

ACQUISITION BY VEOLIA ENVIRONNEMENT S.A. OF SUEZ S.A.

Directions issued on 10 January 2022 pursuant to paragraph 12 of the Initial Enforcement Order imposed by the Competition and Markets Authority on Veolia Environnement S.A. (Veolia), Veolia UK Limited (Veolia UK), Suez S.A.(Suez) and Suez UK¹ on 20 December 2021 (Order)

The Competition and Markets Authority (**CMA**) made an initial enforcement order pursuant to section 72(2) of the Enterprise Act 2002 (the **Act**) in relation to the completed acquisition by Veolia of a shareholding of 29.9% in Suez from Engie S.A. on 1 February (the **Completed Merger**), which was subsequently varied on 9 December 2021 (the **First IEO**).

At the date of the First IEO, Veolia had also announced its intention to make a voluntary public takeover bid in relation to the remaining Suez share capital (the **Anticipated Acquisition**) (together the Completed Transaction and the Anticipated Transaction are referred to as the **Merger**).

The CMA understands that as of 14 December 2021, all conditions precedent to the Anticipated Acquisition have been fulfilled.

On 20 December 2021, the CMA revoked the First IEO and at the same time, made a new initial enforcement order pursuant to section 72(2) of the Act (the **Order**) addressed to Veolia, Veolia UK, Suez and Suez UK.

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

Tim Geer
Director, Mergers
Competition and Markets Authority
10 January 2022

¹ Ondeo Industrial Solutions UK Limited, Suez Water Technologies & Solutions Holdings UK Limited and Suez UK Group Holdings Ltd (collectively, **Suez UK**).

Annex

Directions to appoint a monitoring trustee

Interpretation

1. In these Directions:

‘the Act’ means the Enterprise Act 2002;

‘an affiliate’ of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

‘business’ has the meaning given by section 129(1) and (3) of the Act;

‘CMA’ means the Competition and Markets Authority;

‘Derogations’ means any derogations granted whether before or after the appointment of the MT by the CMA by which Veolia, Veolia UK, Suez or Suez UK may undertake certain actions that derogate from the Order;

‘MT’ means the monitoring trustee appointed in accordance with paragraphs 2 to 4 below;

‘Order’ means the initial enforcement order made by the CMA on 20 December 2021 and addressed to Veolia, Veolia UK, Suez and Suez UK;

‘Suez’ means Suez S.A., a company registered in France at Tour CB 21, 16 place de l’Iris, 92040, Paris La Défense Cedex, with RCS number 433 466 570;

‘the Suez business’ means the business of Suez and its subsidiaries (including for the avoidance of doubt Suez UK and the Suez UK business) carried on as at the commencement date of the Order;

‘Suez UK’ means (1) Ondo Industrial Solutions UK Limited, a company registered at Suez House, Grenfell Road, Maidenhead, Berkshire, SL6 1ES, with company number 04319605; (2) Suez Water Technologies & Solutions Holdings UK Limited, a company registered at 3rd Floor, 1 Ashley Road, Altrincham, Cheshire, WA14 2DT with company number 03794207; and (3) Suez UK Group Holdings Ltd, a company registered at Suez House, Grenfell Road, Maidenhead, Berkshire, SL6 1ES, with company number 02264639;

‘the Suez UK business’ means the business of Suez UK and its subsidiaries carried on as at the commencement date of the Order;

‘Veolia’ means Veolia Environnement S.A., a company registered in France at 21 rue La Boétie, 75008, Paris, with RCS number 403 210 032;

‘the Veolia business’ means the business of Veolia and its subsidiaries (including for the avoidance of doubt Veolia UK and the Veolia UK business) but excluding the Suez business, carried on as at the commencement date;

‘Veolia UK’ means Veolia UK Limited, a company registered at 210 Pentonville Road, London, N1 9JY, with company number 02664833;

‘the Veolia UK business’ means the business of Veolia UK and its subsidiaries (but excluding the Suez business insofar as relevant), along with: (1) Veolia Nuclear Solutions (UK) Limited, a company registered at Unit 18 Nuffield Way, Abingdon, England, OX14 1RL, with company number 03957801; (2) Veolia ES Field Services Limited, a company registered at Unit 1 Heol Crochendy, Parc Nantgarw, Cardiff, CF15 7QT, with company number 07816723; (3) Veolia Energy Services NI Limited, a company registered at 2 Rocklyn Way, Donaghadee, Northern Ireland, BT21 0GD, with company number NI073352; and (4) Swordfish Shipco Limited, a company registered at 210 Pentonville Road, London, N1 9JY, with company number 08545861, carried on as at the commencement date;

‘the two businesses’ means the Veolia business and the Suez business;

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

Appointment

2. Veolia and Suez must appoint a MT in order to ensure compliance with the Order, in particular to:
 - a. monitor and report to the CMA on compliance by Veolia, Veolia UK, Suez and Suez UK with the Order; and
 - b. support the CMA taking any action which may be required to ensure compliance by Veolia, Veolia UK, Suez and Suez UK with the Order, including the CMA’s consideration of possible derogations to the Order.
3. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
4. Veolia and Suez must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Veolia and Suez as set out in these directions.

