

Completed acquisition by Veolia Environnement S.A. of a minority shareholding in Suez S.A. and the anticipated public takeover bid by Veolia Environnement S.A. for the remaining share capital of Suez S.A.

Decision on relevant merger situation and substantial lessening of competition

ME/6908-20

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 7 December 2021. Full text of the decision published on 18 January 2022.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

Overview of the CMA's findings

1. Veolia Environnement S.A. (**Veolia**) proposes to acquire Suez S.A. (**Suez**) through two related transactions: its acquisition of a minority shareholding in Suez on 5 October 2020 and the public takeover bid by Veolia for the remaining share capital of Suez, which has not yet completed (together, the **Merger**). The CMA is exercising its discretion to review the two related transactions as a single merger transaction. Veolia and Suez are together referred to as the **Parties**, or for statements referring to the future, the **Merged Entity**.
2. The CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in a number of national waste management and water management services in the United Kingdom (**UK**) including the supply of complex waste management contracts procured by local authorities, the

supply of non-hazardous commercial and industrial (**C&I**) waste collection services, the operation and maintenance (**O&M**) of water and wastewater treatment facilities for industrial customers and the supply of mobile water services. The CMA also believes the Merger gives rise to a realistic prospect of an SLC in certain local markets in the UK for waste incineration and composting services.

Waste and water management services

3. In the UK, local authorities are responsible for managing the waste generated by households. This generally includes **collecting** waste from residents, **sorting** different dry recyclates (such as paper, cardboard, glass, metals and plastics), recovery (eg incineration with energy recovery, composting) and **disposing** of waste (eg via landfill). To fulfil these responsibilities, local authorities may procure services from specialist waste management companies, such as Veolia and Suez, through contracts that can be worth hundreds of millions of pounds.
4. Businesses must also procure collection and disposal services for the waste they generate. Businesses that use water as part of their processes and/or which generate wastewater will also require water management services, for example through **water and wastewater treatment facilities**. These are facilities that provide the quantity and quality of water (such as drinking water and treated water) required by the business, and also provide wastewater treatment. Business may also require **mobile water services** in response to emergency shutdowns, planned outages or to meet medium term needs. Both Veolia and Suez provide these water and wastewater management services.

Trends in waste management and the move towards a net zero economy

5. Water and waste management services are becoming increasingly important as the UK Government and devolved nations implement their net zero strategies, and move towards a circular economy. The circular economy is a model of consumption and production that involves sharing, reusing, repairing, renewing and recycling existing products for as long as possible. Pursuant to this strategic goal, the UK Government's waste hierarchy prioritises the prevention of waste, waste recycling and other waste recovery, while seeking to reduce waste disposal, including via landfill. In particular, the UK Government expects waste incineration, which can be used to generate energy, to play a significant ongoing role in waste management in the UK.

6. While historically most of the UK's waste was disposed via landfill this is changing. For example, the UK Government's strategy is to ultimately reduce the use of landfill to zero. Indeed, over the past decade the proportion of waste disposed via landfill has steadily reduced from over 80% in 2010 to less than half in 2019, with waste processed through incineration with energy recovery increasing from around 6.7 million tonnes in 2014 to 14 million tonnes in 2020. Administrations in the devolved nations have similar strategies.
7. To achieve these strategic priorities, it is crucial that sufficient competition remains in UK waste management markets. This will ensure that local authorities can procure waste collection, recycling, recovery and disposal services at competitive rates, and to a high standard of service, providing value for money to UK taxpayers as the UK economy transitions towards net zero.

Veolia and Suez's activities in the UK

8. Within the increasingly important waste management sector, Veolia and Suez are very large international businesses and are two of the leading providers in the UK. Veolia and Suez provide services to many local authorities and businesses to collect, sort and dispose of their waste across the UK. Both Parties are active at most key stages of the waste management supply chain, have a national presence with access to capacity at several types of waste management facilities (such as sorting facilities, incineration facilities, landfills, etc.) and benefit from comprehensive research, development and innovation capabilities. The Parties have some of the most longstanding and largest waste management contracts with local authorities, serving millions of households across the UK. The Parties also both provide a range of water management services to businesses. In 2020, Veolia reported worldwide revenues of €26 billion and revenues of €2.1 billion in the UK and Ireland (UK revenues are not reported separately in its financial statements). For the same year, Suez reported worldwide revenues in excess of €17.2 billion and revenues exceeding €0.9 billion in the UK.

CMA's assessment

9. The CMA examined whether the Merger would lead to a loss of competition between the Parties in several markets.
10. As part of its merger investigation, the CMA reviewed a substantial amount of evidence, including internal documents from each of Veolia and Suez, as

well as data on tenders the Parties competed in. The CMA also considered detailed submissions from other market participants such as local authorities, consultants specialising in local authority procurement processes, C&I customers of the Parties, as well as competing suppliers in the different waste and water management services.

Complex waste management contracts

11. The CMA's investigation found that a subset of waste management contracts procured by local authorities are particularly complex. Complexity can arise from a range of factors such as the inclusion of several waste management services into single tenders, the overall value of such contracts or duration of the contract (eg a long-term contract servicing hundreds of thousand or even millions of households in the UK), or specific local authority requirements. Local authorities told the CMA that not all waste management companies are able to credibly compete for complex contracts, and that the more complex the contract, the smaller the number of potential bidders. In particular, local authorities said that waste management companies must demonstrate a track record in supplying large contracts and contracts covering multiple services, that they must have a sufficiently large UK presence, including access to fallback facilities in the event of a site outage, and that they must have sound financial standing and access to significant funding.
12. The CMA's investigation showed that the Parties have several strengths that make them particularly strong suppliers of these complex contracts. In particular:
 - (a) Both Veolia and Suez have extensive decade-long experience in managing complex waste management contracts, including contracts that cover a range of waste management services (both collection and disposal) and high-value contracts that cover millions of UK households;
 - (b) Both are present across most stages of the waste management supply chain, including collection, sorting of dry recyclates, incineration, disposal via landfill and composting and can also assist local authorities with operating and maintaining the infrastructure necessary for waste management purposes;
 - (c) Both have a nationwide footprint, which gives them access to additional capacity eg in the event of a plant shutdown;

- (d) Both have comprehensive global research, development and innovation capabilities which allow them to develop and implement innovative solutions in the UK; and
 - (e) Both are also companies forming part of an international group, benefitting from knowhow and best-practice sharing across different countries.
13. The CMA received a large number of complaints from local authorities, some of whom expressed concerns that the Merged Entity would be the only company that could credibly service complex waste management contracts in the UK. Several submissions from local authorities showed that the Parties are perceived as two of a very small number of credible bidders for complex waste management contracts, with some submitting that they had been the last two bidders in high-value contracts.
 14. Local authorities also told the CMA that the Parties' strength in competing for contracts covering several waste management services significantly exceeds that of other UK suppliers (including Biffa, Serco, Urbaser, Viridor and FCC). In particular, other providers do not offer the same breadth of services as the Parties, cannot match the Parties' track record in servicing complex contracts, do not have a comparable geographic footprint, and/or do not have sufficiently robust financial standing.
 15. The CMA is therefore concerned that the Merger would remove an important competitor from the market and give rise to a realistic prospect of an SLC, which could manifest itself through higher prices, lower quality of service and/or less innovation, affecting potentially millions of UK households and businesses.

C&I waste collection services

16. As set out above, the Parties also provide waste collection services to C&I customers. Many customers that operate across all or large parts of the UK (**national customers**) told the CMA that they prefer to use only one supplier to collect their waste, instead of using different regional suppliers in different parts of the UK.
17. The evidence received by the CMA shows that Veolia and Suez compete closely for national customers. The CMA for example found that, in their internal documents, the Parties primarily monitor each other and Biffa. National customers also most often identified Veolia, Suez and Biffa as businesses that could service their needs and several competitors told the CMA that Suez is a close competitor to Veolia and vice-versa. Generally,

customers considered Biffa, Veolia and Suez to be the three strongest suppliers of C&I waste collection services.

18. In addition to their waste collection services, both Parties also have access to significant waste disposal capabilities (as outlined above). Several third parties told the CMA that this may give them an advantage over their rivals because they are able to more efficiently design their disposal routes, have more control over the prices they charge to customers, and can transparently show to their customers how their waste is going to be disposed. The Parties also recognise this advantage in their internal documents.
19. While the Parties told the CMA that they are also in competition with brokers, several national customers said that they had tried using brokers, but found that the quality of service, costs, and ability to manage the service were inferior to using a single national supplier. Furthermore, while there are a few other C&I waste collection providers, the available evidence shows that these are weaker than the Parties and Biffa.
20. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of the removal of an important competitor from the market.

O&M of water and wastewater treatment facilities for industrial customers

21. The CMA's investigation found that as a result of the Merger, the Parties would become the largest provider of O&M of water and wastewater treatment facilities for industrial customers.
22. The evidence also shows that the Parties compete closely in this market. Several customers told the CMA that the Parties are strong suppliers of O&M in particular to large customers, with both offering innovative services. This closeness of competition was also reflected in the Parties' tender data and internal documents confirmed that innovation is a strategic priority for both Parties.
23. The available evidence suggests that the Parties may have an advantage over their rivals because in addition to operating and maintaining water and wastewater treatment facilities, both are also active in the design and construction of technical solutions and equipment for these facilities. Some evidence received by the CMA suggests that vertically integrated companies like the Parties can respond to a broader range of requests from customers, covering more than just O&M contracts.

24. Furthermore, while third parties identified a few other suppliers active in the UK, the feedback on these other suppliers showed that these are not strong rivals to the Parties. Customers also said that it would be difficult to cater for their own O&M requirements in-house.
25. The CMA is therefore concerned that removing one of the Parties from the market would give rise to a realistic prospect of an SLC and could lead to higher priced, lower quality and/or less innovative services being provided.

Mobile water services

26. The CMA's investigation found that as a result of the Merger, the Parties would be the largest UK supplier of mobile water services by a very large margin with a combined share of supply exceeding 80%. The Parties' market leading position was also confirmed by the Parties' internal documents, which show that the Parties view each other as close competitors. Many third parties also raised concerns about this market, telling the CMA that other competitors have a much smaller fleet size than the Parties. The evidence also shows that smaller suppliers may have more difficulties in winning contracts, because Veolia and Suez offer a large portfolio of wider services and are therefore more likely to win contracts because of their existing relationship with customers.
27. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.

Other markets

28. In addition to the areas of concern set out above, the CMA also assessed the following overlaps, finding for each that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects:
 - The supply of non-hazardous municipal waste collection services in the UK;
 - The supply of services for the O&M of local authority-owned energy recovery facilities (ERFs) in the UK;
 - The supply of non-hazardous waste incineration services in several local areas; and
 - The supply of organic waste composting services at open-windrow composting (OWC) facilities in several local areas.
29. These markets are discussed in more detail in the decision text itself.

Conclusion

30. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in a number of markets in the UK.
31. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). Veolia has until 14 December 2021 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger for a Phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

32. Both Veolia (the **Notifying Party**) and Suez are active globally in waste, water, and energy management services, as well as other related activities. Veolia is headquartered in France and listed on the Euronext Stock Exchange. The turnover of Veolia in 2020 was approximately £22 billion worldwide and approximately £2 billion in the UK.¹
33. Suez is headquartered in France and listed on the Euronext Stock Exchange. The turnover of Suez in 2020 was approximately £15 billion worldwide and approximately £1 billion in the UK.²

Transaction

34. On 5 October 2020, Veolia formally announced its acquisition of a 29.9% minority shareholding in Suez from an existing Suez shareholder, Engie S.A. (the **Completed Transaction**), and its intention to launch a voluntary public offer for Suez's remaining issued share capital (the **Anticipated Transaction**).³ On 6 October 2020, Veolia completed the Completed Transaction.⁴ As regards the Anticipated Transaction, on 14 May 2021 Veolia and Suez announced that they had signed a combination agreement, for an offer price of €20.50 per share for the remaining share capital in Suez (the **Combination Agreement**). On 29 June 2021, Veolia filed a revised draft public offer document with the *Autorité des Marchés*

¹ [REDACTED].

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

Financiers (AMF) in France reflecting the increased offer price. This offer has been recommended by the Board of Directors of Suez. On 20 July 2021, the AMF declared the public tender offer for the remaining shares of Suez filed by Veolia on 30 June 2021 to be compliant and approved the draft offer document.⁵

35. Where a company acquires control of an enterprise through a series of transactions or successive events within a single two-year period, for the purposes of a merger reference, sections 27(5) and 29 of the Act give the CMA discretion to treat those transactions or successive events as having occurred simultaneously on the date of the last transaction.⁶ In giving effect to these provisions, the CMA may take into account transactions in contemplation (that is, where the last of the events has not yet occurred).⁷ The CMA believes it is appropriate to treat the Completed Transaction and the Anticipated Transaction as occurring simultaneously (ie on the future date of the Anticipated Transaction).
36. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in Australia, Brazil, Canada, Chile, China, Colombia, Ecuador, India, Morocco, Russia, Saudi Arabia, South Korea, Taiwan, Turkey, United Arab Emirates, the United States of America and the Common Market for Eastern and Southern Africa. The Merger was also formally notified to the European Commission (the **EC**) under the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the **EUMR**) on 22 October 2021.⁸

Procedure

37. The Merger was considered at a Case Review Meeting.⁹

Background to waste and water management services

The Parties' global activities in waste and water management services

38. Both Parties have significant activities in waste and water management in the UK and globally.

⁵ [REDACTED].

⁶ *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, December 2020, paragraph 4.42.

⁷ Article 3 of the Enterprise Act 2002 (Anticipated Mergers) Order 2003 and *CMA2*, paragraph 4.42.

⁸ [REDACTED].

⁹ *CMA2*, from paragraph 9.28.

Veolia

39. Veolia has permanent establishments and approximately 179,000 employees across 55 countries.¹⁰ In its 2020 universal registration document, Veolia states that it is ‘a world leader in environmental services and offers a complete range of solutions for managing Water, Waste and Energy on five continents’.¹¹ Across the UK and Ireland, Veolia employs approximately 14,000 people.¹² In the UK, Veolia is present across the waste management supply chain including collection, sorting, incineration with energy recovery, and also has activities in several water management services.
40. While Veolia states in its 2020 universal registration document that most markets for environmental services are very competitive, it singles itself out and states that ‘there are few players that are comparable to Veolia on a global level’. Veolia also notes that it is one of three ‘global multi-service companies’ alongside Suez and Remondis (the latter does not have significant activities in the UK), noting that Suez’s strategic focus and range of services in water and waste management make it Veolia’s closest competitor. Veolia also notes that what sets it apart from the competition is its larger geographic footprint, more extensive range of services, the synergies between its water, waste and energy business lines, its portfolio of technologies enabling it to tackle all water treatment problems, and its huge portfolio of industrial customers.¹³
41. With regard to waste management, Veolia’s 2020 universal registration document sets out that it is one of the leading players in the management of liquid, solid, non-hazardous and hazardous waste.¹⁴ With respect to water management, the same document states that Veolia is a leading expert in water cycle management, engaged in resource management, production and transport of drinking water and industrial process water, collection, treatment and recovery of wastewater from all sources and treatment of by-products, customer relationship management and design and construction of treatment infrastructure and networks.¹⁵
42. Further, Veolia publicly recognises that innovation is inherent to its business strategy.¹⁶ In 2020, Veolia’s total budget for research and

¹⁰ Veolia’s universal registration document 2020, pages 12 and 16.

¹¹ Veolia’s universal registration document 2020, page 16.

¹² See, for instance, an [article](#) by Beth Whittaker, Chief Human Resources Officer, Veolia UK and Ireland.

¹³ Veolia’s universal registration document 2020, page 36.

¹⁴ Veolia’s universal registration document 2020, page 25.

¹⁵ Veolia’s universal registration document 2020, page 23.

¹⁶ Veolia’s universal registration document 2020, page 37.

innovation (**R&I**) was €56 million.¹⁷ R&I is coordinated by Veolia Recherche et Innovation (**VERI**) at group level; VERI conducts research programs on behalf of and in cooperation with all the group's activities.¹⁸ The 2020 universal registration document is clear that Veolia's innovation capabilities are cross-border, and Veolia notes that in 2020, its R&I activities involved over 200 researchers and technicians, as well as experts present in all Veolia group entities.¹⁹ The same document sets out that Veolia's global innovation network supports and encourages local innovation initiatives by sharing best practices or specific tools. In this context, Veolia is committed to protecting its intellectual property rights, including trademarks and patents 'as they set it apart from the competition'.²⁰ As of 1 June 2021, Veolia had [✂] active patents registered in the UK only.²¹

Suez

43. With approximately 86,000 employees across 70 countries and global revenues of €17.2 billion, Suez refers to itself as one of the 'two main players in the global environment market'.²² In its 2020 universal registration document, Suez notes that it is present throughout the water management and waste recovery value chain, from the construction and the operation of water networks and infrastructure, to collection, sorting and recycling, and the production of renewable energy, new materials and the provision of digital services. It describes itself as being able to offer a complete range of services, to all categories of customers, including public authorities and industrial players.²³ In the UK, Suez employs approximately 5,700 people.²⁴
44. In public facing documentation, Suez notes that it is the world's second largest provider of environmental services, and that it is second in the global market for environmental water-related services, behind Veolia. Within waste, Suez notes that it ranks fourth in the terms of global revenues behind the companies Waste Management, Republic Services (neither of which have significant activities in the UK), and Veolia. Suez remarks that except for Veolia, most of its competitors are national suppliers and/or do not provide all the services that it offers.²⁵

¹⁷ Veolia's universal registration document 2020, page 37.

¹⁸ Veolia's universal registration document 2020, page 38.

¹⁹ Veolia's universal registration document 2020, page 39.

²⁰ Veolia's universal registration document 2020, page 57.

²¹ [✂].

²² Suez's universal registration document 2020, page 34; see also Suez's [website](#).

²³ Suez's universal registration document 2020, page 34.

²⁴ Suez's universal registration document 2020, page 42.

²⁵ Suez's universal registration document 2020, page 61.

45. Similar to Veolia, Suez views innovation as a high priority, describing it as a ‘core component of its strategy’.²⁶ In 2020, Suez invested €103.3 million in R&I globally.²⁷ Like Veolia, Suez’s innovation efforts are developed through a network of global experts, and Suez highlights the importance of sharing its innovations throughout the business.²⁸ Suez also develops innovations in partnerships with academics and European bodies such as Water Europe and KIC Climate. Similarly to Veolia, Suez has an intellectual property strategy aimed at gaining a ‘decisive competitive edge’.²⁹ As of 1 June 2021, Suez had [§] active patents registered in the UK only.^{30, 31}

The Merger

46. Veolia publicly communicated that the Merger will create ‘a world champion of ecological transformation’ and would result in the creation of a truly global player in the management of water and waste processing. In deal-related documentation Veolia notes that the Merged Entity would have an extensive offering in terms of services and performance both for regional authorities and industrial customers and would also be extremely strong in strategic future growth segments and in know-how, especially in digital.³²

Other suppliers of waste and water management services in the UK

Waste

47. The CMA’s investigation has found that there are several other waste management companies of different sizes and capabilities operating in the UK, including:
- (a) **Biffa** is a UK national provider of waste management services, with approximately 9,000 employees. Biffa states that it is active in the waste sector, including in collection, recycling, energy generation, treatment and disposal, operation and management of landfills.³³ Biffa is listed on the London Stock Exchange and its 2020 turnover was approximately £1 billion,³⁴ achieved across 49 counties in the UK.³⁵

²⁶ Suez’s universal registration document 2020, page 57.

²⁷ Suez’s universal registration document 2020, page 58.

²⁸ Suez’s universal registration document 2020, page 58.

²⁹ Suez’s universal registration document 2020, page 63.

³⁰ [§].

³¹ Suez’s universal registration document 2020, page 58.

³² Veolia’s universal registration document 2020, page 22.

³³ Biffa’s [website](#).

³⁴ Biffa’s [website](#).

³⁵ Biffa’s [website](#).

- (b) **Viridor** is a UK-based energy and waste management company. Viridor has 3,000 employees across 48 UK sites as well as more than 300 recycling, energy recovery and landfill diversion facilities.³⁶ In 2020, the Pennon group sold Viridor to KKR and Co Inc. Its 2020 turnover was approximately £758 million in the UK.³⁷ Viridor divested its C&I waste collection business and other assets to Biffa on 1 September 2021.³⁸
- (c) **FCC Environment (FCC)** is part of a global corporation active in waste, water and construction services with 55,000 employees across Europe, North and South America and Africa.³⁹ The FCC group's 2020 worldwide turnover was approximately €4.44 billion, of which approximately €569 million was generated in the UK.⁴⁰ In the UK, FCC employs approximately 2,450 employees across all its sectors of activity,⁴¹ including waste collection, street cleansing, recycling, waste treatment, energy generation, waste recovery services and HWRC management services.⁴²
- (d) **Serco** is a UK provider of public services in the defence, justice, transport, citizens and health services sectors. In the waste management sector, Serco is active in collection, recycling and street cleansing.⁴³ It employs approximately 55,000 people in more than 20 countries worldwide.⁴⁴ Serco is listed on the London Stock Exchange and its 2020 turnover was approximately £3.9 billion,⁴⁵ of which £1.6 billion was generated in UK.⁴⁶
- (e) **Urbaser** is a Spain-based environmental services provider with activities in Europe, Asia, North Africa and South America.⁴⁷ In the UK, Urbaser is active in waste treatment and recovery, water treatment and urban services such as waste collections, street cleansing, grounds maintenance and beach cleansing. In January 2021, Urbaser acquired six waste management contracts from Amey.⁴⁸ Urbaser's 2019 worldwide turnover was approximately €2.2 billion, with revenues of approximately £52.5 million in the UK.⁴⁹ It employs approximately 40,000 employees in

³⁶ Viridor's [Modern Slavery Statement 2021](#).

³⁷ Viridor's [Sustainability Summary Report 2020](#).

³⁸ Biffa's [website](#).

³⁹ FCC's [website](#).

⁴⁰ FCC's [website](#).

⁴¹ FCC's latest accounts filed on Companies House.

⁴² FCC's [website](#).

⁴³ Serco's [website](#).

⁴⁴ Serco's [website](#).

⁴⁵ Serco's [Annual Report and Accounts 2020](#).

⁴⁶ Serco's latest accounts filed on Companies House, page 66.

⁴⁷ Urbaser's [website](#).

⁴⁸ See an [article](#) on Letsrecycle.com, 14 January 2021.

⁴⁹ Of which approximately £48.33 million are revenues for the provision of services and approximately £4 million for construction contracts. See Urbaser's [website](#) and Urbaser's latest accounts filed on Companies House, page 16 and 33.

28 countries worldwide, of which approximately 1,080 are in the UK.⁵⁰ In October 2021, Platinum Equity acquired Urbaser for €2.97 billion.⁵¹

- (f) **Beuparc** is an Ireland-based company active in the UK in waste management, recycling and MRF sorting services. Macquarie Asset Management acquired the Beuparc group in June 2021 for €1.3 billion.⁵² Beuparc currently employs over 2,300 employees in Ireland, the UK and the Netherlands and trades under its multiple acquired brands (eg Panda).⁵³

Water

48. The CMA's investigation has found that there are several other water management companies of different sizes and capabilities operating in the UK, including:

- (a) **Alpheus**, a wholly owned subsidiary of the Anglian Water Group, is a water and wastewater asset management company specialising in large wastewater treatment plants. Alpheus has approximately 200 employees in the UK and generated a turnover of approximately £585,000 in 2020.^{54 i}
- (b) **Aquabio**, a company part of the Freudenberg Group, provides advanced systems for the treatment and reuse of industrial wastewater at its customers' facilities.⁵⁵ The CMA understands that it has approximately 50 employees in the UK and generated a turnover of approximately £547,000 in the UK in 2020.^{56 ii}
- (c) **Nijhuis**, a company part of the Saur group, specializes in the design, production and installation of water treatment and sludge processing systems for industrial applications. Nijhuis had global revenues of approximately €90 million in 2019.⁵⁷
- (d) **Acwa** is a municipal and industrial water and wastewater treatment company located in Skipton and appears to have approximately 50 employees. Acwa is part of the Consolidated Contractors Group since

⁵⁰ Urbaser's [website](#). See also Urbaser's [Sustainability Report 2020](#), page 111.

⁵¹ Platinum Equity's [website](#).

⁵² Macquarie's [website](#).

⁵³ Beuparc's [website](#).

⁵⁴ Alpheus's latest accounts filed on Companies House.

⁵⁵ Aquabio's [website](#).

⁵⁶ Aquabio's latest accounts filed on Companies House.

⁵⁷ Nijhuis' [website](#): Interview with Menno Holterman, CEO of Nijhuis Saur Industries. See also Nijhuis's latest accounts filed on Companies House.

1991. In 2020, Acwa had a turnover of approximately £6 million in the UK.⁵⁸

- (e) **Solenis** is a US headquartered company with a presence in 120 countries and approximately 6,000 employees. Solenis is engaged in providing water treatment and process improvement solutions.⁵⁹ In November 2021, Platinum Equity acquired Solenis for \$5.25 billion and merged it with Sigura Water.⁶⁰ In 2020, Solenis generated revenues of approximately £2.2 million in the UK.⁶¹

49. In relation to mobile water services (**MWS**), other UK suppliers include:

- (a) **Ecolutia** provides mobile and outsources water treatment services globally to energy, industrial and civil infrastructure sectors. It is headquartered in Switzerland and is present in the UK, USA, Germany Singapore, the Philippines and Australia.⁶² Ecolutia generated a turnover of approximately £1.2 million in the UK in 2020.^{63 iii}
- (b) **Nalco** is a part of Ecolab and is engaged in providing water treatment and process improvement solutions. Ecolab generated global turnover of approximately \$14.9 billion in 2019. Ecolab employs more than 49,000 people and has operations in more than 170 countries.⁶⁴ Nalco generated a turnover of approximately £63 million in the UK in 2020.⁶⁵
- (c) **Siltbuster** operates a fleet of water treatment equipment and solutions in the UK.

Parties' overlapping activities in the UK

50. In the UK, local authorities are responsible for managing the waste generated by households. This generally includes collecting waste from residents, sorting different dry recyclates (such as paper, cardboard, glass, metals and plastics), recovery (eg incineration with energy recovery, composting) and disposal of waste (eg via landfill). To fulfil these responsibilities, local authorities may procure services from specialist waste management companies, such as Veolia and Suez, through contracts that

⁵⁸ Acwa's latest accounts filed on Companies House.

⁵⁹ Solenis' [website](#).

⁶⁰ Solenis' [website](#).

⁶¹ Solenis' latest accounts filed on Companies House.

⁶² Ecolutia's [website](#).

⁶³ Ecolutia's latest accounts filed on Companies House.

⁶⁴ [§].

⁶⁵ Nalco's latest accounts filed on Companies House.

can be worth hundreds of millions of pounds. Businesses must also procure collection and disposal services for the waste they generate.

