

By email

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Commerce Commission

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MATTER NO. []
DATE 28 March 2022

Sika / MBCC Group: Divestment of MBCC Group's ANZ business

1. Introduction

- 1.1 We refer to the proposed acquisition by Sika AG (**Sika**) of 100% of the shares in LSF11 Skyscraper HoldCo S.à.r.l, the ultimate parent company of the MBCC group of companies (**MBCC Group**) (the **Proposed Transaction**). The Proposed Transaction is currently the subject of an application for clearance to the Commerce Commission (the **Commission**).¹
- 1.2 []. The Parties do not consider that the Proposed Transaction gives rise to competition concerns in respect of either chemical admixture products or EBC products supplied in New Zealand, but in the interests of ensuring completion of the global Proposed Transaction in a timely fashion, Sika is prepared to divest MBCC Group's entire New Zealand business, via a sale of 100% of the shares in MB Solutions New Zealand Limited (**MBCC NZ**) (**Divestment Business**) (the **Proposed Remedy**). The draft Divestment Deed is attached as **Annexure 1**.
- 1.3 []. Sika intends that the Divestment Business together with the MBCC Group's entire Australian business (together the **ANZ Business**) will be offered for sale as a going concern to a single independent third-party buyer (**Approved Purchaser**) approved by the Commission. The proposed divestment of the ANZ Business will also be subject to approval by the ACCC.
- 1.4 This letter sets out details of the Divestment Business, explains why there is no material composition, asset or purchaser risk attributable to the Proposed Remedy, and sets out the arrangements for transition of the Divestment Business to an Approved Purchaser (as defined in the draft Divestment Deed). [].

2. Executive Summary

- 2.1 For the reasons set out in this letter, there is no material composition, asset or purchaser risk associated with the Proposed Remedy.
- 2.2 The Divestment Business will be transferred with all necessary tangible and intangible assets, personnel, and all essential business functions for the ongoing competitive operation of the business in New Zealand. Accordingly, the acquisition of the Divestment Business by any Approved Purchaser would enable it to operate as a viable, long-term, independent and effective competitor to the merged entity and sufficiently preserve competition at the level that existed prior to the Proposed Transaction in the market for the supply of chemical admixtures or any other market in New Zealand.

¹ Defined terms in this letter have the same meaning as that in the clearance application, unless otherwise specified.

- 2.3 Completion of the divestment transaction will not be complex or difficult to implement and, on that basis, the Parties do not expect a prolonged sale process. Any asset risks are appropriately addressed by Sika's hold-separate and other conduct commitments set out in the draft Divestment Deed. The attractiveness of the business and the arrangements for transition to the Approved Purchaser, coupled with the protections in the proposed undertaking will ensure no degradation of the assets prior to completion.
- 2.4 The ANZ Business has attracted significant interest from a number of suitable purchasers. []. The Divestment Business is a highly attractive and longstanding business within New Zealand's chemical admixture industry and, therefore, will provide a unique investment opportunity for a number of potential buyers. In addition, any purchaser risks are appropriately addressed by Sika's obligations to have the Commission approve the purchaser.
- 2.5 This letter sets out:
- (a) the scope of the Divestment Business (**Section 3**), illustrating how the Divestment Business is sufficient to create a viable, long-term, independent and effective competitor;
 - (b) reasons why the timely separation and transfer of the Divestment Business is achievable, including an outline of the third-party consents required and expected ease with which those can be obtained (**Section 4**);
 - (c) reasons why the Proposed Remedy maintains the economic viability, marketability, competitiveness and goodwill of the Divestment Business prior to divestiture (**Section 5**); and
 - (d) reasons why the Parties are confident that a suitable Approved Purchaser can be identified (**Section 6**).

3. The scope of the Divestment Business is comprehensive and sufficient

All necessary assets are included in the Divestment Business

- 3.1 The Divestment Business will include all components necessary to maintain the current ongoing competitive operation of the Divestment Business in New Zealand, as detailed in Schedule 1 to the draft Divestment Deed at Annexure 1. The Divestment Business includes all core assets. More specifically, the divestiture assets forming part of the Divestment Business include:
- (a) the freehold interest in the chemical admixture production facility located in Albany, Auckland;
 - (b) all fixtures, equipment, machinery and all other property of a tangible nature held by MBCC NZ (at its Albany production facility or otherwise stored at third-party storage facilities) for the purposes of carrying on the Divestment Business, including all mixing vessels, bulk storage, IBCs and pallet racking;
 - (c) all assets and equipment used by the Divestment Business that are located at the customers' ready mix sites, including all dispensing equipment, tanks and pumps;
 - (d) the rights to the necessary intellectual property rights and know-how used by MBCC NZ (either by licence or transfer of ownership);
 - (e) MBCC NZ employees;
 - (f) all existing customer contracts, sales orders and purchase orders entered into by MBCC NZ;

- (g) all relevant supply agreements for both raw materials and finished products, as well as for warehousing and distribution of its products; and
- (h) all customer records (current and historical), price lists, advertising or marketing materials, catalogues and mailing lists which are used by the Divestment Business.

All necessary arrangements will be offered to the Approved Purchaser

3.2 Additionally, to ensure that the Divestment Business will continue its commercial operations and competitiveness, Sika will:

- (a) enter into a supply agreement (or agreements) required by, and agreed with, the Approved Purchaser, to ensure the continuity of the supply of relevant raw materials (including in particular polymers) or finished products which are manufactured by MBCC Group entities (outside of the ANZ Business) and, at the time of the divestment, supplied to MBCC NZ on a formal or informal basis. The terms of any such supply agreement (including for example, the duration etc) will be the subject of negotiation with the Approved Purchaser; and
- (b) provide any transitional services required by, and agreed with, the Approved Purchaser to ensure that it is able to seamlessly take over the Divestment Business during an interim period.

