



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1368

mergers@accc.gov.au

www.accc.gov.au

Our ref: IM-71601
Contact officer: Annelise Caplan / Alex Reed
Contact phone: (03) 9910 9451 / (02) 6243 1364

20 January 2023

Dear Interested Party

Re: Request for submissions: Sika's proposed acquisition of MBCC – proposed undertaking

The Australian Competition and Consumer Commission (**ACCC**) is currently reviewing Sika AG's (**Sika**) proposed acquisition of the MBCC Group of companies (**MBCC Group**) (the **proposed acquisition**).

MBCC Group is comprised of two main business divisions:

- the 'Admixture Systems' business division (**EBA business**), which consists of MBCC Group's chemical admixtures business and associated products such as fibers and underground construction (**UGC**) products, and
- the 'Construction Systems' business division (**EBC business**), which supplies such products as industrial flooring, waterproofing, sealants, adhesives, etc.

As part of the proposed acquisition, Sika proposes to divest to a single purchaser:

- the EBA business of MBCC Group in the European Economic Area (**EEA**), Switzerland and the UK,
- the EBA business of MBCC Group in the United States and Canada, and
- MB Solutions Australia Pty Ltd (including its subsidiary, Bluey Technologies Pty Ltd) (**MBCC Australia**) and MB Solutions New Zealand Limited, comprising both the EBA and EBC business of MBCC Group in Australia and New Zealand.

(collectively, the **Divestiture Business**)

Sika will retain the EBA business outside the EEA, Switzerland, UK, Canada, United States, Australia and New Zealand and the global EBC business except in Australia and New Zealand.

To address competition concerns in Australia, Sika has offered the ACCC a court-enforceable undertaking pursuant to s87B of the *Competition and Consumer Act 2010* (the **Act**) (**Proposed**

Undertaking), which requires Sika to divest the Divestiture Business in Australia, and provides for ACCC approval of the proposed purchaser of the Divestiture Business.

The purpose of this letter is to seek your views on whether requiring Sika to sell the Divestiture Business would adequately address the competition concerns arising from the proposed acquisition in Australia. Your views will assist the ACCC in reaching a final decision on the proposed acquisition and whether to accept the Proposed Undertaking. **Attachment A** of this letter outlines the background to the proposed acquisition. A list of specific questions is at **Attachment B**. We have provided additional details regarding the Divestiture Business at **Attachment C**.

If you wish to make a submission, please provide it by **4.00pm (AEDT) on 3 February 2023**. Submissions may be emailed, preferably in PDF format to mergersru@acc.gov.au with the subject line: Submission re Sika/MBCC Group – Proposed Undertaking (Attention Annelise Caplan/Alex Reed).

This matter is public and you can forward this letter to anybody who may be interested.

Please note the ACCC has not yet formed a concluded view as to whether its preliminary competition concerns are capable of being addressed by the Proposed Undertaking or any other possible remedy. The market consultation process should not be taken as an indication that the ACCC will accept the Proposed Undertaking or that any remedy will be capable of satisfying its preliminary competition concerns.

The ACCC may require changes to the Proposed Undertaking depending on the nature and extent of any concerns raised during the market consultation process. The ACCC will only accept a remedy if it is satisfied that it will sufficiently address its preliminary competition concerns, and after consideration of the monitoring and compliance costs and any risk to competition associated with the implementation of the Proposed Undertaking (or failure to do so). If you have any questions in relation to this matter or would like to arrange a teleconference to discuss your response, please contact Annelise Caplan on (03) 9910 9451 or Alex Reed on (02) 6243 1364.

Confidentiality of submissions

The ACCC treats sensitive information it receives during a merger review as confidential, and will not publish your submission. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the Competition and Consumer Act 2010. Where the ACCC is required to disclose confidential information, we will notify you in advance where possible so that you have an opportunity to be heard. Therefore please clearly indicate if any information you provide is confidential. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Suzie Copley
General Manager
Policy, Coordination and Remedies

Attachment A

The proposed acquisition

Sika, through its wholly owned subsidiary Sika International AG, proposes to acquire LSF11 Skyscraper HoldCo S.à.r.l., the holding company of the MBCC Group. In Australia, MBCC Group operates through, MB Solutions Australia Pty Ltd and its subsidiary, Bluey Technologies Pty Ltd and Sika operates through its subsidiary, Sika Australia Pty Ltd.

Sika

Sika is a Switzerland-based specialty chemicals company that develops and produces systems and products for bonding, sealing, damping, reinforcing, and protecting in the building sector and motor vehicle industry. Sika has subsidiaries in 101 countries around the world and manufactures in over 300 factories.

MBCC Group

MBCC Group, formerly BASF Construction Chemicals, is a global supplier in construction chemicals. MBCC Group is headquartered in Germany and has operations in over 70 countries with more than 120 production facilities. MBCC Group operates in the field of construction systems and admixture systems.

