixed containers by coastal vessel);

(f) Sika NZ supplies customers who are located outside New Zealand (such as in Fiji) from its production plants in New Zealand; and

(g) [redacted].

**Figure 5 – Geographic layout of suppliers in New Zealand[45]**




*No delineation by customer*

[45] Note the location of GCP's warehouse in the South Island in this map is based on Sika's market intelligence. Sika understands that the warehouses of Fosroc and Mapei are currently not used for admixture business in New Zealand. Sika also understands that Normet does not have a local production plant in New Zealand but does store its chemical admixtures in Auckland. However, Sika is not aware of the exact address of Normet's storage facility or whether Normet uses a third party warehouse/logistics company.

13.13 For the purposes of assessing the potential competitive effects of the Proposed Transaction, Sika considers that there is a single market for the supply of chemical admixture products to all customers in New Zealand, regardless of the customer type, given the similarities in the competitive dynamics.

13.14 As noted above, the Parties' customer base is predominantly (circa 90%) concrete ready-mix customers, as the direct end users of chemical admixture products. Although the Parties also serve precast concrete customers, generally all precast production in New Zealand is set up adjacent to a ready-mix plant, so there is usually no distinction between the two types of customers, with the exception of Wilson Precast, Hynds Precast (Pokeno) and Stresscrete Northern, who make their own precast concrete on a standalone basis. There is a high degree of supply-side substitutability between these products and, generally, all chemical admixture suppliers (such as the Parties and their competitors) supply chemical admixtures for ready-mix as well as precast production in New Zealand. These are all produced using the same basic equipment, primarily consisting of the mixing vessels as described above.

13.15 Sika also supplies chemical admixture products (e.g., grinding aids) to cement producers. There are substantial similarities between these customers in terms of the:

(a) underlying products (both inputs and supply side substitutability);

(b) competitors;

(c) constraining presence of imports; and

(d) countervailing buyer power.

13.16 For completeness, Sika notes that even if the Commission were to consider distinct customer markets for concrete, mortar and cement producers, MBCC Group does not currently supply chemical admixtures to any mortar or cement producers in New Zealand. Accordingly, the Proposed Transaction does not involve an overlap in this respect.

*Imported and locally produced admixtures are within the same market*

13.17 The Parties consider that it is appropriate to define a single market including New Zealand-manufactured and imported chemical admixture products. In this case, the supply of chemical admixtures manufactured in New Zealand and the supply of imported chemical admixtures fall within a single market.

13.18 Chemical admixture products can be efficiently imported, as GCP's experience shows. Admixture products (liquid) are typically shipped to New Zealand in 1,000 litre IBC tanks. These tanks are then either delivered to the supplier's warehouse, or straight to the customer's plant, to be pumped into the customer's own silos / tanks.

13.19 MBCC Group imports approximately [redacted] of the chemical admixture products it supplies in New Zealand.[46] However, MBCC Group's plant in Albany mixes only [redacted] of MBCC Group's total New Zealand supply of accelerator and retarder admixtures, with [redacted] being imported products and [redacted] being toll manufactured products.[47] For completeness, MBCC Group's Albany plant does mix [redacted] water-reducing admixtures (including plasticizers and super-plasticizers) and [redacted] air-entraining admixture products.

13.20 There are also some chemical admixture products that Sika does not manufacture locally in New Zealand, in which case, Sika uses the same import model as GCP and MBCC Group use to import certain products. By way of example, [redacted].

[46] Figures based on MBCC Group's volume data for 2020.
[47] Figures based on MBCC Group's volume data for 2020.

13.21 Furthermore, there are some very large scale international players such as Normet and MC Bauchemie who can (and do) competitively supply to New Zealand from overseas (without any local production presence in New Zealand). Accordingly, chemical admixture customers remain free to (and commonly do) enter into arrangements with large international players to import chemical admixture products, should they desire to exercise that option.

## 14. Approach taken by the Parties

14.1 Having regard to the above, Sika has assessed the Proposed Transaction by reference to the national market for the supply of chemical admixture solutions.

## Part F: Competitive Assessment

15. **The counterfactual**

15.1 If the Proposed Transaction does not proceed, [redacted].

16. **Overview of the competitive landscape**

16.1 The two major users of chemical admixtures in New Zealand are Allied and Firth. They are both ready-mix concrete producers, are evenly sized (each producing around 30% of New Zealand's annual volume of ready-mix concrete), and both require a similar chemical admixture product range. Firth was previously supplied by both GCP in the South Island and MBCC Group in the North Island. However, MBCC Group won all of Firth's business approximately eight years ago. [redacted]

16.2 There are a large number of smaller ready-mix concrete producers operating in New Zealand, including Higgins Concrete, Bowers Brothers and Bridgeman (to name a few). GCP are currently supplying Bridgeman directly from Australia (or via their New Zealand warehouse) and do not currently operate a chemical admixture production facility in New Zealand. The chemical admixture value of Bridgeman is estimated to be around NZ$[redacted] per annum. In Sika's view, [redacted]. Sika understands that [redacted].[48] Sika, MBCC Group and GCP all offer a similar variety of chemical admixture products and solutions, covering both ready-mix and precast.