51. Businesses that use water as part of their processes and/or which generate wastewater will require water management services, for example through water and wastewater treatment facilities. These are facilities that provide the quantity and quality of water (such drinking water, treated water) required by the business, and also provide wastewater treatment. Business may also require mobile water services in response to emergency shutdowns, planned outages or to meet medium term needs. Both Veolia and Suez provide these water and wastewater management services.

Waste management services

52. In the UK, the Parties supply a broad range of waste management services and are active at most stages of the non-hazardous waste management supply chain (the **waste management supply chain**),^{66, 67} including:
- (a) **Collection of municipal waste:** this includes the collection of rubbish (ie the residual black-bin-bag waste), recycling, food and garden waste through collection rounds or at household waste recycling centres (**HWRCs**) which the Parties may also manage on behalf of local authorities;⁶⁸
 - (b) **Collection of C&I waste:** this includes the collection of mixed and specific waste flows from factories and other industrial premises, as well as offices and shops;⁶⁹
 - (c) **Waste recycling services**, including:
 - (i) **Sorting of dry recyclates** (eg paper, cardboard, glass, metals, plastics) at **material recovery facilities (MRFs)**:⁷⁰ MRFs sort different non-hazardous waste streams into separate containers before they are sent away for further processing. MRFs can differ in their capabilities and the types of waste they can sort. For example, some MRFs are automated by employing optical sorting using cameras and/or lasers, while some employ manual sorting using

⁶⁶ [REDACTED].

⁶⁷ The Decision does not discuss hazardous waste management services and regulated waste management services owing to Suez's limited related activities in the UK.

⁶⁸ Veolia manages [REDACTED] HWRCs across the UK and Suez manages [REDACTED] HWRCs ([REDACTED]).

⁶⁹ C&I waste does not include waste resulting from construction and demolition due to the absence of overlap between the Parties in the UK ([REDACTED]).

⁷⁰ [REDACTED].

operatives on picking lines. Also, some MRFs can only sort plastics and are therefore referred to as plastic recovery facilities (**PRFs**);^{71, 72}

Under long-term contracts with local authorities, a portion of an MRF's operational capacity will typically be reserved for use by the local authority that commissioned the infrastructure.⁷³ This gives the local authority priority of access over the capacity. The waste management company operating the MRF can sell the remaining capacity (ie that which has not been reserved for the local authority) (referred to as **Controlled Merchant Capacity**) to other customers,⁷⁴ usually subject to the local authority's prior authorisation. Alternatively, waste management companies seeking to sort waste can also purchase capacity in third parties' MRFs under contracts known as Fuel Supply Agreements;

- (d) Waste recovery and disposal (together, **waste disposal**) services, including:
- (i) **Incineration** of residual waste and MRF residues through **energy recovery facilities (ERFs)**: ERFs are incineration plants producing heat or electricity from burning residual waste, a process referred to as Energy-from-Waste (**EfW**) incineration or incineration with energy recovery. To treat waste by EfW incineration, waste management companies require access to capacity at an ERF. As with MRFs, under long term contracts with local authorities, a portion of the ERF's operational capacity will typically be reserved for use by the local authority that commissioned the infrastructure, with the remaining capacity available to the ERF operator as Controlled Merchant Capacity. Waste management companies can also seek to incinerate waste at third parties' ERFs under Fuel Supply Agreements;⁷⁵
 - (ii) **Composting of organic waste at in-vessel composting (IVC) facilities** (for mixed food and garden waste) **and open-windrow composting (OWC) facilities** (for unmixed garden waste): composting is the process by which a part of the organic matter of waste is decomposed by the activity of microorganisms in the presence of oxygen;⁷⁶

⁷¹ [REDACTED].

⁷² For the purpose of this Decision, the term MRFs includes PRFs.

⁷³ [REDACTED].

⁷⁴ These can be either the Parties' own C&I or municipal customers or other waste companies seeking to supply their own C&I or municipal customers.

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

- (iii) **Processing of wood waste:** wood waste is collected separately from dry recyclates and sent to specific wood-reprocessing sites rather than MRFs;⁷⁷ and
- (iv) **Disposal** of residual waste and MRF residues **via landfill**, ie in structures specifically designed for its containment, built in or on the ground, and in which the waste is isolated from the surrounding environment (groundwater, air, and rain).⁷⁸

- 53. As part of their waste collection and disposal activities, both Parties also operate a large network of truck depots and waste transfer stations (**WTS**), which they either own or manage on behalf of local authorities.⁷⁹
- 54. In addition to the individual overlapping segments described above, the Parties overlap in complex contracts for the supply of municipal waste management services to local authorities in the UK (**complex waste management contracts**). These contracts are discussed from paragraph 66 below.

Water management services

- 55. The Parties also both provide water management services which comprise the extraction, production, distribution and treatment of water, and the collection and treatment of wastewater, for both municipal and industrial purposes. In the UK, the Parties overlap in the following water management services:
 - (a) The **O&M of water and wastewater treatment facilities for industrial customers**:⁸⁰ water and wastewater treatment facilities provide the quantity and quality of water required, according to customer specifications, for the supply of treated water, drinking water, or wastewater treatment. The O&M of water and wastewater treatment facilities can either be provided by the owner of the facility or it can be contracted out to third parties such as Veolia and Suez;⁸¹

⁷⁷ [REDACTED]. Suez [REDACTED] ([REDACTED]), whereas Veolia does ([REDACTED]). Biomass facilities are incineration plants producing heat or electricity from waste wood or other biomass wastes ([REDACTED]).

⁷⁸ [REDACTED].

⁷⁹ [REDACTED].

⁸⁰ The EC has previously considered a segmentation between the supply of O&M services to Regulated Water Companies (**RWCs**) and the supply of O&M services to industrial customers. In this Paper, the CMA is not considering this segmentation as the Parties do not overlap in the supply of O&M to RWCs in the UK ([REDACTED]).

⁸¹ [REDACTED].

- (b) **MWS**: MWS involves the provision of moveable water treatment units that can be deployed to customers in response to emergency shutdowns, planned outages or to meet medium term needs;⁸² and
- (c) **The design and construction (D&C) of technological solutions and equipment for water and wastewater treatment systems**: both Parties design, build and integrate equipment or solutions for water treatment plants, as well as ‘off-the-shelf’ technological and engineering solutions that they provide to customers for the customer’s existing facilities.

Background to the competitive landscape, procurement practices and future trends

Waste

- 56. In the UK, local authorities are responsible for collecting and treating the waste generated by households. To fulfil these responsibilities, local authorities may procure services from specialist waste management companies, such as Veolia and Suez.

Local authority types

- 57. There are three different types of local authorities in England, which may procure waste management services in different ways. In particular:
 - (a) **Waste Collection Authorities** are responsible for waste collection and recycling services described at paragraphs 52(a) and 52(c) (eg the district, borough and city councils in England such as St Albans City Council);
 - (b) **Waste Disposal Authorities** are not responsible for waste collection and recycling services but instead for the waste disposal services described at paragraph 52(d) above (eg the county councils in England such as Surrey County Council); and
 - (c) Some **Unitary Authorities** are responsible for both waste collection, recycling and waste disposal services (eg unitary authorities in the shire areas, London boroughs and metropolitan boroughs in England such as South Gloucestershire Council).⁸³

⁸² [§].

⁸³ See UK Government’s [website](#). Some Unitary Authorities are responsible only for waste collection and recycling only as there is a separate statutory body responsible for waste disposal (eg the West London Waste

58. Scotland, Wales and Northern Ireland are not subject to the same two-tier local government system applicable in England and responsibilities relating to waste management are therefore not split between different types of local authorities.⁸⁴

Trends in waste management services and the move towards a net zero economy

59. Water and waste management services are becoming increasingly important as the UK Government and devolved nations implement net zero strategies, and move towards a circular economy.⁸⁵ The circular economy is a model of consumption and production that involves sharing, reusing, repairing, renewing and recycling existing products for as long as possible. Pursuant to this strategic goal, the UK Government's waste hierarchy prioritises the prevention of waste, waste recycling and other waste recovery, while seeking to reduce waste disposal, including via landfill. In particular, the UK Government expects waste incineration, which can be used to generate energy, to play a significant ongoing role in waste management in the UK.⁸⁶
60. While historically most of the UK's waste was disposed via landfill, in January 2021, the Department for Environment, Food and Rural Affairs (**DEFRA**) published its 'Waste Management Plan for England' (the **Plan**). The Plan is a requirement under The Waste (England and Wales) Regulations 2011 (**The Waste Regulations**)⁸⁷ and must set out the measures to be taken so that, by 2035 the preparing for re-use and the recycling of municipal waste is increased to a minimum of 65% by weight and the amount of municipal waste sent to landfill is reduced to 10% or less of the total amount of municipal waste generated (by weight).⁸⁸ The UK Government's strategy is ultimately to reduce the use of landfill to zero.
61. Indeed, over the past decade the proportion of waste disposed via landfill has steadily reduced from over 80% in 2010 to less than half in 2019, with waste processed through ERFs increasing from around 6.7 million tonnes in 2014 to 14 million tonnes in 2020.⁸⁹

Authority which is responsible for waste disposal services for the London boroughs of Brent, Ealing, Harrow, Hillingdon, Hounslow and Richmond Upon Thames).

⁸⁴ See webpages of the devolved governments for [Scotland](#), [Wales](#) and [Northern Ireland](#).

⁸⁵ See, for example, [Net Zero Strategy: Build Back Greener](#), October 2021.

⁸⁶ [Our Waste, Our Resources: A Strategy For England](#), 2018.

⁸⁷ [Waste Regulation 2011](#) (England and Wales).

⁸⁸ DEFRA, [Waste Management Plan for England](#), January 2021, page 10.

⁸⁹ [🔗].

Historic PPP / PFI contracts and the trend towards disaggregation of waste management services

62. Historically, local authorities have procured municipal waste management services under single Public-Private Partnerships (**PPP**) contracts (including some contracted through the Private Finance Initiative (the **PFI**)), bundling a broad range of services under a single waste management contract with a supplier such as Veolia or Suez (who may then in turn have sub-contracted some of the services included in the contract).
63. In line with recent regulatory and policy developments, there has been a move from local authorities towards increasingly fragmenting waste management contracts into lots. Indeed, as early as 2007, local authorities were encouraged to disaggregate waste management contracts in order to 'open the market' and prevent smaller suppliers from being excluded in bidding for contracts with local authorities.⁹⁰ Furthermore, since 2018, the PFI is no longer used to develop new infrastructure (although the option to procure waste management contracts through PPP contracts remains).⁹¹
64. As a result, local authorities now have the option, and are encouraged, to procure waste management services in separate tenders, and to simplify their procurement processes in order to maximise competition. In this context, Veolia submitted that PFI / PPP contracts are mostly a 'thing of the past'.⁹²
65. The CMA found that in spite of the trend towards disaggregation and simplification of waste management services, local authorities retain a discretion over how they design and award tenders for waste management services. This discretion is enshrined in Regulation 46(1) of The Public Contracts Regulations 2015 which states that: '[c]ontracting authorities **may** decide to award a contract in the form of separate lots and **may** determine the size and subject-matter of such lots' (emphasis added).

Current public procurement landscape

66. The CMA believes that a subset of waste management contracts procured by local authorities remain particularly complex. Such complexity can arise from a range of sometimes interacting factors.
67. The CMA found that local authorities regularly bundle several waste management services into single tenders (some to a larger extent than

⁹⁰ DEFRA, [Waste Strategy for England 2007](#), page 83.

⁹¹ [Project Finance Initiative and Private Finance 2 projects: 2018 summary data](#).

⁹² [redacted].

others) which the CMA refers to as **multi-faceted waste management contracts** and/or join together with other local authorities to tender for waste management services (eg through partnerships such as the Merseyside and Halton Waste Partnership which covers the following councils: Knowsley Metropolitan Borough Council, Metropolitan Borough of Wirral Council, St Helens Metropolitan Borough Council, Halton Borough Council, Sefton Metropolitan Borough Council, Liverpool City Council).⁹³

68. In practice, this means that many local authorities (in particular Unitary Authorities and Waste Disposal Authorities) do not run separate tender processes for each individual waste service they outsource. Instead, local authorities procure their required waste management services in a wide variety of ways, depending on the scope of their roles and preferences with the aim to secure the best value for money. Value for money can be of a financial nature, but also assessed in terms of buying more sustainable and efficient products and services. This is reflected, for example, in the most recent Waste Strategy for England which puts the emphasis on ‘establishing a more strategic and robust approach that puts social value, including environmental considerations, at the heart of our procurement policy’.⁹⁴
69. There are several reasons why local authorities may choose to tender several services as part of a single tender, even though tendering services into lots or disaggregating previously integrated waste management contracts might allow more suppliers to compete. For example, one local authority submitted that splitting services according to facility type (eg sorting vs incineration) may not always be possible as this would require splitting environmental permits, with several contractors operating different facilities in one location, which would require separate drainage and spill containment which cannot be retrospectively installed. The same local authority also submitted that splitting by geographical location would result in too many contractual interfaces where waste is passing from one contractor to another, resulting in increased risk to the local authority (or increased cost if the risk is passed to a particular contractor).⁹⁵
70. In addition to multi-faceted waste management contracts, the CMA encountered other possible indicators of complexity, including the risk profile, duration and/or overall value of such contracts, as well as specific requirements from the local authorities procuring such services. Several

⁹³ See Veolia's [website](#).

⁹⁴ [Our Waste, Our Resources: A Strategy For England](#), 2018, page 63.

⁹⁵ [redacted]'s response to the CMA's municipal customers questionnaire and note of call with [redacted] dated 13 October 2021.

examples of multi-faceted, or otherwise complex waste management contracts are discussed throughout the CMA's assessment of the related theory of harm below (ie unilateral horizontal effects in the supply of complex waste management contracts procured by local authorities).

71. The CMA found that there is no clear-cut criteria or threshold that makes a municipal contract for waste management services complex. This is primarily due to the heterogenous way in which waste management services are procured. As a result, the CMA has not sought to carry out a granular assessment of whether a given contract is complex. Rather, the CMA formed its view based on feedback from market participants, submissions from the Parties and their internal documents.
72. In its internal documents, Veolia discusses complex contracts by reference to types of contract ([redacted]) or a certain monetary threshold [redacted].⁹⁶ Veolia also identifies contracts for municipal collections and street cleansing with [redacted] as complex, without detailing further on which bases these contracts are perceived as complex.⁹⁷ This suggests that complexity can arise from a variety of factors.
73. Separately, the CMA received concerns from local authorities in the UK that recently ran tenders for waste management services for which competition had been insufficient due to either the small number of bidders or because many of the bidders fell short of the required quality standards. The tenders displayed some of the following features: some degree of disaggregation into lots although the contracts were multi-faceted (ie including waste management services bundled together); a large amount of waste to handle; a variety of facilities to operate; a very high overall contract value (several millions of pounds); and strict requirements regarding adequate expertise and experience.⁹⁸

Competitive conditions for complex waste management contracts procured by local authorities

74. The available evidence shows that competitive conditions relating to complex waste management contracts procured by local authorities differ to those relating to more straightforward municipal contracts, as set out in further detail below from paragraph 127. Local authorities submitted that to

⁹⁶ [redacted].

⁹⁷ [redacted].

⁹⁸ Note of calls with [redacted] dated 17 May 2021 and [redacted] dated 13 October 2021; [redacted] and [redacted]'s responses to the CMA's municipal customers questionnaire; [redacted] and [redacted]'s responses to the CMA's online questionnaire published on Microsoft Forms and made accessible to local authorities in the UK (**the online questionnaire**); and [redacted]'s submission to the CMA dated 30 June 2021.

be in a position to win a tender for a complex waste management contract, potential suppliers typically have to meet several strict requirements. While these requirements can vary on a tender-specific basis, the available evidence suggests that bidders tend to have to show:

- (a) A track record in supplying large waste management contracts and/or a track record in supplying waste management contracts covering several waste management services;
- (b) Sufficient geographical reach, including having access to fallback facilities in the event of a site outage; and
- (c) Sound financial standing, including access to significant funding and the ability to provide financial guarantees to local authorities.

75. In particular:

- (a) The majority of local authorities that procure complex waste management services submitted that quality of service, price and track record were very important or essential.⁹⁹ In this context, one competitor specified that in multi-faceted waste management contracts, track-record and experience had to be demonstrated for each included service.¹⁰⁰ Some municipal customers echoed this, submitting that bidders need to demonstrate the ability to fulfil the various parts of the contract.¹⁰¹
- (b) Several large local authorities submitted that for particularly large and/or complex contracts bundling several waste management services across several sites, adequate capability and proven experience in operating such contracts were essential;¹⁰² and
- (c) One third party noted that bundled services contracts would often be of higher value meaning that companies bidding for these contracts would have to be of sound financial standing, have access to funding and be able to provide financial covenants/guarantees.¹⁰³

76. The available evidence also suggests that as the complexity of a particular waste management contract increases, the number of bidders able to service the contract decreases. For example:

⁹⁹ [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's municipal customers questionnaire.

¹⁰⁰ [redacted]'s response to the CMA's disposal competitors questionnaire.

¹⁰¹ [redacted] and [redacted]'s responses to the CMA's municipal customers questionnaire.

¹⁰² Note of calls with [redacted] dated 17 May 2021 and [redacted], dated 13 October 2021. [redacted]'s submission to the CMA of 30 June 2021.

¹⁰³ [redacted]'s response to the CMA's disposal competitors questionnaire.

- (a) Two municipal customers submitted that the wider the diversity of services covered by the contract, the lower the number of bidders there are likely to be;¹⁰⁴
- (b) Another municipal customer submitted that it would be quite difficult for a small company to manage the integration risk of a multi-faceted waste management contract successfully;¹⁰⁵
- (c) One competitor submitted that post-Merger, fewer companies will be able to demonstrate the track record and experience across all the bundled waste management services;¹⁰⁶ and
- (d) Another competitor stated that the cost of bidding for municipal contracts is extremely high, which may in turn prevent certain categories of competitors from bidding.¹⁰⁷

Water

- 77. Businesses that use water as part of their processes and/or which generate wastewater require water management services. Both Suez and Veolia provide these water management services, including the D&C of equipment and solutions used in water and wastewater facilities, and the O&M of these facilities. Both Parties also supply MWS to businesses in response to emergency shutdowns, planned outages or to meet medium term needs.
- 78. In terms of procurement, the CMA found that customers for O&M of water and wastewater facilities services often conduct their contracts through tender processes or by inviting bids from a number of providers, which allows customers to establish which provider is most price competitive.¹⁰⁸ However, as discussed in more detail below, customers may also negotiate better deals with their existing supplier in lieu of issuing new tenders.
- 79. For MWS services, feedback from third parties showed that contracts are not always awarded by tenders but instead may be awarded to the existing supplier or the supplier of a related water management service.
- 80. With regard to future trends, in line with the sixth Sustainable Development Goal of the United Nations to '[e]nsure availability and sustainable management of water and sanitation for all',¹⁰⁹ several water management

¹⁰⁴ [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's municipal customers questionnaire.

¹⁰⁵ [redacted]'s response to the CMA's municipal customers questionnaire.

¹⁰⁶ [redacted]'s response to the CMA's TD competitors questionnaire.

¹⁰⁷ Note of call with [redacted], dated 8 April 2021.

¹⁰⁸ [redacted].

¹⁰⁹ United Nations' [website](#).

services suppliers note the growing emphasis on water reuse to support the circular economy.¹¹⁰ The suppliers of water management services understand that ‘it is no longer a choice but a necessity to reuse wastewater to continue growth’.¹¹¹

81. Another important trend in the water management industry is the growing use of innovation and smart technologies.¹¹² An academic involved in water management research told the CMA that developments include greater use of artificial intelligence and large data handling, stating that the water sector could be a ‘pioneer’ in infrastructure management through data mining.¹¹³ The Water Services Regulation Authority (**Ofwat**) also established a £200 million Innovation Fund, the themes of which highlight the importance of the above trends. In particular, the themes include meeting ‘net-zero emissions’ ambitions and ‘exploring opportunities associated with open data’.¹¹⁴

Jurisdiction

82. A merger must meet the following criteria to constitute a relevant merger situation for the purposes of the Act:¹¹⁵
- (a) First, the arrangements in progress or in contemplation will, if carried into effect, lead to enterprises ceasing to be distinct;
 - (b) Second, either:
 - (i) The UK turnover associated with the enterprise which is being acquired exceeds £70 million (the **turnover test**), or
 - (ii) The enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, together supply or acquire at least 25% of all those particular goods or services of that kind supplied in the UK or in a substantial part of it. The merger must also result in an increment to the share of supply or acquisition (the **share of supply test**); and

¹¹⁰ Nijhuis’ [website](#), Veolia’s [website](#) and Suez’s [website](#).

¹¹¹ Nijhuis’ [website](#).

¹¹² IWA’s [website](#).

¹¹³ Note of call with [redacted], dated 1 July 2021.

¹¹⁴ Ofwat’s [website](#).

¹¹⁵ Section 23 of the Act.

(c) In the case of a completed merger, third, the date of the merger must be no more than four months before the day the reference is made, subject to extensions.

83. To conclude that a transaction will lead to enterprises ceasing to be distinct, the CMA must find that an acquirer obtains a sufficient level of control (ie material influence, *de facto* control or a controlling interest)¹¹⁶ over the activities of an enterprise.¹¹⁷

Parties' submissions

84. Veolia submitted that the Anticipated Transaction constitutes an acquisition of control over Suez by Veolia and that the turnover test is met. Veolia submitted that the Anticipated Transaction therefore is a relevant merger situation for the purposes of the Act.¹¹⁸

85. As regards the Completed Transaction, Veolia submitted that its 29.9% shareholding in Suez does not give Veolia:

(a) [REDACTED];

(b) [REDACTED]; or

(c) [REDACTED].¹¹⁹

86. Veolia also submitted that [REDACTED].¹²⁰ Finally, Veolia submitted that it receives various documents and information, as a shareholder of Suez.¹²¹

CMA's assessment

87. As described at paragraph 34 above, the Merger is comprised of the staggered acquisition of Suez's issued share capital by Veolia. First, Veolia acquired a 29.9% shareholding in Suez from an existing Suez shareholder in October 2020 (ie the Completed Transaction), and second, pursuant to the Combination Agreement, Veolia will acquire all of Suez's remaining issued share capital (ie the Anticipated Transaction).

88. As described at paragraph 35 above, the CMA believes it is appropriate to use its discretion under sections 27(5) and 29 of the Act to treat the

¹¹⁶ CMA2, paragraphs 4.20 to 4.43.

¹¹⁷ CMA2, paragraphs 4.10 to 4.19.

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED].

¹²⁰ [REDACTED].

¹²¹ [REDACTED].

Completed Transaction and the Anticipated Transaction as occurring on the date of the last transaction (ie the future date of the Anticipated Transaction).

Enterprises ceasing to be distinct

89. Each of the Parties is an enterprise. As a result of the Merger, Veolia will acquire the entire share capital in Suez and will, therefore, acquire a controlling interest in Suez. As such, as a result of the Merger, these enterprises will cease to be distinct.¹²²

Turnover test

90. The UK turnover of Suez exceeds £70 million (see paragraph 33 above), so the turnover test in section 23(1)(b) of the Act is satisfied.

Statutory period for reference

91. As the CMA believes it is appropriate to use its discretion to treat the Completed Transaction and the Anticipated Transaction as occurring on the date of the last transaction (which is yet to occur), the four month statutory period reference under section 24 of the Act is not relevant to the CMA's assessment of whether the Merger will result in a relevant merger situation for the purposes of the Act.¹²³

¹²² For completeness, the CMA notes that pursuant to the Completed Transaction, Veolia has acquired 29.9% of the issued share capital in Suez. Given that it believes it is appropriate to use its discretion under the Act to treat the Completed Transaction and the Anticipated Transaction as occurring on the same day, the CMA is not required to conclude on whether the minority shareholding pursuant to the Completed Transaction gives rise to material influence by Veolia over Suez. However, having regard to all the circumstances of this case, pursuant to the Completed Transaction, the CMA notes that Veolia may have acquired the ability to exercise material influence over Suez in light of a number of mutually reinforcing factors, in particular:

- The size of Veolia's shareholding (it is Suez's largest shareholder and the rest of Suez's share capital is widely dispersed to much smaller shareholders);
- The fact that this shareholding may give Veolia a de facto ability to block special resolutions under Article L. 225-96 of the French Commercial Code; and
- Veolia's significant status and expertise in the sectors which are directly relevant to Suez's business which may, for example, give Veolia significant corresponding influence with other shareholders.

¹²³ For completeness, however, the Completed Transaction completed on 6 October 2020. At that time, the EUMR still applied in the UK. The EC had informed the CMA that it considered that the Completed Transaction and the Anticipated Transaction formed a single concentration with an EU dimension for the purposes of the EUMR. Accordingly, the CMA was prevented by the EUMR from applying the provisions of the Act to the Completed Transaction at that point (Article 21(2)-(3) of the EUMR). The Act, however, provided that the four month statutory period for reference which applies in respect of completed mergers will only begin when the CMA is no longer prevented from making a reference because of the EUMR, or anything done under or in accordance with the EUMR (see Section 122 of the Act as in force until 31 December 2020). Therefore, despite the Completed Transaction completing on 6 October 2020, the four month period did not begin until 31 December 2020 (the first date on which the EUMR did not prevent the CMA from making a reference). See [Guidance on the functions of the CMA after the end of the Transition Period \(CMA125\)](#), December 2020, paragraphs 1.1 and 3.7-3.10. Had the Parties completed pre-notification discussions and initiated merger control proceedings under the EUMR prior to the UK's exit from the EU, per Article 92 of the UK – EU Withdrawal Agreement, the EC would

Conclusion on jurisdiction

92. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation comprising the Completed Transaction and the Anticipated Transaction both occurring on the date of the Anticipated Transaction.

40 working day initial period

93. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 13 October 2021 and the statutory 40 working day deadline for a decision is therefore 7 December 2021.

Counterfactual

94. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). The CMA will generally conclude on the counterfactual conditions of competition broadly – that is, finding that the counterfactual is one of the following: prevailing or pre-merger conditions of competition, conditions of stronger competition or conditions of weaker competition.¹²⁴ The CMA seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger.¹²⁵ In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment. If two or more possible counterfactual scenarios lead to broadly the same conditions of competition the CMA may not find it necessary to select the particular scenario that leads to its counterfactual.¹²⁶
95. Only events that would have happened in the absence of the merger under review—and are not a consequence of it—can be incorporated into the counterfactual.¹²⁷

have retained jurisdiction to review any concentration which was notified pursuant to the EUMR. See [CMA125](#), paragraphs 3.4-3.6. Due to the Parties failing to respond by the stated deadline to numerous notices issued under section 109 of the Act, the CMA extended the four month period pursuant to section 25(2) of the Act several times. The first such notice of extension was issued on 29 January 2021 and the last was terminated on 18 October 2021, with at least one notice under section 25(2) of the Act being in force at all times in between these dates. The four-month deadline for a decision under section 24 of the Act would therefore, if applicable, be 17 January 2022, following the numerous extensions under section 25(2) of the Act

¹²⁴ [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 3.2.