Chemical admixtures are an essential component in the production of concrete and cement, used to chemically modify its properties. Chemical admixtures increase workability, the acceleration or retardation of the rate of hydration and to add resistance to freezing and thawing. A combination of different chemical admixtures is commonly used in a single batch of concrete or cement as they add different properties to the mix.

Preliminary competition concerns

The ACCC has preliminary concerns that the proposed acquisition would result in the combination of the two largest suppliers of chemical admixtures in Australia and remove Sika's closest competitive constraint. Post-acquisition, their combined market share is likely to be approximately 80 per cent. The ACCC considers that other suppliers would not represent a sufficient level of competitive constraint to prevent the combined entity from profitably increasing prices or decreasing service quality. In particular, the ACCC has concerns that Sika and MBCC Group are the only two suppliers able to service larger customers.

Further, the ACCC considers the threat of new entry or expansion to be unlikely to provide an effective constraint on the combined entity. The ACCC has found that the affected market has high barriers to entry and expansion including difficulties accessing raw materials, incumbency advantages for existing suppliers, and significant economies of scale and scope. The ACCC considers customers would be unlikely to effectively bypass the combined entity.

The ACCC has concerns that other suppliers would not have access to research and development on a sufficient scale to compete effectively with the combined entity. The ACCC has particular concerns that this would decrease incentives to innovate and, for example, bring new product developments to Australia.

Attachment B

We have set out a list of questions you may wish to address in your submission. Please feel free to comment on any other issues that you consider relevant to the ACCC's assessment.

1. If you have not previously provided a submission to the ACCC on this matter, please:
 - a. provide a brief description of your business or organisation
 - b. outline the reasons for your interest in the proposed acquisition, including any commercial relationship/s with Sika.
2. Is the remedy proposal sufficient to replace any loss of competition resulting from the proposed acquisition? Why / why not.
3. To what extent would the purchaser need experience in Australia in order to be a viable, effective and long-term competitor?
4. Would the divestment of the Divestiture Business fully address any concerns you have in relation to the proposed acquisition?
5. What are the key assets and personnel required to ensure a purchaser can become a viable, effective and long-term competitor?
6. Are you aware of any third party (including regulatory) consents required to transfer the assets to a purchaser that may impact on the effective implementation of the remedy proposal?
7. Do you have any concerns about the loss of competition resulting from the proposed acquisition that are not addressed by the remedy proposal?
8. Please provide any additional information or comments you consider relevant to the ACCC's consideration of the proposed acquisition under section 50 of the Act.

Attachment C

The Divestiture Business will:

- operate in 36 countries (in the EEA, Switzerland, UK, United States, Canada, Australia and New Zealand);
- manufacture chemical admixtures, fibres, mineral admixtures, UGC and other related products such as polymers;
- include:
 - i. 36 production sites, as well as over 30 standalone warehouses and around 20 standalone offices (including the whole of the current MBCC Group headquarters in Mannheim, Germany);
 - ii. over 1,000 registered trademarks, including all of the trademarks for the Master Builders Solutions umbrella brand globally;
 - iii. all of the patents relating to the EBA business worldwide¹ (subject to certain EBA patents used exclusively in Japan), as well as certain EBC patents for Australia;
 - iv. three research and development (R&D) sites, being the EBA part of MBCC Group's global R&D centre in Trostberg, Germany, the Treviso site in Italy and the EBA part of the Beachwood site in North America) and over 80 global EBA R&D projects;
 - v. around 1,600 full-time equivalent (FTE) staff, including around 160 R&D/Technical FTEs;
 - vi. over 60 'Key Personnel' including top-level executive management (CEO, CFO, CTO and Head of M&A) and a number of global functional leads (Group Vice President Marketing & Strategy Admixtures, Head of Global Operations, Director Global Brand Management and Global Vice President Underground Construction); and
 - vii. all EBA-related customer and supplier relationships in the 36 countries in which the Divestment Business operates, as well as all of the EBC customer and supplier relationships in Australia and New Zealand.
- In Australia, the Divestiture Business includes all of MBCC Australia's manufacturing facilities, warehouses and other sites, all of MBCC Australia's customer and supply contracts, all other assets, and all Australian employees. The Divestiture Business includes MBCC Australia's manufacturing facilities in Seven Hills, NSW, Clayton, Victoria, Eagle Farm, Queensland and Pooraka, South Australia, as well as all bills of materials used by MBCC Australia at its production sites.
- To ensure that the purchaser can establish itself as a viable, effective and long-term competitor in Australia, Sika must supply (at the option of the purchaser), a:
 - i. transitional supply agreement for any goods or services that are required by the purchaser, and
 - ii. transitional technical assistance agreement for any technical assistance required by the purchaser.
- The transfer of the Divestiture Business to the purchaser will be implemented by way of share transfer. The retained EBA and EBC businesses will be carved out and transferred to Sika.

¹ With a sole licence to be granted to Sika for use of the patents for the retained EBA business (within that business's geographic perimeter).