16.3 In general, precast production is set up adjacent to ready-mix production. [redacted] Although most precast producers purchase concrete from adjacent ready-mix producers, there are one or two exceptions to this. For example, Hynds Precast's plant in Pokeno, which is currently being supplied by MC Bauchemie (a German admixture supplier), is a standalone precast producer with no associated ready-mix operation.[49]

16.4 The market in New Zealand is beginning to evolve, with new entry and impending customer switching. Normet is the newest entrant into the market (supplying shotcrete accelerator for the City Rail Link and Central Interceptor Projects). GCP has also recently re-expanded (securing a substantial supply contract for Bridgeman in 2019) and is currently advertising a Technical Support role in New Zealand.[50] As will be discussed in further detail below, Sika considers that it is highly likely that [redacted].

16.5 Figure 6 below illustrates the Parties' key competitors that are either already active in New Zealand or, in Sika's view, are potential new entrants.

**Figure 6 – Current and potential competitors**

| Company | Active | Overview of operations |
|---|---|---|
| **GCP / Saint-Gobain** | Yes | GCP is a major global player in specialty construction chemicals with approximately 50 manufacturing plants in 38 countries. In New Zealand, GCP is the current supplier to Bridgeman. GCP also currently supplies admixtures to Bowers & Sons. GCP was supplying Ashburton Contracting earlier this year, before supply switched to Sika in May 2021 for a few months and then returned to GCP.<br><br>GCP does not operate an admixture production plant in New Zealand, but instead, imports its chemical admixture products from Australia. Sika understands that GCP has warehouses in Auckland and Christchurch. |

[48] Sika understands that [redacted].
[49] Note that Hynds is also partly supplied by Sika and MBCC.
[50] See https://gcpat.com/en/about/careers?p=job%2FocHjefwa. Sika understands that this role is to service and maintain the Verifi truck mounted concrete QC system that GCP have promoted to Bridgeman Concrete.

| | | |
|---|---|---|
| | | On 6 December 2021, Saint-Gobain (see below) and GCP announced that they have entered into a definitive agreement pursuant to which Saint-Gobain will acquire all of the outstanding shares of GCP.[51] The press release provides that GCP's "other businesses, consisting of mainly concrete admixtures and cement additives (c. $750 million of sales) will be combined with the Chryso business".<br><br>Further information in relation to GCP can be found at: https://gcpat.com/en. |
| **Saint-Gobain / Chryso** | Partly | Saint-Gobain is a French multinational construction materials company that manufactures building materials primarily supplied to the construction industry.<br><br>On 20 May 2021, Saint-Gobain announced that it had entered into an agreement to acquire Chryso. This merger completed on 29 September 2021. Chryso is a French-based construction chemicals company and a leading global player in the admixture market. Chryso employs about 1,300 employees across 66 countries.<br><br>Neither Chryso nor Saint-Gobain are currently active in the chemical admixture market in New Zealand. However, Saint-Gobain Abrasives (a subsidiary of the Saint-Gobain Group) supplies abrasion products in New Zealand from its warehouse in Auckland. Sika understands that Saint-Gobain has two admixture production plants in Australia.<br><br>Sika understands that [redacted].<br><br>Further information in relation to Chryso/Saint-Gobain can be found at: https://www.chryso.com/ and https://www.saint-gobain.com/en. |
| **Normet** | Yes | Normet is currently active in New Zealand and supplies the City Rail Link Project (tunnelling). Normet is a large international construction chemicals company and admixture producer. Normet operates globally with over 50 locations in 33 countries worldwide. In particular, Normet has seven sites in Australia (its headquarters, one plant and five warehouses with offices).<br><br>Sika considers that Normet has the product range and New Zealand track record to successfully expand its current operations in New Zealand.<br><br>Further information in relation to Normet can be found at: https://www.normet.com/. |
| **MC Bauchemie** | Yes | MC Bauchemie is a leading German chemical admixture manufacturer that currently supplies admixtures to Hynds Pipe Systems Limited in Pokeno.<br><br>Established over 55 years ago, MC-Bauchemie is one of the leading international producers of building chemical products and technologies. With more than 2,500 employees in over 40 countries, MC has acquired a renowned reputation for sophisticated and advanced solutions and technologies.<br><br>Further information in relation to MC Bauchemie can be found at: https://www.mc-bauchemie.com/ |
| **Mapei** | Partly | Mapei is currently active in the building adhesives and sealants market in New Zealand (through MBP (NZ) Limited) but does not currently compete with the Parties.<br><br>Founded in Milan in 1937, Mapei is today a world leader in the production of adhesives and chemical products for the building industry. The Mapei Group now has 89 subsidiaries with 81 production facilities in 36 different countries. Mapei entered the chemical admixture market in Australia around one year ago and is understood to be expanding quickly. |

[51] See press release here: https://www.saint-gobain.com/sites/saint gobain.com/files/media/document/20211206_GCP_VA.pdf.

| | | |
|---|---|---|
| | | As noted above, Sika understands that [redacted]. This is discussed in further detail below.<br><br>Further information in relation to Mapei can be found at: https://www.mapei.com/nz |
| **Fosroc** | Partly | Fosroc is a British manufacturer of specialised construction chemicals that cater to a range of sectors including commercial, industrial, residential, marine and infrastructure. Fosroc has offices and manufacturing locations across Europe, the Middle East, North and South Asia. Importantly, Fosroc is a large international player, experienced in providing advanced concrete admixtures that provide innovative solutions to complex building challenges and construction projects.<br><br>Fosroc currently sell a range of surface treatments, but currently have no chemical admixture business in New Zealand. The Fosroc product range is now sold by an agent, Youngman Richardson & Co. Ltd., who have branches in Auckland, Wellington and Christchurch. They are primarily an importer and distributor of contracting, industrial and commercial equipment.<br><br>Further information in relation to Fosroc can be found at: https://www.fosroc.co.nz/. |