¹²⁵ [CMA 129](#), paragraph 3.10.

¹²⁶ [CMA 129](#), paragraph 3.9.

¹²⁷ [CMA 129](#), paragraph 3.4.

Parties' submissions

96. Veolia first submitted that an alternative counterfactual to the prevailing conditions of competition should not be used.¹²⁸
97. Veolia also subsequently submitted that the CMA's counterfactual should take into account the planned sale of parts of Suez's business ([REDACTED]) to a consortium of new investors (**New Suez**) and its offer of certain commitments to the EC (including the sale of assets to create New Suez).¹²⁹ In particular, Veolia noted that it has offered to divest its UK MWS business pursuant its proposed commitments to the EC.¹³⁰ Veolia also noted that the CMA had considered a parallel merger in some depth in its Phase 1 decision in *BT/EE*.¹³¹

CMA assessment

98. In this case, there is no evidence supporting a different counterfactual, and the Notifying Party and third parties have not put forward arguments in this respect. Therefore, the CMA believes that the prevailing conditions of competition is the relevant counterfactual. Given that the CMA believes it is appropriate to use its discretion to treat the Completed Transaction and the Anticipated Transaction as occurring on the date of the last transaction (which is yet to occur), the prevailing conditions of competition in this case are the conditions of competition absent both the Completed Transaction and the Anticipated Transaction.
99. As regards Veolia's supplementary submissions that the CMA should take into account New Suez and its offer of commitments to the EC as part of its counterfactual, as noted above, only events that would have happened in the absence of the merger under review, and are not a consequence of it, can be incorporated into the counterfactual. The CMA notes that in *BT/EE* it considered the impact a parallel transaction between entirely different parties which was not contingent on or a consequence of the merger in question. *BT/EE* is therefore not analogous to the present situation.
100. Moreover, the completion of certain of the events that Veolia's submissions refer to (in particular the divestment of Veolia's UK MWS business) are currently prohibited by the CMA's interim enforcement order under section 72 of the Act which was imposed on Veolia and Suez on 1 February 2021

¹²⁸ [REDACTED].

¹²⁹ [REDACTED].

¹³⁰ [REDACTED].

¹³¹ [REDACTED]. See also CMA's decision of 9 June 2015 in case ME/6519-15, anticipated acquisition by BT Group plc of EE Limited.

(the **IEO**) and no consents under section 72(3C) of the Act have yet been granted to allow for these events to occur. It would therefore be inappropriate to consider them as part of the counterfactual.

Competitive assessment

101. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.¹³² Horizontal unilateral effects are more likely when the merging parties are close competitors and when competitive constraints are weak.¹³³ The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely.¹³⁴
102. Accordingly, the concern under the theories of harm assessed below is that the removal of one party as a competitor could allow the Merged Entity to increase prices, lower quality, reduce the range of their services and/or reduce innovation.
103. While the CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in a number of markets listed below, it is important to bear in mind that there are important linkages among some of these markets and that both companies in the UK benefit from being part of large global groups. Furthermore, the Parties are likely to keep growing and competing in new markets absent the Merger. The analysis in the rest of this Decision focuses on actual overlaps thereby underestimating the overall loss of competition resulting from the Merger:
- (a) The supply of complex waste management contracts procured by local authorities;
 - (b) The supply of non-hazardous C&I waste collection services;
 - (c) The supply of non-hazardous municipal waste collection services;

¹³² [CMA 129](#), paragraph 4.1.

¹³³ [CMA 129](#), paragraphs 4.3, 4.8 and 4.10.

¹³⁴ [CMA 129](#), paragraph 4.3.

- (d) The supply of services for the O&M of local authority-owned ERFs;
- (e) The supply of non-hazardous waste incineration services;
- (f) The supply of non-hazardous waste sorting services;
- (g) The supply of organic waste composting services at OWC facilities;
- (h) The supply of non-hazardous waste disposal services via landfill;
- (i) The supply of wood waste processing services;
- (j) The O&M of water and wastewater treatment facilities for industrial customers;
- (k) The supply of MWS; and
- (l) The design and construction (**D&C**) of technological solutions and equipment for water and wastewater treatment systems.

104. In assessing an anticipated merger, the CMA is required to consider whether it ‘may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services’. The assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise. It involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.¹³⁵
105. The CMA’s assessment of the competitive effects of the merger may not need to be based on a highly specific description of any particular market (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether particular products or services fall within it).¹³⁶ In this context, the CMA sets out its assessment of the frame of reference appropriate to each of the theories of harm in the section relating to that theory of harm below.
106. Given the competitive dynamics in this market, the CMA is particularly concerned that the removal of one of the Parties could result in the overall number of players becoming too limited such that customers faced inadequate alternatives in future tenders.

¹³⁵ CMA 129, paragraphs 9.1-9.2.

¹³⁶ CMA 129, paragraph 9.5.

Horizontal unilateral effects in the supply of complex waste management contracts procured by local authorities

107. As set out above in paragraphs 52, both Veolia and Suez are active across the waste management supply chain and operate in a UK waste management sector that according to [REDACTED].¹³⁷
108. The current portfolio of Veolia's and Suez's contracts with local authorities show that their municipal waste management contracts more often than not cover more than one waste service. For example, of the [REDACTED] municipal waste collection contracts that Veolia currently has [REDACTED] include at least one other component in addition to pure municipal waste collection services. Municipal waste collection is frequently bundled with street cleansing, processing and/or sale of recyclates, sorting, and/or grounds maintenance, winter maintenance and/or beach cleaning.¹³⁸
109. The CMA also notes the limited tender data available for standalone waste management services such as non-hazardous waste sorting services. For instance, Veolia only participated in [REDACTED] such tenders over the last five years whereas, in the same period, Veolia was awarded at least [REDACTED] municipal contracts where sorting was included as part of a package of waste management services.¹³⁹
110. Based on the above facts, the CMA believes it would be artificial to assess the effects on competition of the Merger in the waste sector in the UK by solely analysing the conditions of competition in the various segments within the waste management supply chain as standalone segments and in isolation from one another as this risks only partially reflecting the competitive dynamics at play. Rather, the CMA believes it is appropriate to adopt a broader and more holistic approach to the waste management services procured by local authorities.
111. Notwithstanding this approach, the CMA also, on a conservative basis and in keeping with precedents,¹⁴⁰ assessed the effects on competition of the Merger in each of the key segments composing the waste management supply chain in separate theories of harm.

¹³⁷ [REDACTED].

¹³⁸ [REDACTED].

¹³⁹ [REDACTED].

¹⁴⁰ See, for instance, OFT's decision of 17 September 2004 in case ME/1162/04, completed acquisition by Cholet Acquisitions 2 Limited of the UK landfill and energy business of Shanks Group plc; OFT's decision of 9 May 2005 in case ME/1635/05, completed acquisition by Augean plc of Atlantic Waste Holdings Limited and Waste Holding Limited; and EC's decision of 30 July 2009 in case COMP/M.5464, *Veolia Eau/Société des Eaux de Marseille/Société des Eaux d'Arles/Société Stéphanoise des Eaux*.

112. As set at paragraph 54 above, the Parties overlap in complex contracts for the supply of municipal waste management services in the UK: each Party provides such services to a range of local authorities across the UK. In addition, as set out in 129 below, the Parties' internal documents reflect a focus on competing specifically for complex contracts.

113. In assessing this theory of harm, the CMA has considered:

- (a) The frame of reference;
- (b) The closeness of competition between the Parties;
- (c) The competitive constraints from other alternatives; and
- (d) Barriers to entry and expansion.

Frame of reference

Product scope

114. The CMA considered whether complex waste management contracts procured by local authorities, described at paragraphs 66 to 73 above, may form a separate product frame of reference.

- *Parties' submissions*

115. In relation to non-hazardous waste management services, Veolia proposed that the CMA investigate separate markets for each of municipal waste collection, street cleansing, C&I waste collection, sorting, landfill, incineration, and material recovery and submitted its assessment of the horizontal effects of the Merger on this basis.¹⁴¹

116. Further to a query from the CMA, Veolia provided an overview of integrated waste management contracts procured by local authorities (**integrated contracts**) as a potential separate product frame of reference.

117. Veolia submitted that, in its experience, there is no clear or standard definition as to what constitutes an integrated contract and that all contracts vary in scope at the discretion of the local authority. Used in a narrower sense, an integrated contract would be one that includes, as a minimum, the provision of treatment and/or disposal services for two or more different waste streams. This would include the majority of PFI/PPP contracts

¹⁴¹ [REDACTED].

tendered 10 to 25 years ago, but Veolia submitted that there are relatively few recent examples of local authorities tendering this type of contract. An even narrower use of the term is one that include all stages of the waste management process from collections to disposal, which there are examples of (although this is rare in modern contracts). In its submissions, Veolia appears to rely extensively on a narrow use of the term ‘integrated contract’ which it erroneously conflates with the notion of multi-faceted waste management contracts used by the CMA in its Issues Paper of 11 November 2021 (the **Issues Paper**) and the Decision.¹⁴²

118. Further, Veolia submitted that local authorities historically procured municipal waste management services through integrated contracts for the following reasons:

- (a) Local authorities were only beginning to use private providers for waste management services and wanted to transfer greater risks on to outsourced providers than is the case today;
- (b) There was a need to build infrastructure associated with the sector’s move away from landfill towards more sophisticated treatment options; and
- (c) Local authorities benefited from PFI credits for investment in capital infrastructure.¹⁴³

119. This was echoed by Suez who submitted that integrated contracts have been used to outsource the management of complex waste flows, have intensive capital requirements (including significant bid costs) and impose demanding performance criteria given the level of risk assumed by the suppliers.¹⁴⁴

120. Veolia also submitted, as these integrated contracts come to an end, local authorities are no longer tendering contracts in the same way and are encouraged to disaggregate previously integrated municipal waste management services and increasingly fragment tenders into lots. Specifically, Veolia noted that a majority of the local authorities that outsource waste management services separate their collection and disposal contracts.¹⁴⁵ Notwithstanding, Veolia acknowledged that it is in the

¹⁴² [REDACTED].

¹⁴³ [REDACTED].

¹⁴⁴ [REDACTED].

¹⁴⁵ Separately, Suez submitted that, within treatment and disposal, local authorities typically issue separate treatment contracts depending on the material to be recycled and separate disposal contracts depending on the prescribed disposal method. However, in practice, contracts from the same local authority tend (especially in larger contracts) to be awarded to the same supplier (particularly in the case of disposal contracts) ([REDACTED]).

discretion of the local authority whether and how to separate or bundle services conducting public tenders.¹⁴⁶

121. Prior to the Issues Paper, the CMA had not directly sought information from the Parties on whether, aside from integrated contracts (as narrowly defined by Veolia), there may be other types of complex contracts for the supply of municipal waste management services that may form a separate product frame of reference. Following a review of the evidence gathered in its investigation including the Parties' internal documents and input from third parties, the CMA identified the relevance of complex contracts and set out its concerns with respect to such contracts in its Issues Paper.
122. In response to the CMA's Issues Paper in relation to the theory of harm related to complex contracts for the supply of municipal waste management services, Veolia submitted that:
- (a) There is no distinct category of complex municipal contracts, nor recognised industry definition of a complex contract and no definable group of customers or contracts that would fall in such a category. Municipal contracts for the supply of waste management services vary in size, in the number of services included and in other respects;
 - (b) The CMA's characterisation of complex contracts does not accurately reflect the market; and
 - (c) A market for complex contracts would be inconsistent with UK and EC precedents which have defined markets according to the type of waste management service provided, including in relation to municipal services.¹⁴⁷
- *CMA's assessment*
123. While market definition can be an important part of the overall merger assessment process, the CMA's experience is that in most mergers, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms' behaviour, captures the competitive dynamics more fully than formal market definition.¹⁴⁸
124. In any event, the outcome of any market definition exercise does not determine the outcome of the CMA's analysis of the competitive effects of

¹⁴⁶ [REDACTED].

¹⁴⁷ [REDACTED].

¹⁴⁸ [CMA 129](#), paragraph 9.2.

the merger in any mechanistic way.¹⁴⁹ In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.¹⁵⁰

125. In a context where municipal contracts for waste management services lack homogeneity as they vary in size, in the number of services they include and in other respects (see from paragraph 66 above), rather than come to finely balanced judgements on what is 'inside' our 'outside' the market, the CMA believes it is more helpful to describe the constraint posed by different categories of supplier as sitting on a continuum between 'strong' and 'weak'.¹⁵¹ Indeed, not every firm 'in' a market will be equal.¹⁵²
126. Neither the CMA nor its predecessors in the UK have considered the supply of complex waste management contracts procured by local authorities; nor has the EC. However, the CMA believes that this is not, in itself, an obstacle to identifying such product frame of reference in the present case. Further, the CMA notes that in none of the precedents relevant to the waste management sector did merger parties have activities of the same scope and scale as Veolia and Suez do, in the UK and elsewhere.
127. As set out from paragraph 66 above, the Parties overlap in the supply of complex waste management contracts procured by local authorities. The CMA considered whether the product frame of reference should include all contracts for the supply of municipal waste management services to local authorities. The available evidence (described below from paragraph 129 below) clearly points to the existence of a subset of waste management contracts procured by local authorities being particularly complex, for which both Parties have a strong presence in competing (by contrast with other contracts which do not meet this complexity criterion) and for which the competitive constraints imposed on the Parties may be different. Further, the CMA believes that broadening the frame of reference to include all contracts for the supply of municipal waste management services to local authorities would not lead to a different outcome in respect of its finding of a realistic prospect of an SLC as in such a broader market comprising all contracts the CMA would still need to consider the closeness of competition

¹⁴⁹ [CMA 129](#), paragraph 9.4.

¹⁵⁰ [CMA 129](#), paragraph 9.4.

¹⁵¹ [CMA 129](#), paragraph 9.4.

¹⁵² [CMA 129](#), paragraph 9.4.

between the Parties with respect to complex contracts (as further discussed in the assessment).

128. Veolia cautioned the CMA that it is unable to give a clear description of such complex contracts.¹⁵³ The CMA appreciates that there is an inherent degree of uncertainty at the margins of the product frame of reference under discussion, or how many municipal contracts for waste management services may fall in the ‘complex’ category. However:

- (a) The CMA is satisfied, based on the available evidence from third parties and internal documents set out from paragraph 129 below, that such contracts exist and that amongst these contracts there are some for which Veolia and Suez are two of a very limited number of – or indeed the only two – credible competitors. For such contracts, the CMA believes the Merger would result in the loss of an important competitor; and
- (b) Veolia has not adequately explained why it [redacted] but is unable to give a clear description of such complex contracts. Notably, it is clear from its internal documents (some of which are discussed below) that Veolia does consider at least certain municipal contracts for the supply of waste management services as complex. Yet, in its response to the CMA’s Issues Paper Veolia did not volunteer any persuasive explanation as to why these contracts are perceived as complex.¹⁵⁴

- *Evidence from the Parties*

129. The Parties, Veolia specifically, regularly refer to the notion of complexity or integrated contracts in their internal documents when describing which contracts they have an interest in bidding for or contracts composing their current portfolio. For example:

- (a) [redacted];¹⁵⁵
- (b) [redacted].¹⁵⁶ [redacted];¹⁵⁷
- (c) [redacted]. [redacted];¹⁵⁸

¹⁵³ [redacted]

¹⁵⁴ During the issues meeting, Veolia suggested it might describe a contract as complex if [redacted]. Veolia clarified that [redacted]; Veolia did not have an example of [redacted] despite its strategy documents regularly identifying winning complex contracts as a focus of the business. Veolia was also unable to explain data in its internal documents suggesting that it is substantially more successful in winning complex contracts than other types of contracts, and [redacted].

¹⁵⁵ [redacted].

¹⁵⁶ [redacted].

¹⁵⁷ [redacted].

¹⁵⁸ [redacted]. [redacted].

(d) [REDACTED]. [REDACTED];¹⁵⁹ and

(e) A Suez internal document describes [REDACTED].¹⁶⁰

130. The CMA believes that a large proportion of Veolia's and Suez's current portfolio of municipal contracts are complex waste management contracts. Suez estimated that PPP/PFI and large integrated disposal contracts accounted for [REDACTED] in revenues, ie over [REDACTED]% of its total 2019 UK revenues in the management of non-hazardous waste.¹⁶¹ In 2019, Veolia and Suez won contracts for multi-faceted waste management services for the London Borough of Bromley ([REDACTED]) and the Greater Manchester Combined Authority ([REDACTED]), respectively.¹⁶²

- *Evidence from third parties*

131. In the course of its investigation, the CMA sought feedback from third parties on multi-faceted waste management contracts. Specifically, the CMA invited feedback from municipal customers and competitors on:

(a) How local authorities typically procure waste management services and including whether they procure such services separately or as a bundle of services within a single contract;

(b) In the instances where local authorities have bundled several waste management services in one contract, whether this has affected the number of competitors or the types of competitors that are able to bid for the contract;

(c) Whether suppliers can work with others (eg regional suppliers) or through sub-contractors to compete for contracts containing several waste management services to local authorities; and

(d) The companies that they consider to be the strongest competitors in the UK when competing for contracts containing several waste management services to local authorities.

132. At the outset, without being prompted, several respondents referred to the degree of complexity of certain waste management contracts procured by local authorities as having an impact on the conditions of competition.¹⁶³

¹⁵⁹ [REDACTED].

¹⁶⁰ [REDACTED].

¹⁶¹ [REDACTED].

¹⁶² [REDACTED].

¹⁶³ [REDACTED]'s response to the CMA's collection competitors questionnaire; [REDACTED]'s response to the CMA's disposal competitors questionnaire; and [REDACTED]'s, [REDACTED]'s and [REDACTED]'s responses to the CMA's municipal customer questionnaire.

For example, a local authority suggested that few players ‘have the proven expertise to handle the size and complexity of [their] contract’ and that some suppliers are ‘probably not sizeable enough to deal with such volumes and complexity’.¹⁶⁴

133. Several local authorities submitted that only a limited set of suppliers can manage particularly large or complex contracts. For example, a local authority suggested that there are concerns about ‘the ability of smaller players to handle the scale of such contracts’.¹⁶⁵ A further local authority told the CMA that some suppliers do not compete in London ‘due to the difficulties of this particular market’.¹⁶⁶ Another local authority noted that there are limited suppliers ‘especially for larger contracts where investment in infrastructure is required’.¹⁶⁷
134. Local authorities also highlighted the role of multi-faceted waste management contracts and the competitive conditions for such contracts. One respondent told the CMA that ‘there are not many companies [...] that could integrate EfW, green waste, recycling, collection, etc. One reason why [local authorities] do not split contracts is because they want incremental benefits and continuous improvement (eg reduce the amount of waste coming out). It is easier to achieve this where there is one contractor’.¹⁶⁸ Similarly, a local authority told the CMA ‘[t]here are very few players in the market that can deliver a full waste treatment solution’.¹⁶⁹ Another local authority told the CMA that there are ‘[o]nly a small number of large national suppliers for large capital intensive (EfW, MBT, possibly MRF) contracts or integrated contracts’.¹⁷⁰
135. Likewise, several competitors present in various stages of the waste management supply chain submitted that local authorities (particularly larger or Unitary Authorities) across the UK tender a mix of multi-faceted and unbundled waste management services contracts.¹⁷¹ The vast majority of competitors also submitted that bundling multi-faceted waste management services decreased the number of suppliers able to bid and compete for those contracts.¹⁷² One competitor stated in this context that

¹⁶⁴ Note of call with [redacted], dated 17 May 2021.

¹⁶⁵ Note of call with [redacted], dated 17 June 2021.

¹⁶⁶ [redacted]’s response to the online questionnaire.

¹⁶⁷ [redacted]’s response to the online questionnaire.

¹⁶⁸ Note of call with the [redacted], dated 15 June 2021.

¹⁶⁹ [redacted]’s response to the online questionnaire.

¹⁷⁰ [redacted]’s response to the CMA’s municipal customers questionnaire.

¹⁷¹ [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted]’s response to the CMA’s disposal competitors questionnaire.

¹⁷² [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted]’s response to the CMA’s disposal competitors questionnaire.

services bundled under these contracts now tend to be split up to recognise the different waste management companies' areas of expertise.¹⁷³

136. The CMA published an online questionnaire, which it sent to local authorities (including local authorities that are currently customers of the Parties and local authorities that are not) through industry associations asking about their most recent strategic waste management services tender. In putting together this questionnaire, the CMA considered input from an organisation representing local authorities to ensure that the questions and terminology would be clear to respondents. Of the 26 respondents, 14 said their most recent strategic waste management services tender included multiple waste management services bundled into one contract. Of these 14 contracts, 10 contained at least one waste disposal service alongside another waste service (either collection, recycling or disposal). Of these ten contracts, three contained both waste collection and disposal services and seven contained only waste disposal services, that is one or more of the waste disposal services described in paragraph 52(c) above. On average, these ten contracts contained over four services each. The number of services included in these multi-faceted waste management contracts ranged from between two and seven waste management services.¹⁷⁴
137. Although the Parties submitted examples of local authorities which recently re-tendered their waste management services into smaller lots (eg Greater Manchester Combined Authority, London Borough of Bromley),¹⁷⁵ the available evidence shows that these local authorities did not fully disaggregate their required services, and still included several waste management services within one tender. The CMA therefore believes that these remain complex waste management contracts.
138. Several local authorities also submitted that they had plans to procure waste management services in lots when their current contracts expired.¹⁷⁶ However, several local authorities also submitted that they will only procure their waste management services in separate lots if it provides better value for money for the local authority.¹⁷⁷ One local authority said that many local authorities will lack the expertise and resources to let and manage multiple waste management contracts and the interfaces between them. This would require local authorities to make significant changes to their staffing and

¹⁷³ Note of call with [redacted], dated 7 May 2021.

¹⁷⁴ Analysis of the responses to the CMA's online questionnaire.

¹⁷⁵ [redacted].

¹⁷⁶ [redacted], [redacted] and [redacted]'s responses to the CMA's municipal customers questionnaire.

¹⁷⁷ [redacted], [redacted], [redacted], [redacted], [redacted], [redacted]'s responses to the CMA's municipal customers' questionnaire.

risk appetite and many local authorities would prefer a single contract bundling several services.¹⁷⁸

- *Conclusion on product scope*

139. For the reasons set out above, the CMA believes that it is appropriate to consider the impact of the Merger within a product frame of reference for the supply of complex waste management contracts procured by local authorities. The CMA believes that local authorities do procure complex waste management contracts and it is therefore appropriate to consider competition for such contracts separately from competition to provide individual waste management services such as incineration. The Parties' internal documents show that more than the precise content of such contracts what points to a separate product frame of reference is their complexity which can vary in nature from one contract to another (as explained from paragraph 66 above). Any differences between various complex waste management contracts procured by local authorities is discussed further in the assessment.

Geographic scope

140. Veolia did not make submissions on this geographic frame of reference.
141. Third party responses to the CMA's merger investigation were not indicative of differences in competitive conditions based on geographic factors.
142. The CMA notes that the customers for which Veolia and Suez compete for the supply of complex waste management contracts are spread across the UK.

- *Conclusion on geographic scope*

143. For the reasons set out above, the CMA believes that the appropriate geographic frame of reference is national.

¹⁷⁸ Analysis of the responses to the CMA's online questionnaire. Also, [redacted]'s response to the CMA's online questionnaire.

Conclusion on frame of reference

144. For the reasons set out above, the CMA believes that the appropriate frame of reference is the supply of complex waste management contracts procured by local authorities in the UK.

Closeness of competition

145. The CMA examined the closeness of competition between the Parties in this frame of reference and has considered within its assessment:

- (a) Submissions from the Parties;
- (b) Evidence from the Parties; and
- (c) Evidence from third parties.

Parties' submissions

146. Veolia did not make submissions on the closeness of competition between the Parties in this frame of reference.

CMA's assessment

147. In assessing the closeness of competition between the Parties for complex waste management contracts, the CMA took into account the Parties' capabilities, extensive prior experience in winning and running such contracts and awareness of limited competition for the supply of complex waste management contracts.
148. On the latter point, the CMA believes that the experience and expertise accumulated by the Parties through performing PPP/PFI and integrated contracts (as narrowly defined by Veolia), which the CMA believes to be the most complex forms of waste management contracts, is relevant to this assessment. As discussed above, local authorities continue to procure multi-faceted waste management contracts, that is one or more waste management services procured through a single tender and awarded to one supplier. While there will be variations in the complexity of contracts, some contracts remain highly complex (eg Birmingham City Council).

- *Evidence from the Parties*

- *Parties' capabilities*

149. Both Parties are active at most stages of the waste management supply chain and are able to provide both waste collection, recycling and disposal services in the UK. The Parties also have access (either as operators or through Controlled Merchant Capacity) to capacity at a broad network of processing facilities, including MRFs, ERFs, landfill sites, composting sites, and wood processing facilities. As a result of the Merger, the Merged Entity's geographical coverage of the UK in non-hazardous waste management would be significant and unequalled. The value of a combined position in waste collection, recycling and disposal is noted in some of the Parties' internal documents. For example, a Veolia document discussing the development of [REDACTED].¹⁷⁹ Similarly, in a document discussing a tender for [REDACTED].¹⁸⁰
150. In addition, the Parties have comprehensive research, development and innovation (**R&I**) capabilities as evidenced by Veolia's statement that the acquisition of Suez will allow the creation of a global champion of ecological transformation.¹⁸¹ Veolia's senior management repeatedly made statements to the effect that [REDACTED].¹⁸² In 2020, Veolia invested at least [REDACTED] in R&I globally and Suez invested [REDACTED].¹⁸³
151. Both Parties rely on dedicated internal R&I resources and sophisticated innovation ecosystems structured around (i) global innovation networks (eg partnerships with universities, innovative start-ups, and technical players) and (ii) open innovation programs.¹⁸⁴ R&I projects are carried out by Veolia and Suez both at group level and business unit level. In this regard, Veolia submitted that its internal innovation network supports the implementation of innovations across its group through sharing best practices.¹⁸⁵
152. Finally, the available evidence indicates that Veolia and Suez perceive the supra-national dimension of their respective businesses, their overall strength as global groups and the synergies they can achieve across their

¹⁷⁹ [REDACTED].

¹⁸⁰ [REDACTED].

¹⁸¹ Veolia's public paper: [Together let's take on the challenge of ecological transformation, Veolia-Suez: the merger that turns the tide](#), page 11.

¹⁸² [REDACTED]; [REDACTED]; and [REDACTED].

¹⁸³ [REDACTED].

¹⁸⁴ Veolia's universal registration document 2020, pages 38-39; Suez's universal registration document 2020, pages 57-58; [REDACTED]. The CMA notes that these efforts pertain to the entire businesses of the Parties and are relevant to all theories of harm discussed in this Paper, including those in relation to water.