3.3 The above measures will ensure that the Approved Purchaser can continue to service MBCC NZ's customers and compete for new customers without the risk of a gap in supply. The Parties are confident that all agreements and commitments as set out above, coupled with the key assets detailed in Schedule 1 of the draft Divestment Deed, include all assets that are required to allow the successful production and supply of the chemical admixture products and EBC products in New Zealand and, therefore, the operation of an effective and viable competitor to the merged entity in New Zealand. The Commission will of course have the opportunity to review and approve these agreements as part of the divestment process.

3.4 At the same time, [].

4. **Timely separation and transfer of the Divestment Business**

4.1 Sika considers that, once the Commission has provided its approval of the Approved Purchaser, the separation and transfer of the Divestment Business within [] following completion of the Proposed Transaction (the **Divestment Period**) will be achievable. As can be expected with any business sale, the transfer of some key contracts may require consent as a result of the change of control of MBCC NZ, []. []. Sika will use its best endeavours to assist the Approved Purchaser to obtain all necessary rights and/or third-party consents as required for the continued operation of the Divestment Business, including:

- (a) [];
- (b) []; and
- (c) [].

4.2 For completeness, given the Divestment Business has operated within the MBCC Group of companies (formerly BASF) for over 40 years, it has necessarily developed links to the broader Group in relation to certain, commonplace, back-office and administrative functions. While MBCC NZ currently operates with certain administrative links to the broader MBCC Group, [].

4.3 If necessary, support on these back-office and administrative functions can be provided in the form of a transitional services agreement, the terms of which will be agreed with the Approved Purchaser.

5. Competitiveness and saleability of the Divestment Business can be preserved

- 5.1 The timeframe for the sale of the Divestment Business to the Approved Purchaser will be [] after completion of the Proposed Transaction, as set out in the draft Divestment Deed (the **Divestment Period**). Pursuant to the draft Divestment Deed, Sika will []. Accordingly, the competitiveness and saleability of the Divestment Business will be preserved during the Divestment Period so as to minimise any perceived asset risk.
- 5.2 The risk that the Divestment Business degrades prior to being transferred to the Approved Purchaser is very low as MBCC NZ's chemical admixture products (i.e., the core products supplied) are well-established in New Zealand – noting MBCC NZ's presence for more than 40 years. Additionally, Sika's transitional supply agreement(s) with the Approved Purchaser will ensure the continuity of supply of those products and/or ingredients which, at the time of the divestment, are manufactured by MBCC Group entities and subject of formal or informal supply arrangements with MBCC NZ [].
- 5.3 In any event, to eliminate any perceived risk to the competitive position of the Divestment Business pending divestiture, it is proposed that the Divestment Business will be held separate from the completion of the Proposed Transaction until its sale to an Approved Purchaser is completed. During this period, and as per its obligations under the draft Divestment Deed, the Divestment Business will be managed by a person approved by the Commission and appointed pursuant to the Divestment Deed (the **Divestment Manager**) thus ensuring a continuation of the status quo and hence the ongoing viability and competitiveness of the Divestment Business. Appropriate transition and reporting requirements are included in the draft Divestment Deed, attached as Annexure 1.

6. Identifying a suitable purchaser

- 6.1 Consistent with previous divestment undertakings accepted by the Commission in previous transactions it has considered, Sika has undertaken to satisfy the Commission that any proposed purchaser of the Divestment Business:
- (a) is not associated with Sika or any of its affiliates;
 - (b) has the financial resources, proven expertise and incentive to viably operate and develop the Divestment Assets in competition with Sika in the relevant market(s);
 - (c) is not likely to create competition concerns that would result in a contravention of section 47(1) of the Commerce Act 1986; and
 - (d) is not likely to give rise to a risk that the implementation of the Divestment will be unduly delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant authorities for the acquisition of the Divestment Business.
- 6.2 There is significant interest and many prospective purchasers for the Divestment Business, including because of:
- (a) the competitive positioning of the Divestment Business in New Zealand as a leading player with a comprehensive pre-existing product portfolio and the scale to serve key customer accounts nationally;
 - (b) the strong track record and wide recognition of the Divestment Business, having been active in New Zealand for over 40 years;
 - (c) the experienced leadership team and personnel including a local qualified concrete technologist that will transfer as part of the Divestment Business;

- (d) the fact that it offers a platform for a strategic purchaser to supply its own product range to the customers of the Divestment Business; and
- (e) the combination of the Australian Business with the Divestment Business will make this a particularly attractive opportunity for prospective purchasers.

6.3 Given the high level of interest that the Divestment Business will attract, the Parties are confident that the sale process will identify a suitable Approved Purchaser which meets the criteria set out at paragraph 6.1.

6.4 As outlined in the draft Divestment Deed, so as to allay any perceived purchaser risk concerns, the Parties propose the divestiture to the Approved Purchaser be subject to Commission approval, including the sale agreement for the Divestment Business and associated licencing agreements and transitional supply agreements.²

6.5 [].

7. **Conclusion, timing and next steps**

7.1 The Parties believe the Proposed Remedy comprehensively addresses any possible competition concerns and will result in the creation of a viable, independent and effective competitor, able to compete on a standalone basis immediately after completion of the sale of the Divestment Business.

7.2 There is no material composition, purchaser or asset risk associated with the Proposed Remedy. The Divestment Business is complete: it includes all assets, components, consents, IP, and staff necessary for its ongoing competitiveness. The Parties are confident of eliciting a wide range of interest from suitable buyers and a sale process which can be implemented without exceptional obstacles.

7.3 The Parties are willing to provide additional information that the Commission requires to facilitate and expedite its review.

² [].

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