General

5. The MT must possess appropriate qualifications and experience to carry out his or her functions.
6. The MT must neither have, nor become exposed to, a conflict of interest that impairs his or her objectivity and independence in discharging his or her duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
7. Veolia and Suez shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.
8. Veolia and Suez must appoint the MT as soon as is reasonably practicable and in any event by **17 January 2022** and the MT will continue to act either until the CMA reaches a decision to clear the Merger or until the CMA directs that the MT is no longer required.
9. The appointment of a MT by Veolia and Suez is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
 - a. the name of the proposed MT must be notified to the CMA as soon as is reasonably practicable and in any event by **12 January 2022**;
 - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **14 January 2022**; and
 - c. once the MT has been approved by the CMA and appointed, Veolia and Suez must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

10. The functions of the MT will be to:
 - a. assist the CMA in its consideration of possible derogations to the Order (where requested by the CMA);
 - b. ascertain and report to the CMA in relation to the current level of compliance by Veolia and Suez and their subsidiaries with the Order;
 - c. assess and report to the CMA in relation to the arrangements made by Veolia and Suez for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;

- d. identify and supervise if necessary the arrangements made by Veolia and Suez for ensuring compliance with the Order;
 - e. monitor compliance by Veolia and Suez and their subsidiaries with the Order; and
 - f. without prejudice to the right of Veolia and Suez to contact the CMA, respond to any questions which Veolia and Suez may have in relation to compliance with the Order, in consultation with the CMA.
11. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Veolia business and the Suez business, such as written and electronic communications, telephone conversations and meetings as may be required.
12. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by with the Order.

Obligations of Veolia and Suez

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

Reporting functions

16. The MT is required to provide an initial report addressed solely to the CMA by a date to be determined by the CMA, with its findings and recommendations on the questions and matters (to be determined by the CMA) in relation to certain outstanding requests for a derogation to the Order made by Veolia and/or Suez concerning the integration of the non-UK businesses of Veolia and Suez (**Initial MT Report**).

17. Subsequent to the Initial MT Report, and within 10 days (or otherwise as required by the CMA) from the date of the Initial MT Report, the MT is required to provide a separate report addressed solely to the CMA (**Second MT Report**), giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
- a. details of the current extent of compliance with the Order;
 - b. a description of the current arrangements made for the operation of the Suez business and for the preservation of the assets required to operate the Suez business; and
 - c. recommendations as to what changes to those arrangements, if any, are necessary, particularly whether a hold separate manager should be hired to manage the Suez business.
18. In addition to providing the Initial MT Report and Second MT Report referred to in paragraphs 16 and 17 above, the MT must provide a statement to the CMA every four weeks from the date of the Second MT Report (or otherwise as required by the CMA) stating whether or not, in his or her view, Veolia and Suez and their subsidiaries have complied with the Order. At the same time, the MT must provide a report addressed solely to the CMA setting out the following:
- a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
 - i. anything has caused him or her to be concerned as to whether Veolia and Suez and their subsidiaries have complied with the Order, and if it has, whether those concerns have been resolved and why;
 - ii. he or she has any remaining doubts or uncertainties as to whether Veolia and Suez and their subsidiaries have complied with the Order; and
 - iii. anything that causes him or her to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
 - b. details of the performance of the Suez business, including any factors that might indicate asset deterioration;
 - c. whether appropriate steps are being taken to maintain the Suez business as a going concern;
 - d. the extent to which Veolia and Suez and their subsidiaries have cooperated with the MT in his or her task of monitoring its compliance with the Order and details of any aspects of the cooperation of Veolia and Suez that he or she considers could be improved;

- e. the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of Veolia and Suez and their subsidiaries with the Order and if there is anything that the MT considers would assist him or her in monitoring compliance;
 - f. any current or anticipated requests for consent to vary the Order; and
 - g. the information he or she used to compile the report.
19. When providing reports to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which Veolia and Suez would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Veolia and Suez to produce any information or documents to the MT which are privileged.
20. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Order has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 19 above).
21. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 16 to 18) are confidential and should not be disclosed to the Veolia business or to the Suez business, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.