¹⁸⁵ [REDACTED].

activities, as differentiating factors and a marker of their competitive superiority. For example:

- (a) In its universal registration document for 2020, Suez states: '[t]he Group ranks fourth in terms of revenues in the global market for waste-related environmental services, behind [...] Veolia. Except for Veolia, most of the Group's competitors in the waste sector are national players and/or do not provide all the services offered by the Group',¹⁸⁶ and
- (b) Veolia states in its universal registration document for 2020: '[g]lobal multi-service companies have both a global geographic footprint and an extensive range of services in the Water, Waste and Energy business lines. Veolia belongs to this category, as do Suez and Remondis, although neither of these has a presence outside Water and Waste'. In more detail, Veolia notes that it sets itself apart from global and local specialists and local/regional multi-services companies through 'its very broad positioning on the value chains of the Water, Waste and Energy business lines'; 'synergies between its business lines'; 'its ability to guarantee its customers long-term reliability'; 'the effects of scale linked to its size'; and through 'its ability to offer comprehensive services (multi-site and multi-business)'.¹⁸⁷

153. The CMA notes that in reviewing Veolia's internal documents it is clear that, while innovation or know how may be developed in one region, the company actively considers using that innovation and know how in other regions. For example, [REDACTED].¹⁸⁸

154. Another document [REDACTED].¹⁸⁹ [REDACTED];¹⁹⁰ and [REDACTED].

155. These documents indicate both that innovation and other developments are not purely national activities, and that the Parties' capabilities are, at least in part, a result of their ability to draw on innovation and know how developed across their global businesses.

¹⁸⁶ Suez's universal registration document 2020, page 61.

¹⁸⁷ Veolia's universal registration document 2020, page 36.

¹⁸⁸ [REDACTED].

¹⁸⁹ [REDACTED].

¹⁹⁰ [REDACTED].

- *Parties' extensive prior experience in winning and running complex waste management contracts*

156. The available evidence shows that both Veolia and Suez have extensive experience in winning and running complex waste management contracts. For example:

- (a) Veolia and Suez each have two of the largest individual portfolios of PPP/PFI contracts that involved the development of ERF infrastructure (eg [REDACTED]);¹⁹¹
- (b) Both Parties have contracts that cover a broad range of waste management services, some encompassing both waste collection and disposal services along with the operation of infrastructure on behalf of local authorities (eg [REDACTED]); and
- (c) Both Parties have contracts with a significant total value (ie in excess of £400 million) which the CMA considers as an indicator of the Parties' ability to assume a certain level of financial risk (eg [REDACTED]).¹⁹²

157. In its internal documents, Veolia acknowledges its strength in winning contracts of a significant scale. Specifically, [REDACTED]: (i) [REDACTED]; and (ii) [REDACTED]. In the same document, [REDACTED].¹⁹³

- *Parties' awareness of limited competition for the supply of complex waste management services*

158. Consistent with the third party evidence described below, the evidence from internal documents shows that for some complex waste management contracts Veolia and Suez are aware of facing very limited competition past the preliminary stages of the procurement process. For example:

- (a) In a presentation [REDACTED]. [REDACTED].¹⁹⁴ [REDACTED]; and
- (b) In a sales strategy update [REDACTED].¹⁹⁵ In an internal document prepared by Suez [REDACTED].¹⁹⁶

¹⁹¹ [REDACTED].

¹⁹² [REDACTED].

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

¹⁹⁵ [REDACTED]. Veolia warned that the CMA could not rely on this document as evidence that it is aware of which other suppliers bid for complex contracts as [REDACTED] has never confirmed to Veolia the identities of the other bidders ([REDACTED]). The CMA considers that the relevant question is who Veolia believed its competitors were, and that it is not necessary for [REDACTED] to have confirmed the identity of the bidders.

¹⁹⁶ [REDACTED].

159. Suez submitted a tender dataset containing [REDACTED] tenders where the municipal contracts included multiple services. [REDACTED] of these tenders contained information on rival bidders and Veolia competed in [REDACTED] of these tenders. In addition, Biffa and FCC competed in [REDACTED] tenders each and [REDACTED] other competitors competed in [REDACTED] each. While the dataset may provide limited insight, it does show that Veolia was Suez's closest competitor for these tenders.

- *Evidence from third parties*

160. The CMA sets out below third party evidence on how the Parties compete for complex waste management contracts and their perceived strength in competing for such contracts.

161. As noted above, during the course of its investigation, the CMA published an online questionnaire, which it sent to local authorities through industry associations asking about their most recent strategic waste management services tender. The CMA has been unable to collect data on all recent local authority strategic tenders that would allow to conduct a more robust tender data analysis. However, the available evidence shows that in at least [REDACTED] tenders in the last 5 years, the Parties were the last two bidders,¹⁹⁷ and that in at least [REDACTED] tenders since 2007 they both bid and either Veolia or Suez ultimately won the tender.¹⁹⁸

162. The CMA asked third parties to list the companies that they consider to be the strongest suppliers in the UK when competing for contracts containing several waste management services to local authorities and indicate how strong a supplier they believe them to be. Both municipal customer and competitor respondents mentioned Veolia and Suez more frequently and rated them as strongest competitors, by some margin, than the next most frequently mentioned suppliers. The CMA regards the results of this ranking exercise to be very informative of the Parties' respective position.

163. Consistent with this, several third parties that responded to the CMA's merger investigation, including municipal customers, consultants that advise local authorities on waste management contracts, and competitors, singled out Veolia and Suez as being the two largest suppliers of contracts that contain several waste management services to local authorities.¹⁹⁹ For example:

¹⁹⁷ [REDACTED].

¹⁹⁸ Analysis of the responses to the CMA's online questionnaire. The tenders referred to are the ones held by [REDACTED].

¹⁹⁹ Among others, [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

- (a) One collection competitor submitted that only Veolia and Suez have the capacity, capability and broad experience to compete for 'integrated contracts that might include collection, WTSs, MRFs, EfW, AD, large scale haulage by road and/or rail etc.';²⁰⁰
- (b) One municipal customer submitted that the procurement for a multi-faceted waste management contract it recently ran demonstrated that Veolia and Suez were the two most competent and experienced bidders for their scale and breadth of contract;²⁰¹
- (c) Another municipal customer submitted that Veolia and Suez stand out as being the only two companies that provide a broad mix of treatment services using their own infrastructure which enables them to offer integrated contracts for multiple waste streams (such as residual waste, dry recycling and garden waste), providing an opportunity to reduce interface risks between different service suppliers, introduce efficiencies of operation at waste transfer sites, and reduce the complexity of local authority procurement and contract management processes;²⁰² and
- (d) Some third parties classified the Parties as 'tier 1 players'.²⁰³ By contrast, one municipal customer that tendered for an integrated contract in recent years classified Biffa as a tier 2 and FCC as tier 3.²⁰⁴

164. Importantly, several third parties confirmed that Veolia and Suez were the last two bidders for two complex waste management contracts procured in the last five years. [REDACTED].²⁰⁵

165. With regard to the Parties' innovation capabilities, third party evidence is indicative that the Parties are strong competitors. For example:

- (a) A large waste management competitor submitted that Suez has a 'substantial innovation fund which enables them to test innovations in a variety of areas very quickly without many barriers. This has advantages in that they can learn quickly but it also has disadvantages in that many innovations could be seen as not having much substance or potential for significant impact'. The same competitor submitted that Veolia has a

²⁰⁰ [REDACTED]'s response to the CMA's collection competitors questionnaire.

²⁰¹ [REDACTED]'s response to the online questionnaire.

²⁰² [REDACTED]'s response to the online questionnaire.

²⁰³ Note of call with [REDACTED], dated 16 February 2021 and note of call with [REDACTED], dated 13 October 2021.

²⁰⁴ Note of call with [REDACTED], dated 13 October 2021.

²⁰⁵ Note of call with [REDACTED], dated 17 May 2021 and note of call with [REDACTED], dated 13 October 2021. [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

strong brand, knowledgeable expertise, and frequently demonstrate their initiatives to use innovation to support their customers;²⁰⁶

- (b) Another competitor submitted that Veolia and Suez both frequently communicate on the work undertaken with new technologies and work with academia;²⁰⁷ and
- (c) One competitor active in EfW incineration submitted that owing to their level of vertical integration and available funds, Veolia and Suez are able to drive market changes in line with policy and targets.²⁰⁸

166. The available evidence also shows that Veolia and Suez are perceived as companies with a strong financial standing,²⁰⁹ an important factor for municipal customers, as set out in paragraph 75(c) above.²¹⁰ For example:

- (a) One municipal customer submitted that part of Veolia's competitive strength arises from having its own corporate finance facilities rather than relying on external credit sources;²¹¹ and
- (b) Another municipal customer added financial security to the list of factors that are the most important when deciding which company to outsource waste management services to, noting that this factor has a very high importance to minimise the potential for a supplier failing. This customer rated both Veolia and Suez as the strongest competitors for contracts containing several waste management services to local authorities.²¹²

Conclusion on the closeness of competition between the Parties

167. For the reasons set out above, the CMA believes that the Parties compete closely against each other in this frame of reference and compete particularly closely for the supply of the most complex waste management contracts. The CMA believes that the Parties are uniquely positioned to bid for and win such contracts owing to their extensive prior experience and capabilities. The available evidence also shows that the Parties are aware of facing very limited competition for the most complex waste management contracts. This is supported by third parties, which perceive Veolia and

²⁰⁶ [redacted]'s response to the CMA's disposal competitors questionnaire.

²⁰⁷ [redacted]'s response to the CMA's disposal competitors questionnaire. The respondent also considers Biffa and Viridor to have the same ability.

²⁰⁸ [redacted]'s response to the CMA's disposal competitors questionnaire. The respondent also considers Viridor to have the same ability.

²⁰⁹ [redacted]'s response to the CMA's municipal customers questionnaire and [redacted]'s response to the CMA's disposal competitors questionnaire.

²¹⁰ Note of call with [redacted], dated 7 April 2021.

²¹¹ [redacted]'s response to the CMA's municipal customers questionnaire.

²¹² [redacted]'s response to the CMA's municipal customers questionnaire.

Suez as being leading suppliers in servicing complex waste management contracts.

Competitive constraints

168. In assessing the competitive constraints from other alternatives, the CMA has considered:

- (a) Submissions from the Parties;
- (b) Evidence from third parties; and
- (c) Evidence from internal documents.

Parties' submissions

169. Veolia submitted that even in the most complex cases, where a local authority has decided that tendering a large multi-faceted contract provides the best value for money, there are at least six other significant rivals (namely, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]) that can and do compete, as well as multiple smaller suppliers that have also successfully bid for complex contracts in recent years.²¹³

170. In relation to integrated contracts (as narrowly defined by Veolia) specifically, Veolia submitted that all the contractors that currently have a PPP/PFI contract ongoing have the ability to service such contracts.²¹⁴

171. Further, Veolia submitted that even if a waste management company lacks the appetite or experience to provide all the services within a complex contract, it can and do sub-contract elements or enter into partnerships to deliver those services.²¹⁵

CMA's assessment

172. Veolia provided BDS data on each of the suppliers that it considers as having the ability to compete for complex municipal waste management contracts, including for each of these suppliers the list of municipal contracts that they have.²¹⁶

²¹³ [REDACTED].

²¹⁴ [REDACTED].

²¹⁵ [REDACTED]; and [REDACTED].

²¹⁶ [REDACTED].

173. As this data was provided to the CMA only after the issues meeting, the CMA was unable to conduct a contract-by-contract analysis of the BDS data.
174. However, based on an initial analysis of the data, the CMA believes that Veolia interpreted the factors of complexity set out by the CMA in its Issues Paper and set out from paragraphs 68 very broadly, to such extent that Veolia appears to consider a very large proportion (if not all) municipal contracts for waste management services as complex. For example, Veolia submitted that [REDACTED] has recently won several municipal contracts for waste management services that Veolia classifies as complex, specifically the contracts of [REDACTED].²¹⁷ However, the BDS data shows that these contracts only cover one waste service each (either the disposal/treatment of residual waste or recyclates) and that the majority of them have a relatively modest overall contract value below £40 million, with one of these contracts only worth £860,000 in overall contract value.²¹⁸ Further, Veolia did not provide any explanation as to the basis on which these contracts would be complex. As a result, the CMA has not placed any material evidential weight on Veolia's assessment of the BDS data.
175. Notwithstanding, the BDS data shows that Biffa, FCC, Serco, Urbaser, Viridor and Beaparc's respective portfolio of municipal contracts for waste management services is relatively modest compared to that of the Parties, specifically having regard to:
- (a) The number of local authorities the Parties have a contract with. Veolia [REDACTED], and Suez [REDACTED]. For the most part, the local authorities that Veolia and Suez serve are either Unitary Authorities, Waste Disposal Authorities or partnerships between different local authorities;
 - (b) The scope of these contracts, a significant proportion of which are multi-faceted waste management contracts including PPP/PFI contracts and integrated contracts (as narrowly defined by Veolia); or
 - (c) The scale of these contracts, for example by reference to their duration or overall contract value (for example [REDACTED] of Veolia's contracts and [REDACTED] of Suez's contracts have an overall value in excess of £100 million,²¹⁹ noting

²¹⁷ [REDACTED].

²¹⁸ [REDACTED].

²¹⁹ For the avoidance of doubt, the CMA does not consider that £100 million is a threshold that, in itself, determines complexity. The CMA uses this figure as an indicative benchmark.

though that some of these contracts are PPP/PFI contracts which included the development of costly infrastructure (eg ERF)).²²⁰

176. By contrast, the CMA observes based on the BDS data submitted by Veolia that, overall, the Parties' competitors have far fewer municipal contracts than the Parties and materially fewer contracts of a high value. In more detail:²²¹

- (a) **Biffa** has contracts with 29 local authorities, over 70% of which are contracts with Waste Collection Authorities and therefore limited to municipal waste collection, combined in some occasions with street cleansing and/or ancillary services (eg ground maintenance, beach cleansing). Of these 29 contracts, 3 were acquired from Cory and therefore not won as a result of a standard public procurement process. Of Biffa's contracts with Unitary Authorities and Waste Disposal Authorities, only 3 are multi-faceted waste management contracts. This is consistent with third party evidence that Biffa is primarily active and a strong supplier in waste collection. Biffa's portfolio of contracts includes 8 contracts with an overall contract value in excess of £100 million;
- (b) **FCC** has contracts with 31 local authorities, the majority of which are with Unitary Authorities and Waste Disposal Authorities. Although a large proportion of these contracts appear to include several waste management services, the CMA notes that only 8 of these contracts have an overall contract value in excess of £100 million;
- (c) **Serco** has contracts with 20 local authorities, 15 of which are with Waste Collection Authorities and therefore of the same scope as the similar Biffa contracts described in 176(a) above. Only one of these contracts include the provision of disposal services. Serco's portfolio of contracts includes 5 contracts of an overall contract value in excess of £100 million;
- (d) **Urbaser** has contracts with 19 local authorities, the majority of which are with Waste Collection Authorities. Urbaser has one relatively comprehensive contract including several waste management services (eg operation of local authority infrastructure for HWRC, WTS, MRF, ERF sites, and disposal/treatment services for two waste streams) which accounts for a very large proportion of its total portfolio in terms of contract value. While it is unclear for 4 contracts with an overall contract

²²⁰ [REDACTED]; [REDACTED]; and [REDACTED].

²²¹ CMA's analysis of [REDACTED].

value in excess of £100 million what share is allocated to Urbaser,²²² it has 5 other contracts that meet this threshold;

- (e) **Viridor** has contracts with 21 local authorities, the large proportion of which are either Waste Disposal Authorities or Unitary Authorities. Only half of Viridor's contracts appear to include more than one waste service and the CMA notes that less than a third of Viridor's contracts have an overall contract value in excess of £100 million; and
- (f) **Beuparc** has active contracts with 14 local authorities, all of which are with either Unitary Authorities or Waste Disposal Authorities. Beuparc does not offer municipal collection services nor operation of local authorities infrastructure services to any of these authorities. Only 1 of Beuparc's contracts has an overall contract value in excess of £100 million.

- *Evidence from third parties*

177. The CMA summarises below the available third party evidence in relation to:

- (a) The strength of the Parties' competitors;
- (b) Partnering and sub-contracting; and
- (c) Views on the Merger.

- *The strength of the Parties' competitors*

178. Aside from the Parties only Biffa, FCC and Viridor were frequently identified by third parties as competing for contracts containing several waste management services to local authorities. All appeared less frequently in competitor and municipal customer questionnaire responses than Veolia and Suez. Third parties also did not consider that Biffa, FCC and Viridor were as strong competitors as the Parties. Although there were other suppliers mentioned by third parties (eg Urbaser, Amey, Serco), all these companies were mentioned by at most a few third parties and considered to be less strong competitors than Biffa, FCC and Viridor. Beuparc was not mentioned by any municipal customers as competing for contracts

²²² According to the BDS data provided by Veolia, Urbaser operates these contracts as part of a joint venture with Balfour Beatty ([§]). The joint venture was put into receivership in August 2020 (see Construction News article, [Urbaser Balfour Beatty waste JV put into receivership](#), August 2020).

containing several waste management services and is therefore not discussed further in this section.

179. The third party evidence on specific competitors suggests that no competitor can match the Parties' capabilities and extensive track record in servicing complex waste management contracts:

- (a) **Biffa**. Although municipal customers rated Biffa as a reasonably strong competitor in bidding for integrated contracts on average, several municipal customers²²³ noted that Biffa has limited strength in waste disposal services, being active primarily in MRF, and that it has no experience with ERF operations.²²⁴ One third party also highlighted that Biffa is lacking experience in integrated contracts.²²⁵ A majority of the respondents to the CMA's merger investigation considered that Biffa's activities in waste managed heavily focus on C&I collection²²⁶ and municipal collection (to a lesser extent).²²⁷ The CMA notes that Biffa recently acquired some treatment & disposal activities from Viridor (see sub-paragraph (c) below) which do not, however, cover any ERF assets.
- (b) **FCC**. Several municipal customers submitted that owing to financial challenges, FCC may be less likely to take on large waste disposal contracts due to the level of risk associated with such contracts.²²⁸ A few respondents also identified FCC's limited reach locally as a factor limiting its strength as a supplier of integrated contracts.²²⁹ One municipal customer responded that while being a major waste management supplier, FCC was not very strong on integrated contracts.²³⁰ Overall, third party responses to the CMA's merger investigation suggest that FCC is active across the waste management supply chain although FCC's waste collection activities are modest and decreasing compared to its presence in waste disposal services (eg EfW incineration, landfill) and HWRC management.²³¹

²²³ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]'s responses to the CMA's municipal customers' questionnaires.

²²⁴ [REDACTED]'s response to the CMA's disposal competitors questionnaire.

²²⁵ [REDACTED]'s response to the CMA municipal customers questionnaire.

²²⁶ Note of call with [REDACTED], dated 20 April 2021, [REDACTED].

²²⁷ Notes of calls with [REDACTED], dated 20 April 2021, [REDACTED], dated 17 May 2021, [REDACTED], dated 16 February 2021, [REDACTED], dated 7 April 2021, [REDACTED], dated 7 May 2021 and [REDACTED], dated 26 August 2021. See also [REDACTED], [REDACTED], [REDACTED], [REDACTED]'s responses to the CMA's municipal customers questionnaire; [REDACTED]'s response to the CMA's industrial and commercial customers questionnaire (the **C&I customers questionnaire**); [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]'s responses to the CMA's collection competitors questionnaire; [REDACTED], [REDACTED], [REDACTED], [REDACTED]'s responses to the CMA's disposal competitors questionnaire.

²²⁸ [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

²²⁹ [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

²³⁰ [REDACTED]'s response to the CMA's municipal customers questionnaire.

²³¹ Notes of calls with [REDACTED], dated 15 April 2021, [REDACTED], dated 7 April 2021, [REDACTED], dated 14 April 2021, [REDACTED], dated 3 June 2021, [REDACTED], dated 9 August 2021 and [REDACTED], dated 26 August 2021. See also [REDACTED] and [REDACTED]'s responses to the

(c) **Viridor**. With the sale of some of its assets to Biffa, municipal customers submitted that Viridor appears to be moving to concentrating primarily on EfW incineration and is therefore less likely to be competitive in bidding for integrated contracts. One third party also noted that Viridor’s PFI contract with Greater Manchester Combined Authority ran into issues which ultimately led to the contract being re-tendered in 2019 (with Suez winning).²³² Overall, third party feedback on Viridor suggests that Viridor is not active in municipal waste collection.²³³ Furthermore, Viridor recently sold its C&I collection operations to Biffa, along with four MRFs, two HWRC management contracts, three composting facilities, one anaerobic digestion plant and another specialist waste management service.²³⁴

180. Regarding the other suppliers that Veolia listed in its submissions as being credible competitors, the third party evidence does not show that these would constrain the Merged Entity in the supply of complex waste management contracts in the UK:

(a) **Serco**. Third party responses to the CMA’s merger investigation suggest that Serco is perceived as active in a limited number of waste management services, including municipal waste collection and sorting of dry recyclates.²³⁵

(b) **Urbaser**. A large proportion of the respondents to the CMA’s merger investigation that identified Urbaser as a competitor in the UK did so in relation to municipal waste collection only. Respondents also told the CMA that Urbaser has not been actively bidding for contracts over the past 18 months to 2 years.²³⁶

CMA’s municipal customers questionnaire; [redacted], [redacted], [redacted], [redacted], [redacted]’s responses to the CMA’s collection competitors questionnaire. [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted]’s responses to the CMA’s disposal competitors questionnaire.

²³² [redacted]’s response to the CMA’s municipal customers questionnaire.

²³³ Note of calls with [redacted], dated 17 May 2021, [redacted], dated 27 May 2021, [redacted], dated 15 April 2021, [redacted], dated 16 February 2021, [redacted], dated 8 April 2021, [redacted], dated 7 May 2021, [redacted], dated 2 June 2021, [redacted], dated 18 May 2021 and [redacted], dated 9 August 2021. See also [redacted] and [redacted]’s responses to the CMA’s municipal customers questionnaire; [redacted]’s response to the CMA’s C&I customers questionnaire; [redacted], [redacted], [redacted] and [redacted]’s responses to the CMA’s collection competitors questionnaire; [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]’s responses to the CMA’s disposal competitors questionnaire.

²³⁴ See an article on Letsrecycle.com: [Biffa completes acquisition of Viridor assets](#), 1 September 2021.

²³⁵ Note of calls with [redacted], dated 20 April 2021, [redacted], dated 7 May 2021 and [redacted] Council, dated 12 May 2021. See also [redacted]’s response to the CMA’s municipal customers questionnaire and [redacted], [redacted], [redacted] and [redacted]’s responses to the CMA’s collection competitors questionnaire.

²³⁶ Note of calls with [redacted], dated 20 April 2021, [redacted], dated 17 May 2021, [redacted], dated 19 May 2021, [redacted], dated 7 May 2021, [redacted], dated 12 May 2021 and [redacted], dated 26 August 2021. See also [redacted], [redacted] and [redacted]’s responses to the CMA’s collection competitors’ questionnaire.

(c) **Amey**. Several third parties identified Amey as a competitor in municipal waste collection²³⁷ and to a lesser extent in EfW incineration.²³⁸ Several respondents to the CMA's merger investigation however reported that Amey is exiting the market and no longer actively bidding for municipal contracts.²³⁹

- *Partnering and sub-contracting*

181. Nearly three quarters of the municipal customers that responded to the CMA's merger investigation did not object, in principle, to suppliers working with other (eg regional) suppliers or through sub-contractors to compete for contracts containing several waste management services, with several respondents submitting that this already occurs in practice.²⁴⁰ However, third party evidence from municipal customers also shows that this does not necessarily mean that regional or local suppliers have the ability to effectively bid for such contracts. This is because the ultimate responsibility for the performance of the contract as a whole remains with the main contractor²⁴¹ and smaller suppliers may not have the ability to manage this integration risk successfully.²⁴²
182. The feedback from municipal customers also shows that where sub-contracting does occur, it tends to be for less strategic parts of the contract eg composting, HWRC management services or haulage.²⁴³
183. One municipal customer submitted that partnering and sub-contracting merely drives prices higher as each sub-contractor would need to include its own profit margin.²⁴⁴
184. A few competitors that responded to the CMA's merger investigation submitted that while it was theoretically possible for smaller waste companies to partner with other companies this would be challenging as, for example, the local authorities would likely look for a strong guarantor of performance across all companies involved.²⁴⁵

²³⁷ Note of calls with [REDACTED], dated 19 May 2021, [REDACTED], dated 7 May 2021 and [REDACTED], dated 12 May 2021. However, [REDACTED]. See note of call with [REDACTED], dated 9 August 2021. Further, [REDACTED]. [REDACTED]'s response to the CMA's disposal competitors questionnaire.

²³⁸ Note of call with [REDACTED], dated 17 May 2021.

²³⁹ [REDACTED] and [REDACTED]'s responses to the CMA's disposal competitors questionnaire and [REDACTED] and [REDACTED]'s response to the CMA's collection competitors questionnaire. See also note of call with [REDACTED], dated 26 August 2021.

²⁴⁰ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

²⁴¹ [REDACTED]'s response to the CMA's municipal customers questionnaire.

²⁴² [REDACTED]'s response to the CMA's municipal customers questionnaire.

²⁴³ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s response to the CMA's municipal customers questionnaire.

²⁴⁴ [REDACTED]'s response to the CMA's municipal customers questionnaire.

²⁴⁵ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's collection competitors questionnaire.

185. The CMA believes that the third party evidence is indicative that while partnering and sub-contracting is possible and does occur sometimes in practice, it would not in itself allow smaller suppliers than the Parties to compete with them on an equal footing for complex waste management contracts.

- *Views on the Merger*

186. Nearly all municipal customers that responded to the CMA's merger investigation expressed significant concerns about the Merger in terms of its impact on competition. The CMA sets out below some of the key concerns received.

- (a) Two of the largest local authorities in the UK with complex waste management contracts with a combined total value in excess of £750 million noted that only Veolia and Suez are currently in a position to satisfy their requirements of a level of comprehensive experience and capability as regards such contracts, and that post-Merger a single bidder would remain, the Merged Entity, which will likely have an impact on the customers' costs;²⁴⁶
- (b) A London-based local authority submitted that the Merger 'would bring together two suppliers that have strengths in the waste collection and waste treatment/disposal fields, some of these being different to each other and some the same, creating a single supplier that is strong across pretty much the full range of waste collection and waste treatment /disposal over much of the UK. This could limit competition for waste contracts, particularly waste collection and ERF';²⁴⁷
- (c) A PPP customer of Veolia submitted that 'any contraction to the market is likely to have implications for future procurement activity in terms of reducing the number of suppliers and therefore the competitiveness overall. The potential scale of a combined organisation does suggest that one supplier will have significant dominance in a number of service areas within the market';²⁴⁸
- (d) A municipal customer of Suez submitted that while local authorities can generally attract competition for smaller scale and less capital intensive contracts, there are only a small number of large national suppliers for large capital intensive (EfW, MBT, possibly MRF) contracts or integrated

²⁴⁶ [redacted]'s submission to the CMA dated 30 June 2021 and note of call with [redacted], dated 17 May 2021.