*Sika win/loss data (prepared by RBB Economics)*

16.6 A summary table below illustrates the results of RBB's analysis of win/loss data from Sika. The data covers [redacted] competitive processes over the period 2015-2021, for which Sika competed. The first column lists all competitors of Sika (including MBCC) that have competed, won, or lost against Sika in the context of any of these opportunities. The second column shows how often each of these competitors have competed against Sika. As several competitors may have competed for the same opportunity, the numbers assigned to the individual competitors in this column do not add up to the total number of opportunities. For instance, in 2015/2016, both [redacted]. The third column shows the number of competitive processes won by each of the competitors in instances where Sika competed but lost. As several competitors may have won an opportunity lost by Sika, the numbers assigned to the individual competitors do not add up to the total number of competitive processes lost. In particular, both [redacted]. Therefore, this opportunity is counted as a win for both suppliers. The last column shows the previous supplier of competitive processes won by Sika. It takes the value N/A if the competitive process won by Sika relates to new business, e.g. a new plant that was opened, for which there is no existing supplier.

16.7 Of the [redacted] competitive processes for which Sika competed for over the period 2015 to 2021 (and which Sika therefore has information on), Sika and MBCC Group both competed in [redacted]. Sika understands that [redacted].

**Figure 7 – RBB prepared win/loss data for competitive processes Sika competed for between 2015-2021**[52]

| Competitor | Number of competitive processes competed for against Sika[53] | Number of competitive processes won against Sika[54] | Number of customers lost to Sika[55] |
|---|---|---|---|
| MBCC Group | redacted | redacted | redacted |
| GCP | redacted | redacted | redacted |
| NORMET | redacted | redacted | redacted |
| MC BAUCHEMIE | redacted | redacted | redacted |
| MAPEI | redacted | redacted | redacted |
| UNKNOWN[56] | redacted | redacted | redacted |
| N/A[57] | redacted | redacted | redacted |
| **TOTAL** | redacted | redacted | redacted |

16.8 The table above illustrates that there are a number of chemical admixture suppliers with a proven track record to successfully compete against the merged entity post-Transaction. As evident from the table, [redacted] have all been successful in winning competitive processes without having any production facility in New Zealand. This demonstrates that competitors operating import models will remain a very credible competitive constraint on the merged entity.

## 17. Market share estimates

17.1 Market share estimates of the chemical admixtures market have been prepared by Bain & Company on the basis of each Party's sales value.[58]

[52] Customer win/loss data based on Sika anecdotal evidence covering the years 2015 to 2021, complemented by two additional customer wins identified on the basis of Sika's sales data for the period 2016-2021. The data was verified – to the extent possible – with Sika sales data and confirmed with MBCC Group. If a customer was won or lost by multiple suppliers, the customer was counted as a win or loss for each of the suppliers. Therefore, the sum of the wins/losses across all competitors does not add up to the total number of customers won by Sika.
[53] Represents the proportion of competitive processes (in number) that Sika participated that each competitor also participated (i.e., this shows how often Sika has competed with each competitor over the given time period). Multiple competitors per competitive process possible.
[54] Represents the customers lost to each competitor out of the total number of customers lost by Sika over the time period (i.e., this shows which competitors Sika most often lost to over the given time period). Multiple winners per competitive process possible.
[55] Represents the number of customers previously supplied by each competitor that Sika won off that competitor. Multiple suppliers per customer possible.
[56] "Unknown" represents one instance where Sika considered that it had lost a competitive process, but neither party could confirm which supplier had won the competitive process.
[57] These entries relate to competitive processes for new business, where there exists no previous supplier or instances where the previous supplier is unknown.
[58] Noting that this includes (i) cement admixtures and (ii) concrete admixtures. The data excludes mortar admixtures. If mortar admixtures are included the market sizes would be significantly larger and the Parties' shares smaller. Bain & Company have provided market data based on a comprehensive top-down model and – where available – a bottom-up review of the industry reports industry associations (including Concrete New Zealand), and the input of local experts, as well as on the Parties' activities disclosed through a clean team process to ensure data robustness and accuracy.

**Figure 8 – Bain & Company's competitor market shares 2020[59]**

| Company | Market share | Net sales estimates (NZD) |
|---|---|---|
| Sika | redacted | redacted |
| MBCC Group | redacted | redacted |
| **Combined** | redacted | redacted |
| GCP | redacted | redacted |
| Normet | redacted | redacted |
| MC Bauchemie | redacted | redacted |
| **Total** | redacted | redacted |

*Source: Bain & Company 2 December 2021 and Sika's sales data and market size estimates for 2020.*

**Converted to NZD at the exchange rate of EUR/CHF (1.0705) and the average of the daily 2020 EUR/NZD exchange rates published by the European Central Bank (1.7561).*

17.2 It should be noted that Sika's market share has reduced from [redacted] from 2019 to 2020. [redacted]. In this regard, Sika also notes that the above market shares for 2020 are likely to slightly overstate Sika's current (2021) market share, as Sika's 2020 sales figures account for [redacted]. This demonstrates the ease with which admixture suppliers that operate an import model can win market share within a short timeframe, and the significant impact that can have on the Parties' market shares.

17.3 As the [redacted] example demonstrates, given the size of the Parties' largest customers, the loss of such a customer would result in a very large reduction market shares. This could happen very quickly. As set out below in section 20, the two largest chemical admixtures combined account for [redacted] of admixture sales, so the loss of either customer would quickly diminish the combined market share figure.