²⁴⁷ [redacted]'s response to the CMA's municipal customers questionnaire.

²⁴⁸ [redacted]'s response to the CMA's municipal customers questionnaire.

contracts, and some areas have regional monopolies, especially where the private sector owns the waste infrastructure assets. In both cases, the Merger will reduce competition’;²⁴⁹

- (e) Regarding regional strongholds, one municipal customer submitted that ‘[i]f the Suez-Veolia merger proceeds it will further monopolise Suez’s presence in the North East and limit the opportunities for local authority officers managing waste to view facilities and establish relationships with other suppliers. This is not impossible to do but it takes concerted effort and commitment’. The municipal customer also commented on the ongoing Tees Valley ERF tender and submitted that ‘even by partnering with other neighbouring authorities, the efforts of the combined partnering authorities and external bid supporting agencies to deliver confidence to potential tenderers that their bids will be seriously and objectively evaluated and to force market choice has been substantial. Such is the inertial power of Suez in this region that potential competitors are reluctant to tender. The inertial power and influence of a Suez-Veolia merged organisation would only compound this situation’;²⁵⁰
- (f) Several local authorities expressed concerns that the Merger could result in higher prices, affect their ability to secure value for money and/or have an adverse impact on innovation.²⁵¹ Specifically:
- (i) One municipal customer submitted that the merger of two of the largest waste companies in the UK will see the Merged Entity ‘looking to save on R&D, reducing its innovation for the industry and seeing prices escalate, as well as less bidders in the market’;²⁵² and
- (ii) Another respondent submitted that the Merger is ‘likely to create the biggest supplier of EfW facilities by tonnage and number of facilities. This is likely to result in reduced competition and allow for increased gate fees. In some regions one supplier may become dominant further reducing the ability of Councils to procure cost effective and best value solutions. [...] Most large-scale facilities require high capital costs which is usually through banking consortium agreements. These can require tonnage guarantees and if deemed riskier may not be funded or potentially at high financing costs. Part of Veolia’s dominance arises due to having its own corporate finance facilities rather than using external credit sources. This allows them to

²⁴⁹ [redacted]’s response to the CMA’s municipal customers questionnaire.

²⁵⁰ [redacted]’s response to the CMA’s municipal customers questionnaire.

²⁵¹ [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]’s responses to the online questionnaire. See also [redacted]’s response to the CMA’s municipal customers questionnaire.

²⁵² [redacted]’s response to the CMA’s municipal customers questionnaire.

be more competitive and then use refinancing once the waste contracts have been secured. Companies that service significant tonnage contracts once established can then subsequently become dominant in a region. Once this occurs procurements can heavily favour the local option unless a more distant facility can offer a much better rate to offset additional haulage costs. However, waste bulk haulage costs by road are reasonably well established (in the range of £10 - £15) so local operators can simply price accordingly whilst still being not being stretched competitively. A merger of two of largest companies is likely to compound this issue over time as it may increase the distance from a Council area to the next most suitable treatment site not operated by the merged organisation. Ultimately this may lead to bidders not engaging with the procurement as they simply cannot provide a profitable solution after factoring in transport costs and allowing the dominant company in the region to dictate the terms and price of any procurement.²⁵³

187. At the issues meeting and in response to the Issues Paper, Veolia dismissed some of these concerns on the basis that some respondents may not have up to date knowledge of the market.²⁵⁴ While it is true that some of the respondents may not have run tenders for several years, that is not in itself cause to dismiss such significant concerns from directly affected third parties. Furthermore, the CMA has several reasons to believe the input received is robust:

- (a) Local authorities exchange views regarding tendering for waste management services with each other in a variety of forums including the National Association of Waste Disposal Officers (representing about 80% of the UK Waste Disposal Authorities), the Local Government Association, the Local Authority Recycling Advisory Committee. The CMA [redacted], who similarly expressed concerns about the Merger to those expressed by a number of local authorities as set out above. Specifically, the respondent submitted that Veolia and Suez are the only two waste management companies that are able to provide the full package of waste management services, and further added that many Waste Disposal Authorities and Unitary Authorities will lack the expertise and resources to let and manage multiple waste contracts and the interfaces between them. For such authorities, there would only be one option, the Merged Entity.²⁵⁵

²⁵³ [redacted]'s response to the CMA's municipal customers questionnaire.

²⁵⁴ [redacted].

²⁵⁵ [redacted]'s response to the online questionnaire. Note of call with [redacted] dated 15 June 2021.

(b) Further, the CMA sought feedback from a range of other market participants including academics, the Environment Agency, DEFRA and independent consultants advising local authorities on their procurement strategy and processes. Specifically, the CMA spoke to two such consultancy firms, including [REDACTED] who has extensive and up-to-date information on the competitive landscape on the waste sector. This third party expressed competition concerns about the Merger as well.²⁵⁶

- *Evidence from internal documents*

188. The Parties' internal documents show that neither Party discusses competition frequently, whether for individual services, across the waste management supply chain or competition for complex waste management contracts. However, the limited number of internal documents on these points show that only the Parties, Biffa, Viridor and FCC are considered to be credible competitors across the waste management supply chain.²⁵⁷ For example:

(a) [REDACTED];²⁵⁸ and

(b) [REDACTED]. [REDACTED].²⁵⁹

189. By contrast, Serco and Urbaser are primarily mentioned in Veolia's internal documents in relation to basic waste collection services. [REDACTED].²⁶⁰

190. Finally, several Veolia internal documents point to Amey being in the process of exiting the UK waste market, in line with the third party evidence described in paragraph 180(c) above.²⁶¹

Conclusion on competitive constraints

191. For the reasons set out above, the CMA believes that Veolia and Suez are two of a limited number of waste management companies that can service complex waste management contracts. While other suppliers including Biffa, FCC, Urbaser and Viridor, can, in principle, compete for such contracts, the CMA believes that these companies' capabilities and prior experience in running complex waste management contracts are not as extensive as the Parties' and do not allow them to compete on an equal footing. The CMA also believes that the relatively modest size of their

²⁵⁶ Note of call with [REDACTED], dated 6 October 2021.

²⁵⁷ [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED].

²⁵⁸ [REDACTED].

²⁵⁹ [REDACTED].

²⁶⁰ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED].

²⁶¹ [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED].

portfolio of municipal contracts – compared to that of the Parties – indicates that the scale of their activities in the UK may not allow them to bid consistently and credibly for a critical number of complex waste management contracts, specifically the most complex ones. Furthermore, although there is a tail of waste management companies that may be able to supply targeted waste management services, through sub-contracting or partnering, the CMA believes that they do not exert a significant constraint on the Parties. Based on the above, the CMA therefore believes that the remaining suppliers, either individually or in aggregate, would not sufficiently constrain the Merged Entity.

Barriers to entry and expansion

192. Veolia did not make submissions in relation to barriers to entry and expansion in this frame of reference.
193. The CMA has not sought feedback on barriers to entry and expansion relating to the supply of complex waste management services specifically. However, the CMA believes that the corresponding feedback on high barriers to entry gathered in relation to the supply of non-hazardous municipal collection services is relevant and likely to be exacerbated in the context of complex contracts.
194. Several respondents to the CMA's merger investigation submitted that a track record and proven experience are very important to win municipal waste collection contracts.²⁶² Similarly, several respondents submitted that demonstrating balance sheet strength was important.²⁶³ This is consistent with evidence received from local authorities who considered 'reliability of service' very important and 'track record' as only somewhat less important, when identifying the most important factors for deciding which waste company to use.
195. The necessity of demonstrating a track-record and proven experience is enhanced for complex waste management contracts, in particular multi-faceted waste management contracts, as suppliers may need to demonstrate this for each included services, as reflected in the third party feedback set out in paragraphs 74 to 75 above.
196. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC in the

²⁶² [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's collection competitors questionnaire; Note of call with [REDACTED], dated 12 May 2021.

²⁶³ [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's collection competitors questionnaire.

supply of complex waste management contracts procured by local authorities in the UK as a result of the Merger.

Conclusion on horizontal unilateral effects in complex waste management contracts procured by local authorities

197. For the reasons set out above, the CMA believes that Veolia's strong existing position in the overall waste management supply chain would be further strengthened by the addition of Suez, a close competitor in the supply of complex waste management contracts. As a result of the Merger, the Parties would have the largest portfolio of municipal contracts for the provision of a very wide range of waste management services, including through several demanding PFI/PPP contracts.
198. The available evidence supports the finding that the Parties' extensive capabilities and track record in winning and running complex waste management contracts gives them a significant advantage over other suppliers of waste management services, including Biffa, FCC, Urbaser and Viridor who do not compete on an equal footing with the Parties. This is also in a context where the CMA received a significant number of competition concerns from third parties in relation to municipal contracts for waste management services, including from local authorities and consultancy firms advising in the waste management sector, and the CMA has unequivocal evidence that for [X] recent complex waste management contracts worth several hundreds of millions of pounds, Veolia and Suez were the last two bidders.
199. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of complex waste management contracts procured by local authorities in the UK.

Horizontal unilateral effects in the supply of non-hazardous commercial and industrial (C&I) waste collection services

200. The Parties overlap in the supply of non-hazardous C&I waste collection services: each Party provides such services to a range of business across the UK. In assessing this theory of harm, the CMA has considered:
- (a) The frame of reference;
 - (b) Shares of supply;
 - (c) The closeness of competition between the Parties;

- (d) The competitive constraints from other alternatives; and
- (e) Barriers to entry and expansion.

Frame of reference

Product scope

- *Parties' submissions*

201. Veolia submitted that the appropriate frame of reference is the supply of non-hazardous C&I waste collection services without any further segmentation by type of customer or type of waste.²⁶⁴ Further, Veolia submitted that:

- (a) The logistics of collection are broadly similar [REDACTED];
- (b) C&I customers organise calls for tenders in relation to all their waste [REDACTED];
- (c) Veolia does not believe there are any material differences in competitive dynamics between different types of customer; and
- (d) There are a large number of suppliers capable of serving all types of customers, either directly or through brokers.²⁶⁵

- *CMA's assessment*

- *Precedents*

202. Previous merger investigations have consistently found that non-hazardous municipal waste collection services are distinct from non-hazardous C&I waste collection services.

203. The CMA has not previously considered the possible further segmentation of services for the collection of non-hazardous C&I waste collection.

204. The EC previously considered sub-segmentation in the non-hazardous C&I waste collection by type of waste, although it ultimately left such sub-segmentation open.²⁶⁶ Specifically, the EC considered:

²⁶⁴ [REDACTED].

²⁶⁵ [REDACTED].

²⁶⁶ EC's decision of 3 April 2007 in case COMP/M.4576, *AVR/Van Gansewinkel*, paragraphs 10 and 11.

- (a) 'Commercial' non-hazardous waste, ie waste generated by plants, offices, and shops;
- (b) 'Industrial' non-hazardous waste, meaning specific waste generated by production industries, ie various types of sludge, agricultural waste, etc; and
- (c) Construction and demolition (**C&D**) waste.

205. The CMA has excluded from its competitive assessment the supply of non-hazardous C&D waste collection services given the lack of overlap between the Parties in that segment as Veolia only collects C&I waste.²⁶⁷

- *Possible further segmentations*

206. The CMA considered whether the product frame of reference should include the following further segmentations:

- (a) Type of waste: whether it is appropriate to segment the product frame of reference by type of waste collected; and
- (b) Type of customer: whether it is appropriate to segment the product frame of reference by national, regional, or local customers.

Type of waste

207. The CMA considered whether to segment the frame of reference according to the type of waste collected. The CMA's merger investigation has indicated that customers typically need services covering a range of collection services and that most suppliers offer a range of such services in order to be competitive although there are a small number of specialist suppliers (eg DS Smith for paper and cardboard, ACL for food waste).²⁶⁸

208. The CMA has not seen evidence that competitive conditions are materially different across waste streams and has taken any supplier specialisation into account in the competitive assessment.

209. For the reasons set out above, the CMA believes that all types of C&I waste, excluding C&D waste, should be included in the frame of reference.

²⁶⁷ [REDACTED].

²⁶⁸ Note of call with [REDACTED], dated 8 April 2021; [REDACTED], [REDACTED], [REDACTED] and [REDACTED], [REDACTED]'s responses to the CMA's C&I customers questionnaire.

Type of customer

210. The CMA considered whether to segment the frame of reference according to customer type, for example by regional and national customers.
211. From a demand-side perspective, the available evidence shows that national customers may prefer using one supplier with national presence. All national customers that responded to the CMA's merger investigation confirmed that they tended to use a single supplier nationally, albeit some customers submitted that they used different suppliers for different waste streams.²⁶⁹ Furthermore, a number of customers either indicated a preference for using a single supplier to ensure consistency across the business, or suggested that using a single supplier nationally was more cost effective for the business.²⁷⁰ Furthermore, Veolia's internal documents distinguish between local, regional and national customers.²⁷¹
212. From a supply-side perspective, the available evidence suggests that certain competitors do not compete for national customers. Indeed, only one C&I collection competitor that responded to the CMA's merger investigation, [X], submitted that it competed directly for national customers.²⁷² All other C&I collection competitors respondents submitted they either do not compete for national customers or that they compete for them using a third party broker.
213. For the reasons set out above, the CMA believes that there may be differences in competitive conditions for non-hazardous C&I waste collection between national and regional account customers and competitors. The CMA has not, however, found it necessary to define separate frames of reference for such customers and has taken these differences into account in the competitive assessment.
- *Conclusion on product scope*
214. For the reasons set out above, the CMA believes that it should consider competition within a product frame of reference for the supply of non-hazardous C&I waste collection services. The CMA has considered any differences in competition based on customer type further in its assessment.

²⁶⁹ For instance, [X], [X], [X] and [X]'s responses to the CMA's C&I customers questionnaire.

²⁷⁰ [X]'s response to the CMA C&I customers questionnaire and [X]'s submission to the CMA of 12 July 2021.

²⁷¹ [X].

²⁷² [X]'s response to the CMA's collection competitors questionnaire.

Geographic scope

215. While Suez submitted that it may be appropriate for the CMA to consider separate national and regional frames of reference, Veolia submitted that it was not appropriate to consider segmentation on a regional basis and that the appropriate frame of reference is national.²⁷³
216. In particular, Veolia submitted that:
- (a) Waste collection vehicles are mobile assets and that vehicle depots are easy to find;²⁷⁴
 - (b) Brokers can assist a supplier in delivering a national contract by finding subcontractors to provide collection services [REDACTED]; and
 - (c) Barriers to entry in the market are low and suppliers active in one part of the country can easily expand into other parts.²⁷⁵
217. Previous merger investigations considered the supply of non-hazardous C&I waste collection services on a national basis, although ultimately left the geographic scope open.²⁷⁶
218. Veolia and Suez are national suppliers and overlap at a national level.

- *Conclusion on geographic scope*

219. For the reasons set out above, the CMA believes that the appropriate geographic frame of reference is national. The CMA has taken account of constraints from regional and local suppliers in the competitive assessment.

Conclusion on frame of reference

220. For the reasons set out above, the CMA believes that the appropriate frame of reference is the supply of non-hazardous C&I waste collection services in the UK (the **C&I waste collection services**).

²⁷³ [REDACTED].

²⁷⁴ [REDACTED].

²⁷⁵ [REDACTED].

²⁷⁶ OFT's decision of 4 June 2013 in case ME/6040/13, anticipated acquisition by Kier Group plc of May Gurney Integrated Services plc, paragraph 21.

Shares of supply

Parties' submissions

221. Veolia submitted that:

- (a) The Merged Entity will have a share of supply of C&I waste collection services below 15% on a variety of calculations and below 25% on any basis, with the increment resulting from the Merger being no higher than 5%;²⁷⁷ and
- (b) The share of supply estimates have evidential value in that they consistently show low shares.²⁷⁸

CMA's assessment

222. The CMA does not consider that share of supply estimates accurately reflect competitive conditions in C&I waste collection services. For example, as explained above, there are differences in competitive conditions for national and regional C&I waste collection services. It has not been possible, however, to distinguish between national and regional contracts in the share of supply estimates and, as a result, all types of contracts are included in the data set.

223. Veolia provided share of supply estimates for C&I waste collection services for 2020.²⁷⁹ These share estimates are based on revenues and include all regional and national C&I waste collection services across the UK. The CMA adjusted Veolia's estimates based on revenue data from third parties gathered during its merger investigation. These estimates are presented in **Table 1** below.

Table 1: Shares of supply based on revenue for C&I waste collection services in 2020²⁸⁰

²⁷⁷ [REDACTED]; [REDACTED].

²⁷⁸ [REDACTED].

²⁷⁹ [REDACTED]; [REDACTED].

²⁸⁰ [REDACTED].

Entity	Shares of supply
Veolia	[10-20]%
Suez	[0-5]%
<i>Merged Entity</i>	<i>[10-20]%</i>
Biffa	[10-20]%
Mitie	[0-5]%
Grundon	[0-5]%
AWM (Beauparc)	[0-5]%
Bagnall and Morris	[0-5]%
Others	[60-70]%
Total market size²⁸¹	£2.8 billion

Source: Veolia share of supply estimates and CMA calculations

224. In addition to the share of supply estimates based on revenues, Veolia submitted share of supply estimates based upon volume data.²⁸² These estimates suggest that the Parties have a combined share of supply of [5-10]%, with the Merger bringing about an increment of [0-5]%.
225. The CMA believes it is appropriate to place limited evidential weight on the share of supply estimates for the following reasons:
- (a) There is significant differentiation between suppliers in the market. As set out in the frame of reference from paragraph 212 above, not all competitors can compete for all customers. For example, national customers may have a strong preference for a single national supplier, which would exclude many smaller regional and local suppliers from competing; and
 - (b) There are no reliable market size estimates for the supply of the C&I waste collection services.²⁸³
226. Although the CMA has placed limited evidential weight on the share of supply estimates, the CMA notes that these estimates do suggest that Biffa and the Merged Entity will be the largest suppliers, with the remaining competitors being significantly smaller.

Closeness of competition

227. The CMA examined the closeness of competition between the Parties and has considered within its assessment:

²⁸¹ There is no standard estimate for the total size of the C&I waste collection segment in the UK. The CMA relied on an estimated total market size of £2.8 billion as this was the most conservative estimate [redacted] ([redacted]). The CMA did not find more reliable estimates for the size of the C&I waste collection services segment.

²⁸² [redacted].

²⁸³ [redacted]; [redacted]; and [redacted].

- (a) Submissions from the Parties;
- (b) Evidence from the Parties' internal documents;
- (c) The Parties' tender data; and
- (d) Evidence from third parties.

Parties' submissions

228. Veolia submitted that the Parties are not close competitors in the supply of C&I waste collection services, whether for national, regional or local customers. Veolia submitted that this view is supported by Veolia's tender data and Suez's small share of supply which Veolia considers demonstrate Suez's marginal presence in this segment.²⁸⁴

CMA's assessment

- *Evidence from internal documents*

229. The evidence from the Parties' internal documents shows that they appear to consider themselves and Biffa as the most important suppliers in this frame of reference. In particular, internal documents [REDACTED].²⁸⁵ The Parties have argued that certain documents should be disregarded on the basis that they were prepared in the context of the Merger, and that they reflected a high-level overview provided to the Veolia board and therefore did not reflect the views of people close to the UK business. The CMA does not consider that these are credible reasons to disregard the content of a document. Notably, the CMA considers that it is reasonable to expect that businesses will exercise a degree of care in preparing materials presented to their boards of directors and absent evidence to the contrary, or evidence that this material differs from other materials prepared by the business, the CMA considers that it is reasonable to rely on the material in such documents as providing reasonably accurate information about the operation or views of the business.

230. The evidence from Veolia's internal documents also show that connections to its broader waste management businesses, including waste processing

²⁸⁴ [REDACTED]; [REDACTED]; and [REDACTED].

²⁸⁵ [REDACTED] and [REDACTED]; [REDACTED].

infrastructure in the UK, is important to its competitive position in C&I waste collection. [REDACTED].²⁸⁶ [REDACTED],²⁸⁷ [REDACTED].^{288, 289} [REDACTED].²⁹⁰

231. Veolia's pitches to potential customers also point to the benefits of its broader business, noting for example [REDACTED], and the cost and operational certainty benefits this can deliver to customers.²⁹¹ The CMA notes that most other competitors, except Suez, do not have similar broader businesses in the UK.

- *Parties' tender data*

232. Consistent with the evidence from internal documents, the CMA found that the Parties' tender data shows that they compete closely with each other and with Biffa, but that other suppliers provide only a limited constraint in C&I waste collection services.

233. Veolia provided a dataset containing [REDACTED] tenders, each of a value greater than £[REDACTED] across the contract term, for which Veolia offered a price between 2016 and 2020. Veolia recorded the winner for around [REDACTED] of these tenders; Veolia won [REDACTED] the tenders, and recorded the other bidders for [REDACTED] tenders.

234. The CMA carried out two types of analysis:

- (a) A participation analysis ie an analysis of how frequently Veolia faces different competitors when bidding for contracts. This provides information on which suppliers are likely to compete against Veolia and, all other things being equal, a supplier that competes more often against Veolia will be a stronger constraint on Veolia; and
- (b) A loss analysis ie an analysis of how frequently Veolia loses tenders to different competitors. This provides information on which competitors, all other things being equal, provide the strongest competitive constraints on Veolia.

235. The CMA carried out this analysis on all of Veolia's tenders as well separately for national and regional customers based on Veolia's identification of these customers in the dataset.

²⁸⁶ [REDACTED].

²⁸⁷ [REDACTED].

²⁸⁸ [REDACTED].

²⁸⁹ [REDACTED].

²⁹⁰ [REDACTED].

²⁹¹ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

236. In the round, the tender data shows that Biffa is a stronger competitor to Veolia than Suez (in particular, according to the loss analysis). Suez does, however, provide a material competitive constraint on Veolia by competing in around [redacted] of tenders where Veolia bid (according to the participation analysis). In particular:
- (a) [redacted];
 - (b) [redacted]; and
 - (c) If only national customers are considered, Biffa and Suez were again the strongest competitors. [redacted].
237. Suez submitted a dataset containing [redacted] tenders each of an expected value greater than [redacted] in which Suez competed between 2016-2020.
238. As with the Veolia dataset, the CMA carried out a participation analysis on the Suez tender data. It was not possible to carry out a meaningful loss analysis based on the Suez tender data as [redacted].
239. Overall, the tender data submitted by Suez shows that Veolia and Biffa are strong competitors to Suez, while other competitors in the market provide a weak constraint. In particular:
- (a) Of the [redacted] tenders, Suez recorded other bidders in [redacted] of them. Of these [redacted] tenders, Veolia competed in [redacted] ([redacted]%), Biffa [redacted] ([redacted]%), and Viridor [redacted] ([redacted]%) (Viridor's whole C&I business was acquired by Biffa in September 2021),²⁹² followed by a long tail of other competitors which competed in [redacted] tenders or fewer.
 - (b) The CMA also considered tenders segmented by national and regional customers. This produced similar results which showed that Veolia and Biffa are Suez's largest competitors by a significant margin.²⁹³
240. Taking the available evidence in the round, the CMA believes that the Parties' tender data show that Veolia and Suez are close competitors, with Biffa also being a close competitor to both and the closest competitor to Veolia. The CMA notes, however, that merger parties need not be each other's closest competitors for unilateral effects to arise.²⁹⁴ It is sufficient that the merger firms compete closely and that the remaining competitive

²⁹² See Biffa press release 'Biffa acquires Viridor collections business and certain recycling locations', available on Biffa's [website](#).

²⁹³ For national customers, Suez faced Biffa in [redacted]% ([redacted]) of tenders and Suez faced Veolia in [redacted]% ([redacted]) of tenders. For regional customers, Suez faced Biffa in [redacted]% ([redacted]) of tenders and Suez faced Veolia in [redacted]% ([redacted]) of tenders.

²⁹⁴ [CMA 129](#), paragraph 4.8.

constraints are not sufficient to offset the loss of competition between them resulting from the merger.²⁹⁵ In the current case, the Parties each appear to be one of the other Party's two closest competitors. The Parties' tender data points to Veolia being a stronger constraint on Suez than vice versa (consistent with Veolia being a larger supplier than Suez in C&I waste collection services), but the constraint is, in the CMA's view, still very significant given how concentrated the market is. Other than Biffa, other competitors appear to be much weaker constraints as individual suppliers of C&I waste collection services.

- *Evidence from third parties*

241. As part of its merger investigation, the CMA sought to obtain qualitative feedback from a subset of the Parties' customers in order to better understand the demand-side perspective on this segment. This feedback is not intended to provide a basis for statistical analysis, but rather to provide input from stakeholders other than the merger parties. The CMA contacted a range of the Parties' customers and there is no evidence to suggest the feedback from these customers was biased toward any particular view of the Merger.

242. The available evidence from C&I customers of the Parties that responded to the CMA's merger investigation (who for the most part are national customers) shows a strong preference for having a single supplier servicing their C&I waste collection needs nationwide. In particular, C&I customers highlighted the following:

- (a) National agreements allow customers to benefit from competitive pricing;²⁹⁶
- (b) National agreements allow for a consistency of service across the customer's business;²⁹⁷
- (c) National agreements make it easier for customers to monitor compliance and performance;²⁹⁸ and
- (d) It is more efficient to have a single point of contact.²⁹⁹

243. In line with the above, C&I customers also indicated that the geographical reach of suppliers is a very important factor when deciding which C&I

²⁹⁵ CMA 129, paragraph 4.8.

²⁹⁶ [X] and [X]'s responses to the CMA's C&I customers questionnaire.

²⁹⁷ [X]'s submission to the CMA of 12 July 2021 and [X]'s response to the CMA's C&I customers questionnaire.

²⁹⁸ [X], [X] and [X]'s responses to the CMA's C&I customers questionnaire.

²⁹⁹ Note of call with [X], dated 22 June 2021 and [X]'s response to the CMA's C&I customers questionnaire.

waste collection supplier to use.³⁰⁰ Furthermore, half of the C&I customers that responded to the CMA's merger investigation submitted that one of the factors that made them choose Veolia or Suez as their supplier of C&I waste collection services was their national presence.

244. More generally, the strength of Veolia and Suez as two of the main national competitors in C&I waste collection services is supported by third party evidence. Specifically:

- (a) C&I customers, competitors and brokers consistently submitted that they considered Parties and Biffa to be strong competitors based on their ability to meet customer needs and on closeness of competition;
- (b) In support of these submissions, several competitors highlighted Veolia's and Suez's national presence as a strong competitive advantage;³⁰¹ and
- (c) Again, some brokers emphasised Veolia and Suez's national presence as an explanation for their strength.³⁰² For example, one broker submitted that regional and local suppliers are not best placed to tender for national contracts and in this context submitted that Veolia, Suez and Biffa were the strongest competitors.³⁰³ Another broker submitted that the Merger would have a detrimental effect on choice for customers, especially national customers.³⁰⁴

245. While the majority of customers did not express concerns about the impact of the Merger on competition, C&I customers, the competitors and brokers consistently submitted that they considered Parties and Biffa as the strongest competitors in this segment.

246. Feedback from competitors, which was consistent with the information in the Parties' internal documents set out above, confirmed that operating processing facilities (eg ERFs, MRFs, landfill sites) is important or very important to compete effectively in the supply of C&I waste collection services. Competitors pointed to several reasons this is the case:

- (a) Controlling waste transfer stations provides a broader range of options in securing the most efficient disposal route.³⁰⁵ In this context, one

³⁰⁰ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's C&I customers questionnaire.

³⁰¹ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]'s responses to the CMA's collection competitor questionnaire.

³⁰² [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's commercial brokers questionnaire.

³⁰³ [REDACTED]'s response to the CMA's commercial brokers questionnaire.

³⁰⁴ [REDACTED]'s response to the CMA's commercial brokers questionnaire.

³⁰⁵ [REDACTED], [REDACTED], [REDACTED]'s responses to the CMA's collection competitors questionnaire. See also [REDACTED]'s response to the CMA's collection competitors questionnaire.

competitor submitted that companies that operated disposal facilities could always prioritise their own vehicles over those of third parties;³⁰⁶

- (b) Operating processing facilities is important to control costs and deliver competitive pricing.³⁰⁷ One competitor submitted that treatment and disposal is the largest cost in C&I waste collection and accounts for over 50% of its costs,³⁰⁸ and another competitor submitted that the disposal price feeds through to the customer price.³⁰⁹ One third party submitted that if a company has spare capacity at a waste treatment plant, it could use this to provide more competitive rates than collection-only competitors, or to control pricing in the local area;³¹⁰ and
- (c) Customers place value on partnering with companies which can demonstrate transparency in where their waste is going to and how it is handled.

247. The Parties are present extensively across the waste management supply chain (in particular both have access to merchant capacity in many waste processing facilities including ERFs). Third parties submitted that this gives the Parties an advantage over their C&I collection competitors and brokers that do not own and/or operate such infrastructure. For example, a customer submitted that the Parties are particularly strong in the supply for C&I waste collection services in areas of the UK where they currently operated PPP/ PFI contracts, as a result of their existing infrastructure in those regions,³¹¹ and that control of infrastructure enables companies to deliver against factors like price as one of the biggest costs in disposing of waste is transport.³¹² Competitors also pointed to the Parties' control of infrastructure as increasing their competitive strength³¹³ and one competitor that expressed concerns about the Merger emphasised that operating processing facilities would become increasingly important as Veolia, Suez, Biffa and Viridor controlled not only the logistics infrastructure through their vast collection network but also the processing facilities.³¹⁴

³⁰⁶ [redacted]'s response to the CMA's collection competitors questionnaire.

³⁰⁷ [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's collection competitors questionnaire.

³⁰⁸ Note of call with [redacted], dated 20 April 2021.

³⁰⁹ [redacted]'s response to the CMA's collection competitors questionnaire

³¹⁰ Note of call with [redacted], dated 26 August 2021.

³¹¹ Note of call with [redacted], dated 8 July 2021.

³¹² A collection competitor confirmed that combined transportation, treatment and disposal costs for C&I waste account for approximately 50% of the overall C&I business costs. Note of call with [redacted], dated 20 April 2021.

³¹³ [redacted]'s response to the CMA's collection competitors questionnaire and [redacted]'s response to the CMA's collection competitors questionnaire.

³¹⁴ [redacted]'s response to the CMA's collection competitors questionnaire.

248. This was supported by evidence from other regional C&I competitors. For example:

- (a) One regional C&I competitor submitted that it could not use Veolia's disposal facilities as Veolia either reserves its capacity to local authorities or charges twice the market rate;³¹⁵
- (b) Another regional C&I competitor submitted that Suez had denied its C&I waste collection business access to capacity at an ERF, effectively foreclosing it from the local area in question;³¹⁶ and
- (c) The same competitor submitted that it had renounced operating in certain regions of the UK where national waste management players such as Veolia have full control of the merchant capacity at certain PFI-backed ERFs. This is because this control allows these ERF operators to block access to merchant capacity or to provide it only on above market rate prices.³¹⁷

249. Even the third parties that did not consider that operating waste processing facilities was particularly important to compete effectively in the supply of C&I waste collection services caveated their response. For example:

- (a) One C&I collection competitor said that operating waste processing facilities was not particularly important if facilities were opened on a fair commercial basis but that Veolia and Suez had been competing unfairly by using the infrastructure made available to them through contracts with local authorities;³¹⁸ and
- (b) Another competitor (also active in treatment and disposal) noted that whilst not essential, operating processing facilities gave an advantage to winning contracts particularly at regional level.³¹⁹

250. To support its argument that many suppliers compete effectively without operating waste disposal infrastructure, Veolia put forward the example of [redacted] that has not historically operated any ERFs but has, nevertheless, secured a position as a strong competitor in C&I waste collection services.³²⁰ The CMA notes that [redacted] has been active in waste management, including C&I waste collection services, for over [redacted] years,

³¹⁵ [redacted]'s response to the CMA's collection competitors questionnaire.

³¹⁶ Grundon's email of 18 June 2021.

³¹⁷ Note of call with Grundon, dated 8 April 2021 and Grundon's email of 18 June 2021.

³¹⁸ First Mile's response to the CMA's collection competitors questionnaire.

³¹⁹ Amey's response to the CMA's collection competitors questionnaire.

³²⁰ [redacted].

operates waste disposal infrastructure, including [REDACTED] MRFs across the UK and [REDACTED] operational landfill sites.³²¹

Conclusion on the closeness of competition between the Parties

251. For the reasons set out above, the CMA believes that the Parties are close competitors in the supply of C&I waste collection services. The evidence from C&I customers that responded to the CMA's merger investigation (who for the most part are national customers) shows that these customers have a strong preference for having a single supplier servicing their C&I waste collection needs nationwide and that both Veolia and Suez compete for these customers. In addition, the CMA found that the Parties' tender data points to Veolia being a stronger constraint on Suez than vice versa (consistent with Veolia being a larger supplier than Suez in C&I waste collection) but that the Parties are close competitors, which is also supported by evidence from internal documents. Both Veolia and Suez own and/or operate significant waste processing infrastructure (eg MRFs, ERFs, landfill sites) which may give them a competitive advantage over C&I collection suppliers and brokers who do not own and/or operate such infrastructure. This finding is broadly in line with Veolia's internal documents showing that connections to its broader waste management businesses, including waste processing infrastructure in the UK, is important to its competitive conditions in C&I waste collection services.

Competitive constraints

252. In assessing the competitive constraints from other alternatives, the CMA has considered:
- (a) Submissions from the Parties;
 - (b) Evidence from internal documents and the Parties' tender data (discussed at paragraphs 229 to 240 above); and
 - (c) Evidence from third parties.

Parties' submissions

253. Veolia submitted that:
- (a) C&I waste collection is a highly fragmented segment with a large number of strong regional and local players, and [REDACTED] as market leader. Many

³²¹ [REDACTED]; See [REDACTED].

rivals compete effectively without broader waste management businesses or without operating treatment and disposal infrastructure;

- (b) Many suppliers compete effectively for national customers, including brokers and facilities management companies; and
- (c) The CMA's approach to the acquisition by [REDACTED]. In particular, Veolia submitted that the CMA's decision [REDACTED].³²²

CMA's assessment

254. The CMA has considered the remaining constraint from both brokers and other C&I suppliers. The CMA recognises that C&I waste collection sees competition from a large number of players of different sizes, including waste management companies and brokers sub-contracting collection services to local players on behalf of their customers, as well as numerous smaller players active at the local level. The CMA has considered whether competitors would exercise a sufficient constraint on the Merged Entity individually or in aggregate in future such that the Merger would not give rise to a realistic prospect of an SLC.

- *The Biffa/Viridor transaction*

255. The CMA has considered Veolia's submission that the CMA's concerns in this theory of harm are inconsistent with its approach to the Biffa/Viridor transaction. The CMA believes that this submission is incorrect and misunderstands the CMA's approach to merger control under the Act:

- (a) In assessing whether the Biffa/Viridor transaction would meet the reasonable chance test,³²³ the CMA's mergers intelligence committee (**MIC**) considered the facts and market conditions as they stood at the time of that assessment. It would not be reasonable for MIC to establish a complex and speculative counterfactual that included the Merger completing (this is particularly the case given the Merger is currently under review by the CMA and remains an anticipated transaction).
- (b) Each transaction considered by the CMA is examined based on the specific characteristics of the merger parties in the market and market dynamics at the relevant time. Accordingly, following completion of the Biffa/Viridor transaction there is a greater level of concentration in the

³²² [REDACTED]; [REDACTED].

³²³ [Guidance on the CMA's mergers intelligence function](#) (CMA56), December 2020, paragraph 1.2. Where the CMA is assessing whether to investigate a merger, it considers whether there is a reasonable chance that the test for a reference to an in-depth phase 2 investigation will be met.

market, and the Merger is being assessed in a context where that greater level of concentration exists. In any event, the two transactions are not similar in either scale or scope and, moreover, Suez has different characteristics as a C&I supplier in the UK as compared to Viridor and it is, therefore, entirely logical that the CMA may take a different view of the Merger than it did of the Biffa/Viridor transaction.

- *Constraint from brokers*

256. Veolia submitted that brokers ([REDACTED]) and facilities management companies ([REDACTED]) are strong competitors for national customers.³²⁴
257. With respect to facilities management companies, the CMA notes that these companies operate similarly to brokers as they do not typically have their own collection facilities and instead rely on subcontractors to provide the majority of the actual C&I waste collection services.³²⁵ Furthermore, the tender data submitted by the Parties suggests that facilities management companies have no material presence in the market, which is supported by customer respondents. The CMA did not receive evidence from the Parties substantiating their submissions that they face strong competitive constraints from facilities management companies. Given the lack of evidence supporting constraints from facilities management companies, the CMA does not consider that these suppliers exercise a material constraint on the Parties.
258. Evidence received from both brokers and customers indicates that brokers are not a suitable alternative to C&I service providers for all national customers. While brokers responding to the CMA submitted that they compete for national customers,³²⁶ one broker also explained that for national customers looking for a ‘self-delivery’ solution able to compete,³²⁷ the broker model would not be a suitable alternative.³²⁸
259. The CMA received input from customers indicating that brokers can serve national customers nationwide. However, several national customers told the CMA that they had tried using brokers, but found that the quality of service, costs, and/or ability to manage the service were inferior to using a

³²⁴ [REDACTED].

³²⁵ See, for example, [REDACTED]'s response to collection competitor questionnaire.

³²⁶ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's commercial brokers questionnaire.

³²⁷ That is, a supplier with the ability to fulfil the contract or at least parts of it with its own personnel.

³²⁸ [REDACTED]'s response to the CMA's commercial brokers questionnaire.

single national supplier and that they had a preference for a single national supplier.³²⁹ Specifically:

- (a) One customer submitted that it had previously used a broker model to deliver its waste service but found that from a commercial and business perspective, having a national supplier provide services across different regions was a better fit and, as a result, had switched to Veolia. The same customer further submitted that the absence of a single point of contact through which to manage the on-the-ground service delivery and to raise concerns had been a disadvantage of the broker model;³³⁰ and
- (b) In rating C&I collection suppliers, another customer also considered that brokers were not as able to meet their needs as C&I suppliers owing to 'inflated prices, lower flexibility and time of reaction'.³³¹ This is consistent with the Parties' tender data set out at paragraphs 233 to 240 above in which brokers do not feature as prominently participating against the Parties (or the Parties losing tenders to them).

260. Nearly all broker respondents expressed concerns about the Merger, noting that they perceived it to be difficult to very difficult for C&I collection customers to switch their supplier and expressing concern that the national C&I waste collection suppliers (eg the Merged Entity and Biffa) could make it harder for customers to terminate their contracts post-Merger as there would be a lack of competition for such contracts.

261. Consistent with this, some brokers submitted that the Merger would reduce choice for national customers who would only be left with either working with the Merged Entity or Biffa if they want a national 'self-delivery' solution.³³²

262. While Veolia pointed to brokers as providing a significant remaining constraint post-Merger in C&I waste collection services, in light of the above evidence, the CMA believes that any constraint provided by brokers does not address the concern identified by the CMA about competition to serve those customers for whom brokers are not a good alternative to a national supplier.

³²⁹ [redacted], [redacted] and [redacted]'s responses to the CMA's C&I customers questionnaire.

³³⁰ [redacted]'s response to the CMA's C&I customers questionnaire.

³³¹ [redacted]'s response to the CMA's C&I customers questionnaire.

³³² [redacted] and [redacted]'s responses to the CMA's commercial brokers questionnaire.

- *Constraint from other suppliers of C&I waste collection services*

263. The available evidence suggests that Biffa is a strong competitor to both Veolia and Suez. Specifically:

- (a) Customers, competitors and brokers that responded to the CMA's merger investigation rated Biffa as one of the strongest competitors in C&I waste collection services and competitors also identified Biffa as a close competitor to each of Veolia and Suez,³³³ and
- (b) Four customers submitted that Biffa is a strong competitor as a result of its national presence,³³⁴ with one, however noting that Biffa's customer service proposition was lacking compared to Veolia's.³³⁵ Another customer submitted that Biffa has been impacted by the refuse-derived exports tax, which has made their offering less competitive.³³⁶

264. With regard to competitors other than Biffa, the evidence from customers suggests that while there are several other competitors in the market, they provide a moderate to weak competitive constraint on Veolia and Suez. In particular:

- (a) Two other suppliers (namely, DS Smith and Reconomy) were identified by more than one C&I customer when asked to name companies that would be able to meet their waste needs if they issued a tender today, and each was considered a stronger competitor than Suez but not as strong as Veolia and Biffa,³³⁷
- (b) However:
 - (i) Only a handful of brokers and facilities management companies identified Reconomy as one of their strongest competitors.³³⁸ The CMA notes that as a broker Reconomy is subject to the limitations discussed above (see paragraph 262);
 - (ii) No competitor or broker identified DS Smith as one of their strongest competitors; and

³³³ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]'s responses to the CMA's C&I customers questionnaire; and [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]'s responses to the CMA's collection competitors questionnaire.

³³⁴ [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's C&I customers questionnaire.

³³⁵ [REDACTED]'s response to the CMA's C&I customers questionnaire.

³³⁶ [REDACTED]'s response to the CMA's C&I customers questionnaire.

³³⁷ See [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's C&I customers questionnaire who mentioned DS Smith, and [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's C&I customers questionnaire mentioning Reconomy.

³³⁸ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's commercial brokers questionnaire. [REDACTED]'s response to the CMA's C&I customers questionnaire and [REDACTED]'s responses to the CMA's collection competitors questionnaire.

(iii) Third party evidence from C&I national customers regarding DS Smith points to it having some limitations. For example, one customer submitted that DS Smith has some challenges in relation to transport,³³⁹ with another one adding that refuse-derived exports tax has impacted its competitiveness.³⁴⁰ The available evidence also point to DS Smith's waste expertise being focused on the off take of dry recyclates (in particular, paper and cardboard),³⁴¹ in line with how the company presents itself on its website and Veolia's own submissions;³⁴² and

(c) None of the other 24 suppliers named by C&I customers received more than one mention.

265. Notwithstanding, the CMA notes that Veolia's tender data shows that of the [redacted] tenders where Veolia recorded a winner other than itself, DS Smith won most frequently after Biffa, winning [redacted] tenders, [redacted] of which was shared with [redacted]. Taking the available evidence in the round, the CMA believes that DS Smith may exert some degree of constraint on the Parties post-Merger although it would not be of a same magnitude as that imposed by Biffa.

266. While two competitors identified Viridor as a strong competitor,³⁴³ the CMA notes that Biffa acquired Viridor's C&I waste collection business on 1st September 2021 (see paragraph 255 above). On this basis, the CMA no longer considers Viridor an independent competitor in this market.

Conclusion on competitive constraints

267. For the reasons set out above, the CMA believes that in particular for those customers that do not perceive the 'broker model' as a viable option and that have a strong preference for having a single supplier for their C&I waste collection needs nationwide (even if that results in some degree of sub-contracting to regional or local players), the Merged Entity would only face a strong competitive constraint from Biffa and some degree of constraint from DS Smith. The CMA believes that constraints from other competitors are significantly weaker. The CMA therefore believes that the

³³⁹ [redacted]'s response to the CMA's C&I customers questionnaire.

³⁴⁰ [redacted]'s response to the CMA's C&I customers questionnaire.

³⁴¹ See [redacted] and [redacted]'s responses to the CMA's C&I customers questionnaire.

³⁴² 'DS Smith is a leading supplier of sustainable packaging solutions, paper products and recycling services', see DS Smith's [website](#); and [redacted].

³⁴³ [redacted] and [redacted]'s responses to the CMA's collection competitors questionnaire.

remaining suppliers, either individually or in aggregate, would not sufficiently constrain the Merged Entity.

Barriers to entry and expansion

268. Veolia submitted that this segment has seen significant new entrants and barriers to entry are low.³⁴⁴
269. Customers responded that it would be unlikely to very unlikely that a new entrant could serve their C&I waste collection needs given, for example, that suppliers may have to show a track record of reliable service delivery.³⁴⁵
270. This is consistent with evidence from customers on the importance of track record when deciding which C&I waste collection supplier to use who rated this factor as being important.
271. Third party evidence from competitors also suggests that entering the C&I waste collection market is difficult,³⁴⁶ particularly in order to service large customers.³⁴⁷
272. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC in the supply of non-hazardous C&I waste collection services in the UK as a result of the Merger.

Conclusion on horizontal unilateral effects in non-hazardous C&I waste collection services

273. For the reasons set out above, the CMA believes that Veolia's strong existing position would be further strengthened by the acquisition of Suez which is a close competitor. The Merged Entity would be the second largest supplier of C&I waste collection services in the UK.
274. The available evidence indicates that, in particular, for those customers that do not perceive the 'broker model' as a viable option and that have a strong preference for having a single supplier for their C&I waste collection needs nationwide (even if that results in some degree of sub-contracting to local players), post-Merger only Biffa would be in a position to exert a strong constraint on the Parties and DS Smith would be able to exert some degree

³⁴⁴ [REDACTED].

³⁴⁵ [REDACTED] and [REDACTED]'s responses to the CMA's collection competitors questionnaire.

³⁴⁶ [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's collection competitors questionnaire.

³⁴⁷ [REDACTED] and [REDACTED]'s responses to the CMA's collection competitors questionnaire.

of constraint on the Parties although it would not be of a same magnitude as that imposed by Biffa.

275. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of non-hazardous C&I waste collection services in the UK.

Horizontal unilateral effects in the supply of non-hazardous municipal waste collection services

276. The Parties overlap in the supply of non-hazardous municipal waste collection services: each Party provides such services to a range of local authorities across the UK. In assessing this theory of harm, the CMA has considered:

- (a) The frame of reference;
- (b) Shares of supply;
- (c) The closeness of competition between the Parties;
- (d) The competitive constraints from other alternatives; and
- (e) Barriers to entry and expansion.

Frame of reference

Product scope

- *Parties' submissions*

277. Veolia submitted that the appropriate frame of reference is the supply of non-hazardous municipal waste collection services, distinct from the supply of non-hazardous C&I waste collection services.³⁴⁸

- *CMA's assessment*

278. The Office of Fair Trading (**OFT**), one of the CMA's predecessor bodies, previously considered whether the market for municipal waste collection should be segmented by kerbside or depot-based sorting, but ultimately

³⁴⁸ [REDACTED].

found that the product scope was likely to be the supply of municipal waste collection.³⁴⁹

279. Municipal and C&I waste collection services are not demand-side substitutes. From a supply-side perspective, third party evidence shows that municipal waste collection service suppliers have to comply with public procurement rules, which suppliers of C&I waste collection services generally do not.³⁵⁰
280. There are also differences in requirements for suppliers – for example, suppliers of a municipal contract will provide services within a specific local area, often using dedicated resources, while suppliers of a C&I contract may be required to supply services across multiple geographic areas and may need to use resources in that area to support multiple customers in order to operate efficiently.
281. One third party submitted that in some instances, bidders for municipal waste collection contracts are required to prove they have experience specifically in handling municipal waste collection contracts, which is a potential barrier to C&I waste collectors with no experience from entering the municipal waste collection market.³⁵¹
282. As set out above at paragraph 104 above, while market definition can sometimes be a useful tool, it is not an end in itself, and the outcome of any market definition exercise does not determine the outcome of the CMA’s analysis of the competitive effects of the merger in any mechanistic way. In many cases, there is no ‘bright line’ that can or should be drawn between different products or services, and the CMA will generally not need to come to finely balanced judgements on what is ‘inside’ or ‘outside’ the market. As such, there may be no need for the CMA’s assessment of competitive effects to be based on a highly specific description of any particular market definition (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether particular products or services fall within the relevant market).
283. As discussed above with respect to the CMA’s theory of harm pertaining to unilateral horizontal effects in the supply of complex waste management

³⁴⁹ In its decision of 10 June 2013 in case ME/6040/13, anticipated acquisition by Kier Group plc of May Gurney Integrated Services plc (paragraphs 15 and 16), the OFT considered whether waste collection services should be further segmented by type of service such as kerbside collection and sorting, and kerbside collection and depot based sorting of waste and recycling. The OFT did not reach a conclusion given that no competition concerns arose under any possible segmentation.

³⁵⁰ Note of call with [REDACTED], dated 8 April 2021. The CMA notes that certain procurements by a small number of large utilities may be governed by specific utilities procurement rules.

³⁵¹ Note of call with [REDACTED], dated 8 April 2021.

contracts procured by local authorities (**TOH1**), municipal waste management contracts vary with respect to the level of complexity of the contract and the range of services included in the contact. While the available evidence shows that some municipal waste collection contracts are sufficiently complex to be assessed pursuant to TOH1 above, the CMA believes that it is appropriate to assess those municipal waste collection contracts not included in TOH1 under a separate frame of reference for the supply of non-hazardous municipal waste collection services. The CMA has taken into account in the competitive assessment any impact of the interaction with the product frame of reference for TOH1.

284. The CMA recognises that at the margins there may be a degree of uncertainty as to which frame of reference a given municipal waste collection contract pertains to. Veolia cautioned the CMA that this prevents it from segmenting the evidence between the theories of harm, thereby affecting Veolia's ability to make useful representations in relation to the competition concerns raised by the CMA in the Issues Paper.³⁵²
285. However, in a context where stakeholders, including customers and competitors, have consistently referenced a category of complex contracts distinct from other contracts and where the Parties' internal documents indicate that the Parties themselves categorise contracts this way outside of the CMA process, the CMA considers that assessing separate frames of reference for complex waste management contracts procured by local authorities and other municipal waste collection contracts reflects the real functioning of the market and its dynamics.

- *Conclusion on product scope*

286. For the reasons set out above, the CMA believes that the appropriate frame of reference is the supply of non-hazardous municipal waste collection services.

Geographic scope

- *Parties' submissions*

287. Veolia submitted that the appropriate geographic frame of reference for the supply of municipal waste collection services is national.³⁵³ Veolia submitted that:

³⁵² [REDACTED].

³⁵³ [REDACTED].

- (a) Vehicles are mobile assets and sites which can be used as vehicle depots are generally easy to find;³⁵⁴
- (b) Although there are economies of scale in serving neighbouring local authority areas, large waste collection companies generally bid for contracts regardless of their location;³⁵⁴ and
- (c) Barriers to entry are low for collection companies that are already active in other parts of the same country, especially for the municipal waste collection market where tenders are competitive and are subject to public procurement rules.³⁵⁵

288. Suez separately submitted that it may be appropriate to also consider the supply of municipal waste collection services on a regional basis. Veolia noted that it did not consider a regional analysis to be appropriate as suppliers are able to easily bid for a collection contract in any part of the UK, and that it was straightforward to acquire vehicles and a vehicle depot in any part of the UK.³⁵⁶

- *CMA's assessment*

- 289. The OFT previously considered the market for the collection of municipal waste on a national level, although it ultimately left the geographic frame of reference open.³⁵⁷
- 290. EC decisional practice has also considered municipal waste collection at the national level given the tendering processes used by local authorities and environmental legislative frameworks are national in scope.³⁵⁸
- 291. Several local authorities submitted that it would be possible for waste collection companies that operate outside their local area to provide them with municipal waste collection services.³⁵⁹ Two local authorities submitted that it would be important that a waste collection company has a proven track record elsewhere in the UK,³⁶⁰ and another said that the waste collection company would need a contract manager and supervision team

³⁵⁴ [REDACTED].

³⁵⁵ [REDACTED].

³⁵⁶ [REDACTED].

³⁵⁷ OFT's decision of 4 June 2013 in case ME/6040/13, anticipated acquisition by Kier Group plc of May Gurney Integrated Services plc, paragraphs 21.

³⁵⁸ EC's decision of 30 July 2009 in case COMP/M.5464, *Veolia Eau/Société des Eaux de Marseille/Société des Eaux d'Arles/Société Stéphanoise des Eaux*, paragraph 30; EC's decision of 3 August 2010 in case COMP/M.5901, *Montagu/GIP/Greenstar*, paragraph 17; EC's decision of 3 April 2007 in case COMP/M.4576, *AVR/Van Gansewinkel*, paragraph 15; EC's decision of 19 December 1997 in case COMP/M.1059, *Suez Lyonnaise des Eaux/BFI*, paragraph 17.

³⁵⁹ Notes of calls with [REDACTED], dated 19 May 2021, [REDACTED], dated 18 May 2021 and [REDACTED], dated 18 May 2021.

³⁶⁰ Notes of calls with [REDACTED], dated 18 May 2021 and [REDACTED], dated 18 May 2021.

in the local area.³⁶¹ Local authorities also highlighted that if they were to switch supplier of municipal waste collection services, the new supplier would be using the same facilities and infrastructure³⁶² and existing staff would transfer to the new supplier under the Transfer of Undertakings (Protection of Employment) Regulations (**TUPE**³⁶³).³⁶⁴

292. Tender data submitted by the Parties also shows that several competitors (including the Parties, Biffa, and Serco) competed for contracts across the UK (as discussed from paragraph 311 below).³⁶⁵

- *Conclusion on geographic scope*

293. For the reasons set out above, the CMA believes that the appropriate geographic frame of reference is national and will take account of any geographical differences in the assessment below.

Conclusion on frame of reference

294. For the reasons set out above, the CMA believes that the appropriate frame of reference is the supply of non-hazardous municipal waste collection services in the UK (the **municipal waste collection services**).

Shares of supply

Parties' submissions

295. Veolia and Suez provided share of supply estimates on the basis of four measures: (i) by number of local authorities managed; (ii) by number of households served; (iii) by revenue; and (iv) by volumes of waste collected,³⁶⁶ which are discussed in more detail in the CMA's assessment below.