17.4 As will be discussed in further detail below, the snapshot in time reflected by these market shares is not an indicator of market position or any market power. Chemical admixture customers can (and do) determine the market shares of admixture suppliers in every single round of competition and on a frequent basis. The following sections of this application set out in greater detail the Parties' reasons as to why the combined market share of [redacted]%, taken at face value, is not representative of the likely state of competition post-Transaction.

## 18. Competitive assessment

18.1 The Proposed Transaction will not have the effect, or likely effect, of substantially lessening competition in the national market for the supply of chemical admixtures, for the reasons set out below.

[59] Bain & Company have assigned the entire market that is not served by the Parties to GCP [redacted]. However, in Sika's view Normet and MC Bauchemie are also active competitors in the New Zealand market. Accordingly, Bain's shares have been adjusted to reflect the presence of these competitors. The approach taken has been to take Bain's total market size estimate and distribute the remaining [redacted]% of the market between GCP, Normet and MC Bauchemie proportionate to Sika's best estimate of their 2020 sales. As the table illustrates, this approach assigns [redacted]% to GCP, [redacted]% to MC Bauchemie and [redacted]% to Normet.

19. **The availability of imports will continue to significantly constrain Sika post-Transaction**

19.1 Imports are a significant feature of the market. Sika, GCP and MBCC Group are all currently importing selected products from each of their 'sister companies' in Australia or elsewhere, and raw materials from offshore. The threat of further imports of chemical admixtures in New Zealand will also be a constraint on the merged entity.

19.2 Sika generally imports chemical admixture products manufactured in Australia where new products or technologies have been formulated at one of Sika's 'sister plants' in Australia. It is only once sales volumes have increased to a level justifying local production that Sika would consider manufacturing locally. However, there are some admixture products such as [redacted] and [redacted], which Sika NZ continues to import from Australia.

19.3 As discussed at paragraph 13.19 above, MBCC Group currently imports [redacted] of its accelerator and retarder admixture products supplied to its customers in New Zealand. [redacted].

19.4 As is evident from GCP's operations, chemical admixture suppliers are able to compete in New Zealand with entirely imported and no locally produced chemical admixture products. Such products can be readily imported at relatively low additional transportation costs compared to the importation costs for raw materials (virtually all of which are imported given that polymers require different production techniques and materials to the production of chemical admixtures).

19.5 In Sika's experience, the cost to transport finished chemical admixture products from Australia is approximately [redacted] per litre or [redacted] of the sales value. However, as raw materials (polymers) also need to be imported (such polymers not being produced in New Zealand by any chemical admixture suppliers), but in a more concentrated form (i.e., accounting for approximately [redacted] the volume of finished admixture products), the transportation cost differential associated with a pure import model compared to a production model is estimated to be around [redacted] per litre of chemical admixture or [redacted] of the sales value. As long as a supplier has a warehouse in New Zealand (as well as the tanks and dispensers for each customer plant, which can be readily acquired from the incumbent supplier), they are able to compete effectively. Chemical admixture suppliers adopting an import / warehousing model in New Zealand will of course need to carry sufficient stock in their New Zealand warehouse(s) to adequately cover lead times, [redacted].

19.6 Other examples of successful import models / operations include:

(a) MC Bauchemie supplies Hynds Precast with imported chemical admixtures for Hynds' Pokeno plant and does not operate an admixture production facility in New Zealand;

(b) Firth, Bowers & Son and Ashburton Contracting purchase selected chemical admixtures directly from GCP Australia;

(c) Normet was chosen as the chemical admixture supplier for the City Rail Link tunnel project without having a local presence in New Zealand; and

(d) GBC and HR Cement currently import cement raw materials such as clinker, fly ash and slag, and therefore could also import chemical admixtures.

*Comparative cost of an import model*

19.7 In Sika's view, the main advantage of manufacturing in New Zealand compared to importing relates to minor transportation cost advantages (as raw materials can be imported in a concentrated form). Supply chain security can be addressed with local warehouses and sufficient stocking to cover lead time.

19.8 By way of example, set out below is the additional cost components associated with an import model, assuming production in Australia. These costs are based on Sika's sales of [redacted]:

(a) Freight charges for Australia to New Zealand leg: [redacted].

(b) Safety stock / warehousing in New Zealand: [redacted].

19.9 In some instances, an import model might offer cost advantages. For example, those suppliers (such as GCP) who import may be able to manufacture chemical admixtures cheaper overseas due to economies of scale – New Zealand is a comparatively small market. Sika generally [redacted] and for some products, it is more economical for Sika to manufacture in Australia and ship to New Zealand.

19.10 Overall, there is no material difference in price for New Zealand customers (including smaller customers) choosing between imported and locally manufactured alternatives. By way of example, both GCP and Normet have recently been able to win customers / projects despite not having any local production in New Zealand.

19.11 For the reasons set out above, the ability for admixture customers to import their chemical admixture requirements direct from large players overseas, including players not currently active in selling products to New Zealand customers, will continue to constrain the merged entity post-Transaction.