296. Veolia submitted that on any of these bases, the Merged Entity's share of supply will be below the level at which competition concerns generally arise, with a small increment.³⁶⁷ Veolia also submitted that waste collection contracts can last between eight and ten years and that competition has

³⁶¹ Notes of call with [REDACTED], dated 19 May 2021.

³⁶² Notes of calls with [REDACTED], dated 19 May 2021 and [REDACTED], dated 18 May 2021.

³⁶³ [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#).

³⁶⁴ Notes of calls with [REDACTED], dated 12 May 2021 and [REDACTED], dated 19 May 2021.

³⁶⁵ See also note of call with [REDACTED], dated 20 April 2021.

³⁶⁶ [REDACTED].

³⁶⁷ [REDACTED]; [REDACTED]; [REDACTED].

been intensifying over the past five years, meaning that the current shares do not necessarily reflect competition today.³⁶⁸

297. Veolia also submitted that the share of supply estimates should include self-supply by local authorities as well as supply through Teckals because:

- (a) It believes that approximately [%] of local authorities in England undertake waste collection in-house and that a further [%] use entities owned by the local authorities themselves known as Teckals, or mixed sourcing;³⁶⁹
- (b) Self-supply is a viable option for all local authorities, as even local authorities without experience or expertise in in-house supply can engage Teckals to provide municipal waste collection services on their behalf;
- (c) Local authorities are increasingly willing to take their waste collection back in-house; and
- (d) Those local authorities that currently undertake waste collection in-house have the option of outsourcing and local authorities sometimes make that switch. Veolia provided [%] instances in the past five years where Parties' municipal waste collection contracts have been taken in-house by local authorities.³⁷⁰

CMA's assessment

- *Self-supply by local authorities*

298. The CMA believes that it is not appropriate to include self-supply by local authorities (either in-house or through Teckals) within the competitive assessment and has therefore not included self-supply in the shares of supply calculations.

299. While some local authorities have switched to self-supply in recent years, the CMA notes that a high proportion of local authorities still choose to outsource municipal waste collection services to private companies. Furthermore, as set out in more detail below, several local authorities submitted that there would be significant challenges in switching supply in-

³⁶⁸ [%].

³⁶⁹ [%]. A Teckal company (or Teckal) is a term for an organisation, such as a local authority trading company, that is wholly owned and controlled by a parent body and does most of its work (more than 80%) for that body. It is named after the Teckal exemption which, in simple terms, covers circumstances where a local authority or authorities set up arrangements, including wholly owned companies, to supply services back to those authorities, in the same manner as an in-house arrangement. In these cases, the EU procurement rules do not apply to those arrangements.

³⁷⁰ [%]; [%].

house or to a Teckal. Although self-supply (either directly or through a Teckal) may be viable alternatives for some local authorities, the available evidence suggests that this is not the case for a material proportion of local authorities.

- *Number of local authorities managed*

300. The CMA adjusted Veolia's estimates³⁷¹ to exclude self-supply. On this basis, the Merged Entity would have a combined share of supply by local authorities managed in 2020 of [20-30]%, with an increment of [5-10]% brought about by the Merger.

- *Number of households served in 2020*

301. Veolia submitted share of supply estimates on the basis of number of households served in 2020. Based on these estimates, the Merged Entity would have a [20-30]% combined share of supply, with an increment of [0-5]% brought about by the Merger (excluding self-supply).³⁷²

- *Revenue*

302. Suez submitted share of supply estimates to the CMA on the basis of revenue for 2019. Based on these estimates, the Merged Entity would be the largest supplier and have a [30-40]% combined share of supply with a [5-10]% increment (excluding self-supply). This is almost twice the size of the Parties' next largest competitor Biffa ([10-20]%). Based on these estimates only one other competitor, Serco, has a share of supply exceeding [redacted] ([10-20]%) with a long tail of competitors with shares of supply below 10% (eg Kier, FCC).³⁷³

303. Veolia submitted that these share of supply estimates were not using Veolia or Suez's actual revenues.³⁷⁴ Instead, these shares were calculated using data on local authority spending on municipal waste, available from the UK Ministry of Housing, Communities, and Local Government and from the Scottish local government finance statistics.³⁷⁵ Suez then matched local authorities with private contractors.

³⁷¹ [redacted].

³⁷² [redacted].

³⁷³ [redacted].

³⁷⁴ [redacted]; [redacted]. Suez submitted that [redacted]. For the purposes of estimating revenue-based shares of supply, Suez [redacted].

³⁷⁵ [redacted].

304. The CMA notes that based on these estimates Amey has a share of supply of [5-10]%. However, the CMA received evidence from third parties that Amey is exiting the municipal waste collection services market and no longer actively bidding for such contracts which points to Suez's estimates of Amey's share of supply being overstated.³⁷⁶
305. While the CMA considers that there are limitations to all of the assessments of shares of supply in this segment, as discussed further below, the CMA does not consider that Suez's approach to calculating shares was inherently unreasonable.
- *Waste volumes*
306. Suez submitted share of supply estimates to the CMA on the basis of volumes. Based on these estimates, the Merged Entity would have a [20-30]% combined share of supply with a [5-10]% increment brought about by the Merger, followed by Biffa ([20-30]%), Serco ([10-20]%) and a long tail of competitors with shares of supply below 10% (eg Kier, FCC).³⁷⁷
307. Veolia submitted that these shares of supply were not estimated using Veolia or Suez's actual volumes.³⁷⁸ Instead these shares were calculated using the same data sources used to calculate the revenue shares of supply above, using maximum tonnes to be collected or disposed each year.

Conclusion on shares of supply

308. For the reasons set out above, all share of supply estimates provided by the Parties have certain limitations, which impacts the weight that the CMA can place on them and in particular on the precise share levels calculated based on these various methodologies. In particular:
- (a) Share of supply estimates based upon number of local authorities managed provide limited information on competition in the market as not all local authorities are equal in size. Furthermore, Veolia did not provide share of supply estimates for competitors;
 - (b) Veolia did not provide shares of supply for competitors in the estimates based on the number of households served; and

³⁷⁶ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's collection competitor questionnaire.

³⁷⁷ [REDACTED].

³⁷⁸ [REDACTED].

- (c) Both the share of supply estimates based on revenue and on volume of waste collected are unlikely to be precise given that Suez's and Veolia's actual revenues and volumes were not used.

309. The CMA has placed more weight on the evidence on closeness and competitive constraints set out below than on the shares of supply. However, the CMA notes that all estimates submitted by the Parties show that the Merged Entity would become the largest supplier of municipal waste collection services in the UK, ahead of other suppliers such as Biffa and Serco, and it has taken this into account in its overall assessment of the impact of the Merger in this segment. That is, the shares of supply discussed above point to the Merger generating competitive concerns.

Closeness of competition

310. The CMA examined the closeness of competition between the Parties and considered within its assessment:

- (a) Submissions from the Parties;
- (b) The Parties' tender data;
- (c) Evidence from third parties; and
- (d) Evidence from internal documents.

Parties' submissions

311. Veolia submitted that the Parties are not each other's closest competitors in the supply of municipal waste collection services and that Veolia faces closer competition from [REDACTED], [REDACTED], [REDACTED] and [REDACTED].³⁷⁹

CMA's assessment

- *Parties' tender data*

312. Veolia submitted a dataset containing [REDACTED] tenders for which Veolia submitted a bid between 2016 and 2020 and which had an estimated value greater than £[REDACTED].³⁸⁰ The dataset includes Veolia's bids for the [REDACTED], which Veolia identified as complex, as discussed in TOH1. The CMA excluded these contracts on a cautious basis. The CMA does not have detailed

³⁷⁹ [REDACTED]; [REDACTED].

³⁸⁰ [REDACTED].

information on all of the tenders included in Veolia's dataset so cannot exclude the possibility that one or more other complex waste management contracts are included in the remaining data set. As with the tender analysis conducted in respect of the previous theory of harm, the CMA conducted both participation and loss analysis:

- (a) Across the [redacted] tenders, Veolia faced Suez in [redacted] tenders ([redacted]). Veolia competed more often with Serco ([redacted]%), Biffa ([redacted]%), Urbaser ([redacted]%), and FCC ([redacted]%); and
- (b) When considering the occasions where Veolia was unsuccessful in its tender bid, Veolia lost most frequently to Serco and Urbaser on [redacted] occasions each ([redacted]), followed by FCC on [redacted] occasions ([redacted]%) and Suez and Biffa on [redacted] occasions each ([redacted]%).

313. Suez submitted a dataset containing [redacted] tenders in which Suez competed between 2017 and 2020.³⁸¹ The dataset includes Suez's bid for the [redacted] which the CMA considers to be a complex contract. The CMA excluded this contract on a cautious basis. As with the Veolia dataset, the CMA carried out participation and loss analysis on the Suez tender dataset:

- (a) [redacted] of the [redacted] tenders contained information on which other competitors competed in the tender. Veolia competed in [redacted] of these tenders ([redacted]% of tenders), followed by Serco and Biffa who competed in [redacted] each ([redacted]%), FCC who competed in [redacted] ([redacted]%) and Urbaser and Amey who competed in [redacted] each ([redacted]%); and
- (b) [redacted] of the [redacted] contracts contained information on who ultimately won the contract where Suez lost. Of these, [redacted] were won by Biffa, [redacted] were each won by Serco, FCC, and Veolia, and [redacted] was won [redacted] Urbaser and Pearce Recycling.

314. For the reasons set out above, the CMA believes that the dataset submitted by Veolia shows that Suez is among a limited set of competitors that regularly compete with Veolia (Biffa, Serco, FCC and Urbaser), and on several occasions has managed to win contracts Veolia submitted a bid for. Suez's tender data shows that Suez faces a limited set of competitors and that Veolia is one of the strongest of these competitors, ahead of Serco, Biffa and FCC, with Suez only losing more frequently to Biffa.

³⁸¹ [redacted].

- *Evidence from third parties*

315. The position of Veolia and Suez as two strong suppliers of municipal waste collection services within a limited set of competitors is supported by third party evidence. Specifically:

- (a) Customers that responded to the CMA's merger investigation most often identified Veolia, Suez and Biffa (nine times each) as the companies that could meet their municipal waste collection needs and gave Veolia and Suez significantly higher scores than Biffa when asked to rate them. FCC was mentioned seven times and also received a lower score than Veolia and Suez; and
- (b) When asked to identify Veolia's and Suez's closest competitors in the supply of municipal waste collection services more than half of the competitors that responded identified Suez as a close competitor to Veolia (and vice-versa) and gave both Parties high average scores. Only Biffa was rated slightly higher than the Parties, while FCC was rated significantly worse.

- *Evidence from internal documents*

316. Consistent with the available third party evidence and the Parties' tender data, the Parties' internal documents show that Veolia and Suez are two of a small number of competitors in the supply of municipal waste collection services.³⁸² For example:

(a) [REDACTED];³⁸³ and

(b) [REDACTED].³⁸⁴

317. The CMA recognises that the evidence from Veolia's internal documents is mixed, specifically on [REDACTED]. In the round, the CMA believes that the evidence shows Suez is one of a small group of material competitors to Veolia.

³⁸² [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED]. [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED].

³⁸³ [REDACTED].

³⁸⁴ [REDACTED].

Conclusion on the closeness of competition between the Parties

318. For the reasons set out above, the CMA believes that Veolia and Suez are close competitors in the supply of municipal waste collection services within a limited set of credible competitors.

Competitive constraints

319. In assessing the competitive constraints from other alternatives, the CMA considered:

- (a) Submissions from the Parties;
- (b) The Parties' tender data (discussed at paragraphs 312 to 314 above);
- (c) Evidence from third parties; and
- (d) Evidence from internal documents.

Parties' submissions

320. Veolia submitted that the Merger will not give rise to competition concerns in this frame of reference because:³⁸⁵

- (a) Municipal waste collection is an intensely competitive bidding market. The public procurement processes ensure that the market for municipal waste collection contracts is a highly competitive bidding market and, as such, only a small number of credible suppliers are required for the municipal waste collection market to be competitive;³⁸⁶ and
- (b) There are several strong competitors on the market, including [REDACTED], [REDACTED], [REDACTED] and [REDACTED], able to take part in competitive tender processes which ensure competition on quality and price. Teckals also provide strong competition to private companies.³⁸⁷

CMA's assessment

- *Evidence from third parties*

321. The CMA asked municipal customers to list the companies that they consider to be able to meet their municipal waste collection services needs

³⁸⁵ In this context, Veolia also submitted that the Merged Entity's share of supply will be low, with a small increment (the CMA's analysis on shares of supply is set out from paragraph 308 above).

³⁸⁶ [REDACTED]; [REDACTED].

³⁸⁷ [REDACTED]; [REDACTED].

and indicate how strong a supplier they believe them to be. In response, municipal customers rated Veolia and Suez more highly, by some margin, than the next most frequently mentioned suppliers. Serco obtained an average score higher than that of FCC and Biffa, albeit it was mentioned less frequently. Finally, Urbaser was mentioned in a limited number of occasions and received the lowest average score of the six most frequently mentioned suppliers.

322. The CMA also asked third party competitors which municipal waste collection suppliers they would consider to be their strongest competitors and indicate how strong a competitor they believe them to be. Only Veolia, Suez, Biffa, FCC, Serco and Urbaser were mentioned several times, with Biffa being mentioned the most often, followed by Veolia, Suez and FCC.
323. Competitor responses also showed clear differences in the perceived strength of Veolia, Biffa, Serco and Suez (which were rated consistently strongly) on the one hand, and FCC and Urbaser on the other hand (which were rated significantly worse).
324. Additional feedback received from third parties was also consistent with the ratings above, showing that Veolia and Suez form part of a small set of credible competitors (with Biffa and Serco), with Urbaser and FCC viewed as less strong competitors. In particular, the following feedback was received for each of Biffa, Serco, FCC and Urbaser:
- (a) **Biffa.** Local authorities and competitors told the CMA that Biffa is among the market leaders,³⁸⁸ has a good track record³⁸⁹ and a good sector coverage.³⁹⁰ One local authority submitted that Biffa no longer has any London borough contracts but that its collection offering is stronger outside London;³⁹¹
- (b) **Serco.** One local authority submitted that despite some local presence and experience in London, Serco has less sector coverage,³⁹² which another London-based local authority agreed with noting that Serco is therefore less strong than Suez or Veolia in the area.³⁹³ One competitor said that Serco has a good market share and track record³⁹⁴ and another said it competes most often against Veolia and Serco in its tender bids;³⁹⁵

³⁸⁸ [redacted]'s response to the CMA's collection competitors questionnaire.

³⁸⁹ [redacted]' response to the CMA's collection competitors questionnaire.

³⁹⁰ [redacted]'s response to the CMA's municipal customers questionnaire.

³⁹¹ [redacted]'s response to the CMA's municipal customers questionnaire.

³⁹² [redacted]'s response to the CMA's municipal customers questionnaire.

³⁹³ [redacted]'s response to the CMA's municipal customers questionnaire.

³⁹⁴ [redacted]' response to the CMA's collection competitors questionnaire.

³⁹⁵ [redacted]'s response to the CMA's collection competitors questionnaire.

- (c) **FCC.** Respondents said FCC is an established supplier in municipal waste collection services although two of its competitors in municipal waste collection services submitted that the frequency of FCC's bids had significantly decreased over the last 12-18 months.³⁹⁶ One local authority also noted that FCC is 'less of a market player' than it used to be and while it expresses interest in opportunities, it does not follow it up.³⁹⁷ Veolia provided an indicative list of municipal waste collection contracts won by FCC since 2017, showing that it won [redacted] contracts in the period 2017-2019 and only [redacted] since then. The CMA believes that this is broadly in line with the feedback received from third parties that the frequency of FCC's bids has significantly decreased in 2020-2021. While Veolia submitted that FCC's share has grown since 2017, pointing to the list of tenders won since 2017, this does not address the CMA's concern about FCC's more limited activities in the last two years;³⁹⁸ and
- (d) **Urbaser.** Three respondents highlighted that Urbaser is a relatively new entrant and thus has a low market share.³⁹⁹ Two respondents submitted that Urbaser has paused actively bidding for new contracts in the last 18 months as a result of a change of ownership.⁴⁰⁰ Veolia provided [redacted].⁴⁰¹ The CMA believes that in the round, this evidence is consistent with Urbaser being a smaller competitor that provides less of a constraint than Biffa and Serco.

325. The CMA believes that, in the round, the available evidence supports the position that Veolia and Suez are both strong suppliers of municipal collection services, along with Serco and Biffa. On the other hand, the third party feedback is indicative that the constraint from FCC and Urbaser is more limited, and that Urbaser is perceived as a weak supplier.

326. The CMA asked collection competitors how easy they believe it is for local authorities to switch from outsourcing to self-supplying their municipal waste collection services and received mixed feedback. While some respondents submitted that switching would be possible,⁴⁰² several others identified challenges in doing so.⁴⁰³ For example:

³⁹⁶ [redacted] and [redacted]'s responses to the CMA's collection competitors questionnaire.

³⁹⁷ [redacted]'s responses to the CMA's municipal customers questionnaire.

³⁹⁸ [redacted].

³⁹⁹ [redacted] and [redacted]'s responses to the CMA's collection competitors questionnaire; [redacted]'s response to the CMA's municipal customers questionnaire.

⁴⁰⁰ [redacted] and [redacted]'s responses to the CMA's collection competitors questionnaire.

⁴⁰¹ [redacted].

⁴⁰² [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's collection competitors questionnaire.

⁴⁰³ [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's collection competitors questionnaire.

- (a) One competitor submitted that there are some challenges in local authorities bringing services in-house, particularly as a council rarely has the existing management expertise to manage the contract and will need to increase overhead to enhance the health and safety, HR, IT and operational capabilities to be successful;⁴⁰⁴
- (b) Another respondent submitted that a lot of work is required to insource service and can also lead to higher costs;⁴⁰⁵ and
- (c) One competitor submitted that the ability to switch will depend on contract terms, commercial arrangement and financing structure.⁴⁰⁶ Local authorities must also have the ability to fund the service directly.

327. The CMA also received evidence from local authorities that considered bringing municipal collection services in-house and ultimately chose not to do so owing to a lack of sufficient expertise.⁴⁰⁷

328. The CMA believes that, in the round, the available evidence supports the position that self-supply is not a constraint in respect of all local authorities.

- *Evidence from internal documents*

329. Further to the evidence set out above, while not all of the Parties' internal documents refer to the other Party, in the round, the Parties' internal documents show that both appear to consider themselves, Biffa and Serco as the most important suppliers in municipal waste collection services and other suppliers as relatively weaker. For example:

- (a) [REDACTED];⁴⁰⁸ and

- (b) According to a Suez presentation [REDACTED].⁴⁰⁹

330. While discussing in-house supply, including via Teckals, the Parties' internal documents do not appear to show that they are perceived as a competitive threat by either of Veolia or Suez.⁴¹⁰

⁴⁰⁴ [REDACTED]'s response to the CMA's collection competitors questionnaire.

⁴⁰⁵ [REDACTED]'s response to the CMA's collection competitors questionnaire.

⁴⁰⁶ [REDACTED]'s response to the CMA's collection competitors questionnaire.

⁴⁰⁷ Note of calls with [REDACTED], dated 19 May 2021 and [REDACTED], dated 18 May 2021.

⁴⁰⁸ [REDACTED].

⁴⁰⁹ [REDACTED].

⁴¹⁰ [REDACTED] and [REDACTED]. [REDACTED].

Conclusion on competitive constraints

331. For the reasons set out above, the CMA believes that, taking the available evidence in the round, Biffa and Serco will continue to compete with the Merged Entity. The CMA also believes that the constraint from FCC will be moderate and that from Urbaser weak, post-Merger. The CMA also believes that while self-supply, including via Teckals, may be a viable alternative for some local authorities, it is not for all local authorities. Accordingly, for those who do need to outsource the pool of credible competitors would be reduced as a result of the Merger. The CMA therefore believes that these constraints (including existing suppliers and self-supply) would not be sufficient either individually or in aggregate to constrain the Merged Entity.

Barriers to entry and expansion

332. Veolia submitted that the municipal waste collection market is readily accessible to new entrants. This is because:

- (a) The capital requirements for procuring loading trucks, vehicles and depots are relatively low. The costs do not need to be incurred until a contract is won and the contract length corresponds to the useful life of vehicles and related equipment, making these investments low risk;
- (b) For companies already active in the municipal collection market, barriers to becoming active in a new geographic area are particularly low as new entrants do not need localised access to staff or knowledge of employment conditions prior to bidding for a contract (owing of the operation of TUPE);
- (c) New entrants do not need to invest in waste sorting or treatment facilities in order to compete for waste collection contracts since local authorities often tender separate contracts for the different processes in the waste cycle and entrants can procure sorting and/or treatment and disposal capacity on the merchant market; and
- (d) Local authorities will continue to exercise significant buyer power. The mandatory use of formal procurement processes means that local authorities can easily select the tender offer that is most competitive on price and quality and switch suppliers. Local authorities also have the option to take their services in-house.⁴¹¹

⁴¹¹ [REDACTED]; [REDACTED].

333. Third party responses to the CMA's merger investigation are inconsistent with Veolia's submissions that barriers to entry are low. Specifically:
- (a) Several respondents submitted that a track record and proven experience are very important to win municipal collection contracts.⁴¹² Similarly, several respondents submitted that demonstrating balance sheet strength was important.⁴¹³ This is consistent with evidence received from local authorities who considered 'reliability of service' very important and 'track record' as only somewhat less important, when identifying the most important factors for deciding which waste company to use;
 - (b) Only one respondent provided examples of companies that could enter the municipal collection market owing to their presence in HWRC management (eg HW Martin or W&S recycling) or C&I waste collection (eg Beauparc). The same respondent, however, also submitted that it had seen several companies exiting in recent years (eg Kier, Amey and Cory);⁴¹⁴
 - (c) One regional C&I collection competitor with an interest in entering municipal collection submitted that it was precluded from doing so owing to the high cost of bidding (estimated at approximately £200,000) relative to the chance of winning (low).⁴¹⁵ The same third party also submitted that local authorities tend to require proof of prior experience in handling such contracts which therefore excludes new entrants; and
 - (d) Only two respondents provided a recent example of entry and both reference the award of the London borough of Bexley municipal collection contract to Countrystyle.⁴¹⁶
334. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC in the supply of non-hazardous municipal waste collection services in the UK as a result of the Merger.

⁴¹² [redacted], [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's collection competitors questionnaire. Note of call with [redacted], dated 12 May 2021.

⁴¹³ [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's collection competitors questionnaire.

⁴¹⁴ [redacted]'s response to the CMA's collection competitors questionnaire.

⁴¹⁵ Note of call with [redacted], dated 8 April 2021.

⁴¹⁶ [redacted] and [redacted]'s responses to the CMA's collection competitors questionnaire.

Conclusion on horizontal unilateral effects in non-hazardous municipal waste collection services

335. For the reasons set out above, the CMA believes that the Merged Entity would be the largest supplier of municipal waste collection services in the UK.
336. The available evidence, in the round, supports the position that post-Merger only two other strong suppliers of municipal waste collection services will remain, Biffa and Serco, and that FCC and Urbaser are not sufficiently strong competitors to meaningfully constrain the Merged Entity individually or in aggregate.
337. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of non-hazardous municipal waste collection services in the UK.

Horizontal unilateral effects in the supply of services for the operation and maintenance (O&M) of local authority-owned ERFs

338. The Parties overlap in the supply of services for the O&M of local authority-owned ERFs. Each Party provides these services to local authorities across the UK. In assessing this theory of harm, the CMA has considered:
- (a) The frame of reference;
 - (b) Shares of supply;
 - (c) The closeness of competition between the Parties;
 - (d) The competitive constraints from other alternatives; and
 - (e) Barriers to entry and expansion.

Frame of reference

Product scope

339. This theory of harm concerns competition for the supply of services for the O&M of local authority-owned ERFs.⁴¹⁷

⁴¹⁷ The next theory of harm (from paragraph 379 below) concerns competition for the supply of Controlled Merchant Capacity of ERFs.

- *Parties' submissions*

340. Veolia submitted that:

- (a) There are relatively few local authority ERF O&M-only contracts in the UK. This is because most ERFs were developed under the PPP/PFI scheme and very few of these contracts have ended or been terminated to date;
- (b) There is a high degree of supply-side substitutability between the supply of O&M of local authority-owned ERFs and other ERF services. There are no technical differences between the supply of services for the O&M of local authority-owned ERFs and the supply of services for the O&M of privately-owned merchant facilities. Thus, the same companies that provide services for the O&M of privately-owned merchant ERFs should be able to compete for the O&M of local authority-owned ERFs; and
- (c) The question of whether there is a distinct market for the supply of services for the O&M of local authority-owned ERFs can be left open as no competition concerns arise on any plausible basis.⁴¹⁸

341. Suez submitted that PPP/PFI contracts come up for re-tender on a regular basis and these are increasingly transitioning towards facility operation. Suez further submitted that it and Veolia compete for such contracts.⁴¹⁹

- *CMA's assessment*

- *Precedents*

342. The CMA has not previously considered the market for the O&M of local authority-owned ERFs. To its understanding, neither has the EC.

- *Evidence from third parties*

343. While most local authority-owned ERFs in the UK were developed in the 1990s and early 2000s through the PFI scheme and are still operated by the companies that participated in that scheme, the evidence indicates that some local authorities have recently run tenders including the O&M of local authority-owned ERFs (eg Birmingham City Council and Greater Manchester Combined Authority) and others are planning to do so in future.⁴²⁰ Several third parties also submitted that many PPP/PFI contracts

⁴¹⁸ [redacted].

⁴¹⁹ [redacted].

⁴²⁰ Note of call with [redacted], dated 17 May 2021.

which were concluded in the 1990s and early 2000s will expire in the next few years. This means that the market for the O&M of local authority-owned ERFs is likely to expand.⁴²¹ Indeed, three competitors, that provide O&M of ERFs, told the CMA that they expect local authorities to re-tender the O&M of local authority-owned ERFs services upon expiration of these contracts.⁴²²

344. The CMA also received evidence that one existing supplier of services for the O&M of local authority-owned ERFs, Amey, is expected to exit the market.⁴²³ Therefore, the O&M of local authority-owned ERFs contracts that Amey currently operate will become available to tender in the future.

- *Evidence from internal documents*

345. The evidence from the Parties' internal documents shows that they anticipate future opportunities to supply services for the O&M of local authority-owned ERFs and are preparing to compete for such opportunities. Veolia's internal documents identify O&M of local authority-owned ERFs [REDACTED],⁴²⁴ [REDACTED]⁴²⁵ [REDACTED].⁴²⁶ [REDACTED].⁴²⁷

346. Specifically, Veolia submitted that the termination of the PFI scheme means that PPP contracts for new ERFs are rare, and that instead there has been increased investment in private ERF assets (ie merchant ERFs).⁴²⁸ The CMA notes, however, that this trend does not preclude either new local authority-owned ERFs from being built in the future, or contracts for O&M services for existing local authority-owned ERFs being tendered.