20. **Customers will continue to exercise significant countervailing power post-Transaction**

20.1 [redacted].[60] The top five chemical admixture customers (i.e., Allied, Firth, Bridgeman, Higgins and Atlas) account for [redacted].[61]

20.2 The top five customers, but in particular Allied and Firth, exercise significant countervailing power over chemical admixture suppliers and this will continue to be true for the merged entity. Such customers often utilise tenders to compare offers from suppliers, and pricing and volume determinations rest with these large customers and not chemical admixture suppliers. Principally, it is the large customers who determine which chemical admixture suppliers are "in the market" and, a result, static market shares are not an indicator of market position or any market power. Customers can determine the market shares of suppliers in every single round of competition and on a frequent basis, as there are no long-term contracts and Sika understands that many of the large chemical admixture customers [redacted] frequently test other suppliers' products. Accordingly, the combined market share of [redacted], taken at face value, is not representative of the likely state of competition post-Transaction.

20.3 [Redacted].

20.4 Sika expects that [redacted].

20.5 As noted above, large chemical admixture customers frequently test other suppliers' products. In Sika's experience, the Technical Managers of the larger customers are always interested in testing new products and technologies that they become aware of, whether they are produced in New Zealand or overseas. For example, Sika understands that [redacted] Frequent testing combined with the ease of switching significantly constrains chemical admixture suppliers' ability to raise prices or decrease product or service quality.

20.6 In Sika's view, the countervailing power of customers has significant downward pressure on chemical admixture pricing in the market. For example, [redacted] Further, customers tend to be very price sensitive. Any increase in prices post-Transaction will result in the loss of existing business to GCP or Mapei (who, as set out above, would be able to service customers from Australia or quickly and easily use a New Zealand toll manufacturer or set up a production plant should they choose in New Zealand).

[60] Based on Sika's estimate of total market volume of admixture sales in 2020.
[61] Based on Sika's estimated of total market volume of admixture sales in 2020.

20.7 In addition, low barriers to entry and the fact that large global admixture players can easily set up to supply to customers in New Zealand adds significantly to the buyer power that ready-mix concrete producers have. This is further strengthened by the fact that the large customers can also sponsor supplier entry and expansion if needed (and backward integration always remains an option). We consider these constraints in more detail below.

21. **Switching admixture suppliers is easy and low cost**

21.1 Cement and concrete technologies are similar and the cost of changing chemical admixture suppliers is low. Post-Transaction, customers will continue to have the possibility to easily and efficiently switch to other suppliers as:

(a) supply agreements are not a widespread feature of the market in New Zealand and, accordingly, there are often no legal / contractual limitations to customer switching; and

(b) as the chemical admixture supplier owns and services all tanks and dispensing equipment, when a customer switches supplier the new supplier simply purchases the equipment from the previous supplier as set out in 23(a) below.

21.2 Accordingly, there are no switching costs for chemical admixture customers once the initial testing has been completed. In the event of any post-merger price increase or change in product quality, there would be no material costs preventing customers from moving to other existing or new suppliers.

22. **Low barriers to entry**

22.1 The Parties consider that there are no significant barriers to entry into the chemical admixture market in New Zealand as:

(a) local production is not required to compete in New Zealand, which is evidenced by GCP supplying from Australia.[62] Equally, if a competitor chooses to establish a production plant in New Zealand, this can be done quickly and at low cost (see below at 22.4);

(b) the equipment required to supply chemical admixtures to a customer location (whether by import model or via local production) is low cost (approximately NZ$10-30k per customer location for tanks, dispensers and associated fittings)[63] and typically this cost would not factor into a decision to supply a small plant (as the supplier would typically sell this equipment to a new supplier of that customer anyway, should that customer switch supplier);

(c) the technical skill (or “know-how”) required for chemical admixture production is low;

(d) intellectual property is not material to the industry, there are very few patents and strong branding is not required;

(e) approvals and certifications are not required in New Zealand and although the Australian Standard 1478 is often referred to, this is not a barrier to entry, as this standard is generally easy to meet (currently all chemical admixture suppliers have access to products from Australia that meet this standard); and

(f) the raw materials required to manufacture chemical admixtures (mainly polymers) are readily available from large chemical companies, which distribute these raw materials globally.

[62] As noted at paragraph 19.5, as long as a supplier has a warehouse in New Zealand (as well as the tanks and dispensers for each ready-mix plant), they are able to compete effectively.
[63] Please refer to Annex 7C, which sets out the purchase price / invoice issued to GCP when Bridgeman switched from Sika to GCP in 2019/2020. The invoice illustrates that the set-up cost to supply Bridgeman was approximately [redacted].

22.2 Each of the large global players (including GCP/Saint-Gobain/Chryso, Mapei, MC Bauchemie and Normet) all have international technical and R&D support, which they can utilise to facilitate new entry or expansion in the New Zealand market. This is further supported by the fact that potential suppliers, such as Mapei and Normet, are already active in New Zealand (albeit that Mapei is active in the adhesives rather than chemical admixtures). Although global backing is conducive to easy entry, it is certainly not a requirement to entry. By way of example, Lyksor (founded in Turkey in 2016) was able to establish itself independently as it was founded by a former professional who had experience in the industry and had previously worked with global players.

22.3 Similarly, Neocrete is a New Zealand-based start-up chemical admixture company that has recently gained the backing of Callaghan Innovation. Neocrete's D5 Green admixture product (that can reduce carbon dioxide emissions from concrete production by up to 40%) is starting to be used in New Zealand. Neocrete has worked with Concretec, Higgins Concrete, Allied Concrete, LT McGuinness, eHaus and Max Raft to test and improve the performance of D5 Green. Furthermore, Peter Fell (ex-Sika) started his own company that is now the largest supplier of colour for concrete in New Zealand. As the above examples demonstrate, international backing is not necessarily required to successfully enter the market in New Zealand.

22.4 For completeness, the cost to set up a production facility in New Zealand is also relatively low. For example, blending and storage equipment (which comprise stainless-steel tanks with motors and blenders) can be readily purchased for relatively low investment costs (estimated to be below [redacted]) and the lead-time to setting up a production facility is short (roughly six months). Please refer to **Annex 7**, which sets out a quote issued to Sika for two new 10,000 litre tanks and mixers, costing [redacted]. [redacted]. While a facility is being established, customers can be supplied with imported product or toll-manufactured product, such that, in practice, new customers can be supplied with almost no lead time.

22.5 Indeed, toll manufacturing is a very good solution for chemical admixture suppliers. Sika understands that MBCC Group has used a toll manufacturer, RLA Polymers, to produce MBCC's accelerating admixtures during the winter. RLA Polymers imported the raw materials and manufactured and supplied the finished goods for MBCC Group in New Zealand.[64] [Redacted].[65]

22.6 In addition to RLA Polymers, Sika understands that there are a number of other companies in New Zealand that could easily provide toll manufacturing services to a new entrant, including Chemical Solutions Limited[66], C & R Packers[67] and Chemical Packers Limited[68].

## 23. Potential new entry - Customer sponsored entry is highly likely

23.1 The large customers, such as Firth and Allied, are very capable of sponsoring entry and expansion if required. Sika considers that sponsorship would be feasible due to the large volumes of chemical admixture supplied to these large customers. By way of illustration, Bridgeman (New Zealand's third-largest chemical admixture customer) supported GCP's growth in New Zealand when it switched away from Sika to GCP in 2019.

23.2 Sika considers that while smaller customers' volumes may not be sufficiently high to attract a new entrant, any chemical admixture supplier entering the New Zealand market would compete for the Parties' major and smaller customers alike.

[64] See here https://www.rlapolymers.co.nz/company-profile.php. Noting the recent name change, RLA Polymers claims to be "the toll manufacturer of choice for a number of significant players in the NZ construction industry, in both the powder and liquids markets".
[65] [redacted].
[66] See here https://www.chemicalsolutions.co.nz/.
[67] See here https://www.crindustries.co.nz/packers/.
[68] See here https://chemicalpackers.co.nz/.

*Likelihood, extent and timeliness of entry (the 'LET Test')*

23.3 In Sika's view, new entry is highly likely, sufficient in extent and timely enough to constrain the merged firm and prevent it from being able to profitably raise prices or reduce service quality post-Transaction.

23.4 New entry is likely for the following reasons:

(a) Sika understands that [redacted].

(b) Sika understands that [redacted].

(c) Although Mapei does not currently supply chemical admixtures in New Zealand, it does supply adhesives and sealants in New Zealand and also already has a physical presence here, including offices and warehouses in Auckland, Wellington and Christchurch. Accordingly, Mapei could quite easily pivot to also supplying chemical admixtures.

(d) The Parties understand that Mapei has built a chemical admixture plant in Brisbane and has a Melbourne warehouse [redacted]. For example, MBCC Group understands that [redacted] Mapei's presence in the Australian chemical admixture market means that entering the New Zealand market would be relatively straightforward.

(e) [redacted]As noted above, [redacted].

23.5 For the reasons outlined above the actual or potential new entry will be of a sufficient extent to constrain the merged firm. As noted above, a new entrant is most likely to enter on the basis that it has contracted with (or has otherwise arranged to commence supply to) [redacted].

23.6 Sika expects that new entry (by the likes of Mapei) or expansion (by GCP/Saint-Gobain/Chryso or Normet) will be likely to occur within a reasonably short time period after completion of the Proposed Transaction. This is due to the fact that [redacted]. In any case, if new entry did not occur shortly after completion of the Proposed Transaction, in a (hypothetical) scenario where the merged firm sought to increase its price or reduce service quality, new entry or expansion would be very likely to occur almost immediately, as:

(a) chemical admixture customers are not locked in to any long-term contracts;

(b) there are very low barriers to entry;

(c) switching chemical admixture suppliers is easy and low cost; and

(d) a new entrant would not necessary require a local chemical admixture production facility to service chemical admixture customers in New Zealand. By way of example, when Bridgeman made the change from Sika to GCP in 2019, GCP was able to supply Bridgeman with imported chemical admixture from Australia without any manufacturing facility in New Zealand (this continues to be the case today).

23.7 For the reasons set out above, new entry is highly likely, sufficient in extent and timely enough to constrain the merged firm post-Transaction.

24. **No material reduction in competitive constraint**

24.1 Sika considers that the Proposed Transaction will not significantly change the current market conditions. [redacted] For the reasons discussed above, Sika considers it highly likely that [redacted].

24.2 Post-Transaction, the merged entity will not be in a position to raise its chemical admixture pricing or reduce service quality, as its customers (particularly Allied, who is accountable for over [redacted] of Sika's sales volume) would quickly and easily switch their business to GCP or Mapei. Both GCP and Mapei would be able to service customers from Australia, or quickly and easily set up a production plant in New Zealand (and use toll manufacturing short or long term if considered beneficial). Additionally, as **Annex 1** illustrates, Sika does supply other concrete related products to customers in New Zealand. Any post-Transaction price increase or service quality deterioration would risk damaging customer relationships, with the potential to cause ripple effects throughout Sika's portfolio of product offerings in New Zealand (not solely chemical admixtures). Accordingly, Sika's current approach to market and pricing will not change materially as a result of the Proposed Transaction. For example, customer switching will remain a very credible threat, as demonstrated by Bridgeman (New Zealand's third largest admixture customer) recently switching from Sika to GCP for its entire admixture supply.

25. **No risk of vertical effects**

25.1 Sika considers that the Proposed Transaction would not be likely to substantially lessen competition due to vertical effects as it will not give rise to any actual or potential material vertical relationships between the Parties.

25.2 The Parties do not currently acquire or supply any inputs (e.g. polymers) or services from each other or any other of their competitors.

26. **No risk of conglomerate effects**

26.1 Sika considers that the Proposed Transaction would not be likely to substantially lessen competition due to conglomerate effects. Conglomerate effects can arise where, as a result of the acquisition of complementary products, a merger can increase the ability or incentive of an acquirer to bundle or tie the sale of these products in a way that results in foreclosure of competitors. For conglomerate concerns to arise, the merged entity requires not only market power in a particular market, but also a "must-have" product in one market[69] in order to be able to offer a "bundle with which rivals cannot compete" that lessens competition in another market.[70]

26.2 The Proposed Transaction could not have (nor increase the risk of) any such effect:

(a) in relation to chemical admixture customers, the Proposed Transaction does not materially increase the range of other products that Sika can supply to these customers and MBCC Group is not a "must have" supplier of any other products for any chemical admixture customers in New Zealand;

(b) in relation to other (non-chemical admixture) products sold by MBCC Group in New Zealand, the Transaction will add only a small number of products to Sika's range of products that it sells in New Zealand and MBCC Group is not a "must have" supplier of such products for any customers in New Zealand; and

(c) Sika will continue to face competitive constraint for the supply of every product due to the constraint posed by imports, the countervailing power of customers, and the low barriers to entry.

26.3 Accordingly, Sika would not have the ability or incentive to offer bundles, or require tying, in a way that would artificially distort or lessen competition (or foreclose a competitor) in any market. Sika would continue to face competitive constraint for every product within its existing range. Furthermore, large customers have significant countervailing power arising from the ability to switch suppliers (which would further reinforce their ability to defeat any attempts at anti-competitive bundling or tying). This means that the conditions required for potential conglomerate effects do not exist - there would be no enhanced ability or incentive for Sika to seek to foreclose competitors

[69] *Bluescope Steel (NZ) Limited and Pacific Steel Group* [2014] NZCC 8
[70] *Vodafone Europe B.V. and Sky Network Television Limited* [2017] NZCC 1.

through bundling or tying. Rather, any such attempted conduct would be likely to result in Sika losing sales as customers would simply switch to competitors' products given the availability of imports and low barriers to entry for each product.

27. **No risk of coordinated effects**

27.1 Sika considers that the national market for the supply chemical admixtures does not currently exhibit signs of coordination due to the following factors:

(a) The threat of new entry and low barriers to entry makes any coordination vulnerable to external disruption and also means that existing global players can easily enter the market in response to prices 'drifting up', further frustrating potential coordination.

(b) The large ready-mix customers have significant countervailing power. In particular, MBCC Group's key customer, Firth, is highly price sensitive and due to its strong countervailing bargaining position and ability to switch to alternative suppliers, including its ability to sponsor entry, Firth could quickly disrupt any attempt to coordinate behaviour.

(c) Supply takes place via arrangements with each customer, the terms of which are typically not known to competitors. Price transparency is therefore limited in this regard, making coordination difficult (i.e., competing suppliers will have very limited visibility of whether a rival is cheating on any tacitly agreed price). Chemical admixture suppliers such as the Parties do not publish information on their websites (or elsewhere) on the prices at which they sell to customers.

(d) The Proposed Transaction will not cause a material reduction in competitive constraints.

27.2 Sika considers that the Proposed Transaction does not change any of the factors discussed above. Accordingly, the Proposed Transaction cannot be said to materially increase the likelihood of coordination occurring in the national market for the supply of chemical admixtures.

28. **Conclusion**

28.1 Sika considers that the chemical admixtures market in New Zealand is inherently competitive. There are also numerous suppliers outside the market that are well positioned to quickly and easily enter the market. Chemical admixture suppliers, like the Parties find themselves constrained by the actions of their existing and potential rivals and the countervailing power of large ready-mix concrete producers. Post-Transaction the market will continue to be characterised by strong suppliers, strong buyers and low barriers to entry and expansion.

28.2 For these reasons, and in light of the analysis above, Sika considers that there is no credible prospect of the Proposed Transaction substantially lessening competition in any market in New Zealand.

## Part G: Confidentiality

### 29. Reasons for seeking confidentiality

29.1 Confidentiality is sought in respect of the information in this application that is highlighted, in bold and contained within square brackets (the **Confidential Information**). Confidentiality is sought for the Confidential Information for the purposes of section 9(2)(b) of the Official Information Act 1982 on the following grounds.

(a) The Confidential Information is commercially sensitive and valuable information which is confidential to either, or both, Parties.

(b) Disclosure of the Confidential Information would be likely to unreasonably prejudice the commercial position of the Parties.

29.2 The Parties request that they are notified if the Commission receives any request under the Official Information Act 1982 for the release of any part of the Confidential Information. They also request that the Commission seek and consider their views as to whether the Confidential Information remains confidential and commercially sensitive before it responds to such requests.

**Part H: Declaration**

I, Stefan Moesli, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in the circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

**Name and title of person authorised to sign:**

Stefan Mosli, Head Legal, Sika AG

**Sign:** Stefan Mösli

**Date:** 24 December 2021

## Part I: Annexures

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**Annex 1: Table illustrating other products supplied by Sika and MBCC Group in New Zealand in 2020 – excluding chemical admixtures (confidential)**

| Sika Product | Quantity (kg) | Sales (NZD)[71] |
|---|---|---|
| Injection resins | redacted | redacted |
| Resin-based grouts | redacted | redacted |
| Anchoring resins | redacted | redacted |
| Bonding agents | redacted | redacted |
| Primers | redacted | redacted |
| Impregnations incl. Coats/Coatings | redacted | redacted |
| Corrosion protection/ control | redacted | redacted |
| Structural reinforcing/ strengthening | redacted | redacted |
| Ancillaries (cleaners, release agents etc.) | redacted | redacted |
| Liquid membranes, all technologies | redacted | redacted |
| Bitumen felts | redacted | redacted |
| PVC/TPO bonding sheets | redacted | redacted |
| Other non-liquid membranes (foils, tapes etc.) | redacted | redacted |
| Construction dry premix mortar | redacted | redacted |
| Tile fixing dry premix mortar | redacted | redacted |
| Industrial flooring | redacted | redacted |
| Other industrial flooring products | redacted | redacted |
| Expansion joints | redacted | redacted |
| Sealants (Professional + DIY) | redacted | redacted |
| Sealants for professional constructions | redacted | redacted |
| Adhesives for Industrial, Craftsmen, DIY, Consumers (incl. wood floor bonding) | redacted | redacted |
| Silica fume | redacted | redacted |
| Fibers | redacted | redacted |

*Source: Sika sales data 2020.*

[71] Converted to NZD at the exchange rate of 1.5388719 at 18 November 2021.

| MBCC Group Product | Quantity (kg) | Sales (NZD)[72] |
|---|---|---|
| Silica fume | redacted | redacted |
| Ancillaries (cleaners, release agents etc.) | redacted | redacted |
| Bonding agents | redacted | redacted |
| Resin-based grouts | redacted | redacted |
| Premix mortars for construction (dry) | redacted | redacted |
| Expansion joints | redacted | redacted |
| Fibers | redacted | redacted |
| Industrial floors based on epoxy | redacted | redacted |
| Other industrial flooring products | redacted | redacted |
| Sealants for professional constructions and DIY/consumer | redacted | redacted |
| Wood Protection | redacted | redacted |
| Raw materials / Packaging | redacted | redacted |
| Others | redacted | redacted |

*Source: MBCC Group sales data 2020.*

[72] Converted to NZD at the exchange rate of 1.617221 at 18 November 2021.

**Annex 2: MBCC Group structure chart (confidential)**

## Annex 3: Trade or Industry Association Contact Details (confidential)

| Trade / industry associations | | |
|---|---|---|
| **Association** | **Brief description** | **Contact details** |
| Concrete New Zealand | Concrete NZ is a highly respected and valued association. Founding member organisations of Concrete NZ are the Cement & Concrete Association of New Zealand (CCANZ), the New Zealand Concrete Masonry Association (NZCMA), the New Zealand Ready Mixed Concrete Association (NZRMCA), Precast New Zealand (PCNZ) and the New Zealand Concrete Society (NZCS). | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] |

**Annex 4: Sale and Purchase Agreement (confidential)**

**Annex 5: [redacted] (confidential)**

**Annex 6: [redacted] (confidential).**

**Annex 7: [redacted] (confidential).**

**Annex 8: [redacted] (confidential)**

## Annex 9: Competitor Contact Details (confidential)

| Party | Contact details |
|---|---|
| GCP Applied Technologies | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] |
| MC Bauchemie | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] |
| Normet | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] |
| Fosroc | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] |
| Mapei (MBP NZ Ltd) | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] |
| Chryso/Saint-Gobain | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] |

## Annex 10: Sika's Key Customers[73] (confidential)

| Party | Revenue in last FY | Contact details | Chemical admixture(s) purchased from Sika | Length of time the customer has purchased chemical admixture(s) from Sika* |
|---|---|---|---|---|
| redacted | redacted | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] | redacted | redacted |
| redacted | redacted | Contact name: [redacted]<br>Phone: [redacted]<br>Email:[redacted] | redacted | redacted |
| redacted | redacted | Contact name: [redacted]<br>Email: [redacted] | redacted | redacted |
| redacted | redacted | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] | redacted | redacted |
| redacted | redacted | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] | redacted | redacted |

[redacted]

[73] [redacted]

**Annex 11: MBCC Group's Key Customers (confidential)**

| Party | Revenue in last FY* | Contact details | Chemical admixture(s) purchased from MBCC Group | Length of time the customer has purchased chemical admixture(s) from MBCC Group |
|---|---|---|---|---|
| redacted | redacted | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] | redacted | redacted |
| redacted | redacted | Contact name: [redacted]<br>Phone: [redacted] | redacted | redacted |
| redacted | redacted | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] | redacted | redacted |
| redacted | redacted | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] | redacted | redacted |
| redacted | redacted | Contact name: [redacted]<br>Phone: [redacted]<br>Email: [redacted] | redacted | redacted |

[redacted]

**Annex 12: Sika's relevant internal documents (confidential)**

**Annex 13: Sika NZ's latest audited financial accounts (confidential)**

**Annex 14: MBCC NZ's 2020 financial statements (management accounts) for its EBA (chemical-admixtures) business unit (confidential)**