• *Conclusion on product scope*

347. For the reasons set out above, the CMA believes that there is a separate product frame of reference for the supply of services for the O&M of local authority-owned ERFs. The CMA will take into account the constraint from operators of merchant ERFs in the competitive assessment.

⁴²¹ Notes of call with [REDACTED], dated 17 June 2021 and [REDACTED], dated 26 August 2021.

⁴²² [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's disposal competitors questionnaire. [REDACTED] affirmed that it expects these contracts to either be extended or re-tendered. See [REDACTED]'s response to the CMA's disposal competitors questionnaire.

⁴²³ [REDACTED]'s response to the CMA's disposal competitors questionnaire.

⁴²⁴ [REDACTED].

⁴²⁵ [REDACTED].

⁴²⁶ [REDACTED].

⁴²⁷ [REDACTED].

⁴²⁸ [REDACTED].

Geographic scope

348. Neither Party made submissions on the geographic scope of this frame of reference.⁴²⁹
349. The CMA asked disposal competitors which companies they believe would be able to bid for the supply of services for the O&M of local authority-owned ERF contracts. Overall, respondents submitted that several national suppliers, including the Parties, Viridor, and FCC, would likely submit tenders for these contracts.⁴³⁰ Similarly, local authorities told the CMA that the same suppliers would be capable of bidding for the O&M of local authority-owned ERF contracts.⁴³¹
- *Conclusion on geographic scope*
350. For the reasons set out above, the CMA believes that the appropriate geographic frame of reference is national.

Conclusion on frame of reference

351. For the reasons set out above, the CMA believes that the appropriate frame of reference is the supply of services for the O&M of local authority-owned ERFs in the UK (the **O&M of ERFs**).

Shares of supply

352. Neither Veolia nor Suez submitted shares of supply for the O&M of ERFs. However, Veolia submitted that current shares of supply cannot be used to predict the competition for future local authority O&M of ERF contracts.⁴³² Rather, Veolia submitted that current shares of supply reflect historic competition.⁴³³ Veolia further submitted that, if the CMA were to take into account the shares of current operators of ERFs, the CMA should include the operators of merchant ERFs. Finally, Veolia submitted that future tenders will have to go through a public procurement process, and therefore the shares of supply may not be representative of future competition.⁴³⁴

⁴²⁹ [REDACTED].

⁴³⁰ [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]'s responses to CMA's disposal competitors questionnaire.

⁴³¹ For instance, note of call with [REDACTED], dated 9 August 2021.

⁴³² [REDACTED].

⁴³³ [REDACTED].

⁴³⁴ [REDACTED].

353. While the CMA recognises the limitations of share of supply data in this segment, the CMA calculated shares of supply using a Tolvik Consulting dataset submitted by Veolia to understand that extent of suppliers' current activities in this segment.⁴³⁵ This dataset contains information on ERFs across the UK including which company operates the facility, whether the facility is financed using a PPP contract, and the capacity of the facility. In order to calculate the shares of supply, the CMA filtered ERFs to only consider facilities built under PPP/PFI contracts. The CMA then calculated shares of supply based on the assumed operational capacity of ERFs. The CMA also calculated shares of supply based on a competitor count, of the various operators of ERFs in the UK. The results of these shares of supply calculations are presented below in **Table 2**.

Table 2: O&M of ERFs share of supply estimates

Entity	Share of supply (capacity)	Share of supply (competitor count)
Veolia	[20-30]%	[20-30]%
Suez	[20-30]%	[10-20]%
Merged Entity	[40-50]%	[30-40]%
FCC	[10-20]%	[10-20]%
Viridor	[10-20]%	[10-20]%
Cory	[5-10]%	[0-5]%
MESE	[0-5]%	[5-10]%
MVV	[0-5]%	[0-5]%
Amey	[0-5]%	[5-10]%
Others	[5-10]%	[10-20]%
Total	100%	100%

Source: CMA calculations using Tolvik dataset

354. These share of supply estimates show that the Parties are currently the two largest suppliers of services for the O&M of ERFs.

355. In relation to Veolia's submissions at paragraph 352 above:

- (a) The CMA believes that current shares of supply represent relevant evidence but has not used current shares of supply to predict future shares. The CMA's conclusions regarding competition for future local authority O&M of ERF contracts are based on the assessment of closeness of competition and competitive constraints below.
- (b) The CMA did not see evidence that operators of merchant ERFs were necessarily able and willing to bid to operate and maintain local authority ERFs. Moreover, the CMA notes that even if merchant ERFs are included, the Parties' combined share of supply would exceed 25% and the increment would exceed 10%.

⁴³⁵ [REDACTED].

Closeness of competition

356. The CMA examined the closeness of competition between the Parties and considered within its assessment:

- (a) Submissions from the Parties;
- (b) Evidence from third parties; and
- (c) Evidence from internal documents.

Parties' submissions

357. Veolia submitted it [REDACTED] but expects to see more instances of local authorities seeking O&M of ERF services as existing PPP/PFI contracts expire over the coming years.⁴³⁶ Further, Veolia submitted that operators of merchant facilities would be willing and able to compete for O&M of ERF contracts in the future.⁴³⁷

358. Veolia has not made specific representations regarding the closeness of competition between itself and Suez in relation to the supply of O&M of ERFs services. Veolia, however, submitted that all suppliers can access contingent capacity and fulfil local authority requirements in this regard. For example, bidders can access this through spot or Fuel Supply Agreements with other merchant ERF operators or through other disposal methods such as refused derive fuel (**RDF**) export⁴³⁸ or landfill.⁴³⁹

CMA's assessment

- *Evidence from third parties*

359. The available evidence from third parties suggests that Veolia and Suez are leading competitors in the supply of services for the O&M of ERFs and would therefore compete closely in future tenders. In particular, local authorities consistently rated Veolia and Suez to be among the strongest suppliers of treatment of residual waste by EfW incineration.⁴⁴⁰ Submissions by local authorities also suggest that Veolia and Suez would

⁴³⁶ [REDACTED].

⁴³⁷ [REDACTED].

⁴³⁸ RDF is essentially shredded residual waste that may be exported in order to be incinerated abroad ([REDACTED]).

⁴³⁹ [REDACTED].

⁴⁴⁰ The CMA notes in this context that treatment of residual waste by EfW incineration does not exactly equate to the O&M of ERFs. The CMA nonetheless believes that responses from local authorities on this point are indicative of the Parties' strength in the O&M of ERFs frame of reference.

likely compete closely in future tenders for the supply of services for the O&M of ERFs in the UK. In particular:

- (a) Several local authorities submitted that both Parties have significant experience and a good track record of operating ERFs in the UK;⁴⁴¹
- (b) Two local authorities told the CMA that Veolia currently operates their ERFs while also saying that Suez appears to be a competent and effective operator based on its standing in the UK market;⁴⁴²
- (c) Another local authority submitted that Veolia and Suez were the top two bidders in their last procurement round for EfW incineration.⁴⁴³

360. This was also confirmed by submissions from competitors. In particular, the CMA asked competitors who they consider to be their strongest competitors in the supply of services for the O&M of ERFs. The majority of competitors mentioned both Veolia and Suez and rated them as strong competitors. The only other companies to receive similar response rates and strength scores were Viridor and FCC.

- *Evidence from internal documents*

361. While the Parties' internal documents do not appear to specifically discuss how closely Veolia and Suez will compete for the supply of services for the O&M of local authority-owned ERF contracts when these get re-tendered, the CMA believes that evidence from internal documents on the Parties' current strength in operating such assets is relevant to their future competitive positioning vis-à-vis one another and their competitors.

362. In addition to the internal documents already referenced in paragraph 345 above, a Veolia presentation [REDACTED].⁴⁴⁴

363. Similarly, in a 2030 strategy document Suez [REDACTED].⁴⁴⁵ Suez confirmed to the CMA that [REDACTED].

⁴⁴¹ [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

⁴⁴² [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

⁴⁴³ [REDACTED]'s response to the CMA's municipal customers questionnaire.

⁴⁴⁴ [REDACTED].

⁴⁴⁵ [REDACTED].

Conclusion on the closeness of competition between the Parties

364. For the reasons set out above, the CMA believes that Veolia and Suez are leading competitors in the supply of services for the O&M of ERFs and would compete closely in future tenders.

Competitive constraints

365. In assessing the competitive constraints from other alternatives, the CMA has considered:
- (a) Submissions from the Parties;
 - (b) Evidence from third parties;
 - (c) Evidence from internal documents; and
 - (d) Access to contingent capacity.

Parties' submissions

366. Veolia submitted that a large number of suppliers would be well-placed to compete for the supply of services for the O&M of ERFs when contracts for such services arise, including suppliers currently operating local authority-owned ERFs under PPP/PFI contracts ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]).⁴⁴⁶ According to Veolia, operators of merchant ERFs (such as [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]) are also in good position to compete for these contracts, since there are no technical differences between operating a merchant ERF and a local authority-owned ERF.⁴⁴⁷ Veolia submitted this is because there are no differences between operating a merchant ERF and a local authority-owned ERF; and because operating staff employed at a local authority-owned ERF could transfer via TUPE from the incumbent supplier to the new supplier allowing the facility to retain its experience and knowledge.
367. Veolia further submitted that, in a situation where a local authority switched the supplier operating and maintaining its ERF, staff would transfer via TUPE from the incumbent operator under the PPP/PFI contract to the new O&M supplier.⁴⁴⁸

⁴⁴⁶ [REDACTED].

⁴⁴⁷ [REDACTED].

⁴⁴⁸ [REDACTED].

CMA's assessment

- *Evidence from third parties*

368. The available evidence suggests that while Viridor and FCC will provide some competitive constraint on the Merged Entity, other suppliers in the market are likely to be weak competitors. Specifically:

- (a) **Viridor.** During the CMA's market investigation, all competitors identified Viridor as one of the strongest competitors in the supply of services for the O&M of ERFs. Some competitors noted that Viridor has the largest market share in the UK based upon input tonnages,⁴⁴⁹ and one pointed in particular to Viridor's strong track record and operational knowledge.⁴⁵⁰ The evidence the CMA received from local authorities was more mixed, with local authorities rating Viridor less highly as a competitor. While one local authority suggested that Viridor's market share and experience make it a competent operator,⁴⁵¹ another indicated that it was unsure of Viridor's appetite for O&M of ERFs contracts.⁴⁵²
- (b) **FCC.** Several competitors identified FCC as a leading competitor with a large market share and a strong track record and operational knowledge, although they rated it less highly than either Viridor or the Parties.⁴⁵³ Local authorities rated FCC less highly than competitors did, and also rated it less highly than they rated either the Parties or Viridor for the treatment of residual waste by EfW incineration. While several local authorities referred to FCC's previous experience in operating ERFs in the UK,⁴⁵⁴ and noted that its market share suggests that it is a competent operator,⁴⁵⁵ one local authority noted that FCC does not own many of its ERFs.⁴⁵⁶ Another referred to FCC as 'emerging' in the same context,⁴⁵⁷ and another local authority referred to FCC as 'up and coming' while describing Veolia, Suez and Viridor as the 'strongest' suppliers.⁴⁵⁸ Finally, one local authority submitted that 'financing always seems to be an issue' for FCC.⁴⁵⁹

⁴⁴⁹ [redacted] and [redacted]'s responses to the CMA's disposal competitors questionnaire.

⁴⁵⁰ [redacted]'s response to the CMA's disposal competitors questionnaire.

⁴⁵¹ [redacted]'s response to the CMA's municipal customers questionnaire.

⁴⁵² [redacted]'s response to the CMA's municipal customers questionnaire.

⁴⁵³ [redacted] and [redacted]'s responses to the CMA's disposal competitors questionnaire.

⁴⁵⁴ [redacted]'s response to the CMA's municipal customers questionnaire.

⁴⁵⁵ [redacted]'s response to the CMA's municipal customers questionnaire.

⁴⁵⁶ [redacted]'s response to the CMA's municipal customers questionnaire.

⁴⁵⁷ [redacted]'s response to the CMA's municipal customers questionnaire.

⁴⁵⁸ [redacted]'s response to the CMA's municipal customers questionnaire.

⁴⁵⁹ [redacted]'s response to the CMA's municipal customers questionnaire.

- (c) **Amey.** Several third parties confirmed that Amey is exiting the UK market.⁴⁶⁰ Therefore, when the PPP/PFI contracts that Amey currently holds expire, a new supplier will need to be found to provide O&M services to the local authority which owns the ERFs.
- (d) **Others.** The evidence received by the CMA indicates that other competitors do not provide a material constraint in this segment. Some competitors identified suppliers such as Cory, Covanta, WTI, Biffa, MESE, MVV, Paprec Group, and Uniper as being competitors in the supply of services for the O&M of ERFs, but these suppliers were mentioned much less frequently than the Parties, Viridor, FCC, and Amey. One industry consultant did refer to MVV, Covanta, and WTI as companies capable of competing for the supply of services for O&M of ERFs.
- (e) With regard to non-UK competitors, a third party submitted that the challenge with local authority contracts was that they tend to favour contractors with UK experience, which makes it difficult for non-UK competitors to enter.⁴⁶¹

369. One competitor told the CMA that different operators in the UK would be familiar with the different installed technology across ERFs in the UK.⁴⁶² As highlighted in paragraph 368 above, many of these operators of merchant capacity will have limited access to contingent capacity internally and will have to acquire this from third parties. This will likely put them at a competitive disadvantage relative to the Parties when bidding for O&M of ERF contracts. Moreover, the CMA has received limited evidence that these suppliers are likely to exert a material competitive constraint in future tenders. When asked to submit which companies would be able to meet their disposal needs today as regards EfW incineration, no local authorities indicated that operators which solely operate merchant ERFs would be capable of operating and maintaining their own local authority-owned ERF.

- *Evidence from internal documents*

370. The CMA received limited evidence from internal documents in relation to competitive constraints in the supply of services for the O&M of ERFs.

371. A Suez internal document [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].⁴⁶³

⁴⁶⁰ [REDACTED] and [REDACTED] responses to the CMA's disposal competitors questionnaire.

⁴⁶¹ [REDACTED]'s response to the CMA's disposal competitors questionnaire.

⁴⁶² [REDACTED] response to the CMA's disposal competitors questionnaire.

⁴⁶³ [REDACTED].

372. This internal Suez document combined with the Veolia internal documents identified in paragraph 345 above suggest that the Parties both consider themselves to be leading competitors in the market.

- *Access to contingent capacity*

373. Third party evidence indicates that having access to contingency capacity can be an important factor in winning bids for the O&M of ERFs tenders and that this is an important consideration for local authorities when selecting a supplier. Several local authorities told the CMA that suppliers of O&M of ERFs must have contingency measures in place.⁴⁶⁴ The CMA received similar input from a competitor who suggested that access to contingency capacity is necessary to enter this segment,⁴⁶⁵ and from a consultancy in the waste industry which advises local authorities and who told the CMA that waste management companies seek to develop a network of plants as this provides them with contingency disposal points in order to mitigate the risk of having to pay compensation should one plant become unavailable.⁴⁶⁶

374. The CMA found that there are several reasons that a bidder for O&M of ERF contracts that does not have access to significant in-house merchant capacity may be at a disadvantage:

- (a) First, while bidders for O&M of ERF contracts may be able to access contingency capacity through third parties, the same third parties may also be bidding for the same O&M of ERF contract. Therefore, third parties may have the incentive to price incineration capacity at a level that puts rival bidders at a competitive disadvantage.
- (b) Second, current UK Government policy is aimed at reducing the volume of residual waste that is sent to landfill.⁴⁶⁷ Therefore, landfill is unlikely to be seen as an acceptable substitute for EfW incineration by local authorities, especially in future tender negotiations.
- (c) Third, with regards to RDF export, the CMA has received evidence from both a local authority⁴⁶⁸ and a competitor⁴⁶⁹ that indicated that RDF

⁴⁶⁴ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire; and Note of call with [REDACTED], dated 9 August 2021.

⁴⁶⁵ [REDACTED]'s response to the CMA's disposal competitors questionnaire.

⁴⁶⁶ Note of call with [REDACTED], dated 26 August 2021.

⁴⁶⁷ [REDACTED].

⁴⁶⁸ [REDACTED]'s response to CMA's municipal customer questionnaire.

⁴⁶⁹ [REDACTED]'s response to CMA's disposal competitors questionnaire.

export is a weak alternative, at least in part due to overseas taxes and supply chain issues.

375. Suppliers with high levels of Controlled Merchant Capacity are therefore likely to have a competitive advantage when bidding for O&M of ERF contracts. In that context, the CMA notes that the Merged Entity, Viridor and WTI will each have a [20-30]% or [20-30]% share of supply of Controlled Merchant Capacity of ERFs nationally,⁴⁷⁰ while the remaining competitors will have shares below 10% meaning they will have much more limited access to merchant capacity internally.

Conclusion on competitive constraints

376. For the reasons set out above, the CMA believes that, post-Merger, the Parties would face a moderate competitive constraint from Viridor and FCC, with other competitors only providing a very limited constraint in part because of their more limited access to contingent capacity. The CMA therefore believes that the remaining suppliers, either individually or in aggregate, would not sufficiently constrain the Merged Entity.

Barriers to entry and expansion

377. Veolia submitted that barriers to entry in this market are low. In particular, Veolia submitted that technology and equipment are generally acquired from third party suppliers and knowledge and experience can be readily acquired by hiring and working with third party advisers.⁴⁷¹ Veolia also submitted that local authority procurement processes have changed to lower barriers to entry in recent years by separating different waste management services into separate contracts.⁴⁷²
378. Feedback from competitors indicated that barriers to entry and expansion are high. In particular, the majority of respondents noted that having a track record in the market is important. One competitor stated that local authorities tend to favour contractors which have UK experience, which makes it difficult for non-UK competitors to enter.⁴⁷³ Competitors also noted that it is important to have the expertise in order to comply with health and safety and other regulations and financial strength is important to support any performance guarantees.

⁴⁷⁰ [REDACTED].

⁴⁷¹ [REDACTED].

⁴⁷² [REDACTED].

⁴⁷³ [REDACTED]'s response to CMA's disposal competitors questionnaire.

379. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC in the supply of services for the O&M of local authority-owned ERFs in the UK as a result of the Merger.

Conclusion on horizontal unilateral effects in services for the O&M of local authority-owned ERFs

380. For the reasons set out above, the CMA believes that the Parties are the leading suppliers of O&M for local authority-owned ERFs and are likely to be leading competitors for future O&M contracts for local authority-owned ERFs.

381. The CMA notes that there are other operators of ERFs but believes that the Merged Entity would face competitive constraints principally from Viridor and FCC, with other competitors being disadvantaged by lack of experience with providing O&M to local authorities and lack of access to contingent capacity.

382. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of services for the O&M of local authority-owned ERFs in the UK.

Horizontal unilateral effects in the supply of non-hazardous waste incineration services

383. As set out at paragraph 52(d)(i) above, both Veolia and Suez have access to Controlled Merchant Capacity at ERFs which they can either use to supply their own customers or which they can sell to other competitors under Fuel Supply Agreements. In assessing this theory of harm, the CMA has considered:

- (a) The frame of reference;
- (b) Submissions from the Parties;
- (c) The Parties' tender data;
- (d) The closeness of competition between the Parties;
- (e) The competitive constraints from other alternatives;
- (f) The analysis of local shares of supply; and
- (g) Barriers to entry and expansion.

Frame of reference

Product scope

- *Parties' submissions*

384. Veolia submitted that the incineration of non-hazardous waste is likely to be a separate frame of reference given UK and EC precedents. Veolia also submitted that there is a degree of substitutability between different methods of treatment. Nevertheless, Veolia submitted that the precise product frame of reference definition can be left open given, in its view, an absence of competition concerns on any basis.⁴⁷⁴
385. While the Parties have ownership or control over a number of ERFs in the UK, Veolia submitted [REDACTED].⁴⁷⁵ However, the residual Controlled Merchant Capacity can be utilised by the waste management company which operates the ERF for commercial purposes. Veolia submitted that competitors in the incineration of non-hazardous waste therefore compete on the basis of Controlled Merchant Capacity.⁴⁷⁶
386. Suez submitted that the EC has previously considered that the market for non-hazardous waste disposal can be further segmented, based on the method, into disposal by way of landfill, incineration, and waste treatment alternatives, such as recycling or composting.⁴⁷⁷

- *Precedents*

387. Previous UK and EC merger investigations have consistently found different product frames of reference for different non-hazardous waste treatment methods, including EfW incineration.⁴⁷⁸

⁴⁷⁴ [REDACTED]. EC's decision of 3 April 2007 in case COMP/M.4576, *AVR/Van Gansewinkel*, paragraph 12; EC's decision of 30 July 2009 in case COMP/M.5464, *Veolia Eau/Société des Eaux de Marseille/Société des Eaux d'Arles/Société Stéphanoise des Eaux*, paragraph 28; EC's decision of 3 August 2010 in case COMP/M.5901, *Montagu/GIP/Greenstar*, paragraph 16;

⁴⁷⁵ [REDACTED].

⁴⁷⁶ [REDACTED].

⁴⁷⁷ [REDACTED].

⁴⁷⁸ OFT's decision of 17 September 2004 in case ME/1162/04, completed acquisition by Cholet Acquisitions 2 Limited of the UK landfill and energy business of Shanks Group plc, paragraph 7 and 13; EC's decision of 30 July 2009 in case COMP/M.5464, *Veolia Eau/Société des Eaux de Marseille/Société des Eaux d'Arles/Société Stéphanoise des Eaux*, 30 July 2009, paragraph 28.

- *Evidence from third parties*

388. Several competitors confirmed that they compete for customers using the Controlled Merchant Capacity that they have at their disposal at the ERFs that they operate.
389. One third party said that the price of EfW incineration is capped by the price of landfill since landfill is the fallback position for owners of waste if the price of incineration is relatively high.⁴⁷⁹ Therefore, landfill may pose some constraint on incineration of non-hazardous waste. However, Veolia also submitted that the UK Government's policy is to reduce the use of landfill down to zero, thus the desirability of landfill is expected to decrease over time.⁴⁸⁰ This submission is consistent with the CMA's understanding of UK Government policy (see paragraph 6 above).

- *Conclusion on product scope*

390. For the reasons set out above, the CMA believes that the appropriate product frame of reference is the supply of non-hazardous waste incineration services using Controlled Merchant Capacity. The CMA will also take into account the effect of alternative disposal methods (eg landfill, RDF export) in the assessment below.

Geographic scope

- *Parties' submissions*

391. Veolia submitted that the CMA can leave open the definition of the geographic frame of reference as no competition concerns arise on any basis. Veolia has nonetheless provided information (i) on a national basis, (ii) for 10-mile, 100km and 200km catchment areas by road distance around each of Veolia's and Suez's ERF sites, (iii) the driving distance and drive time in which 80% of customer volumes were received in 2020, and (iii) on a regional basis.⁴⁸¹
392. Suez submitted that the EC has previously found the geographic market for incineration of non-hazardous waste to be: (i) national (in the case of the Netherlands); and (ii) local within a catchment area of 200km from each incineration plant.⁴⁸²

⁴⁷⁹ Note of call with [REDACTED], dated 6 October 2021.

⁴⁸⁰ [REDACTED].

⁴⁸¹ [REDACTED].

⁴⁸² [REDACTED].

393. Suez submitted that waste travels substantial distances for processing at incineration facilities.⁴⁸³ Suez therefore proposed analysing the market for incineration on both a national and regional basis.

- *Precedents*

394. Neither the CMA nor EC has previously considered the geographic market for incineration of non-hazardous waste.⁴⁸⁴ Decisions considering other non-hazardous waste treatment markets, such as landfill, also left open the geographic frame of reference but considered catchment areas around particular sites ranging from a 10 mile radius to a 200km radius.⁴⁸⁵

- *Evidence from third parties*

395. Input from competitors indicated that the geographic market for the supply of non-hazardous waste incineration services is local. Operators of ERFs told the CMA that they compete for business over driving distances of between 18 miles and 270 miles.⁴⁸⁶ One competitor told the CMA that waste typically travels within a 30-mile radius, but also stated it was looking at rail infrastructure which would open up its non-hazardous waste incineration services to potentially the whole of the UK.⁴⁸⁷ Despite the fact that one or more competitors may seek to address a broader geographic market, the CMA believes that the preponderance of this evidence shows that the supply of non-hazardous waste incineration services is local, albeit with significant differences between local catchment area sizes.

Conclusion on geographic scope

396. For the reasons set out above, the CMA believes that competition in the supply of non-hazardous waste incineration services is local and is affected by the distance that the waste needs to be transported. The CMA has therefore adopted a local geographic frame of reference and has set out the approach to the local area analysis below.

⁴⁸³ [REDACTED].

⁴⁸⁴ [REDACTED].

⁴⁸⁵ OFT's decision of 17 September 2004 in case ME/1162/04, completed acquisition by Cholet Acquisitions 2 Limited of the UK landfill and energy business of Shanks Group plc, paragraph 19; OFT's decision of 9 May 2005 in case ME/1635/05, completed acquisition by Augean plc of Atlantic Waste Holdings Limited and Waste Holding Limited, paragraphs 11; EC's decision of 30 July 2009 in case COMP/M.5464, *Veolia Eau/Société des Eaux de Marseille/Société des Eaux d'Arles/Société Stéphanoise des Eaux*, paragraph 34; EC's decision of 3 August 2010 in case COMP/M.5901, *Montagu/GIP/Greenstar*, paragraphs 23-27; EC's decision of 25 June 2014 in case COMP/M.7137, *EDF/Dalkia*, paragraphs 171-172; EC's decision of 14 October 2002 in case COMP/M.2897, *Sita Sveridge AB/Sykrift Ecoplus*, paragraph 12 and 14.

⁴⁸⁶ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's disposal competitors questionnaire.

⁴⁸⁷ Note of call with [REDACTED], dated 14 April 2021.

Conclusion on frame of reference

397. For the reasons set out above, the CMA believes that the appropriate frame of reference is the supply of non-hazardous waste incineration services using Controlled Merchant Capacity at local level (the **incineration services**).

Parties' submissions

398. Veolia submitted that the Merger will not give rise to competition concerns in regard to the incineration of non-hazardous waste on the basis that:

- (a) The Parties' combined shares of supply are low in all local catchment areas;
- (b) There are a large number of other suppliers active in the supply of non-hazardous waste incineration services using Controlled Merchant Capacity;
- (c) The Merged Entity will continue to face strong competitive pressure from RDF exports and landfill;
- (d) The market has seen significant new entrants and declining barriers to entry;
- (e) Many waste treatment contracts are awarded through structured and highly competitive tender processes;
- (f) The bidding data shows that the Parties are not close competitors; and
- (g) Buyer power and low switching costs will continue to constrain the Merged Entity.⁴⁸⁸

399. Further, Veolia submitted that no competition concerns arise when considering local markets, irrespective of the radius or local catchment areas considered.⁴⁸⁹

Parties' tender data

400. Both Veolia and Suez submitted tender data to the CMA in respect of incineration services required by local authorities. The CMA notes that these datasets include contracts which are not solely for incineration

⁴⁸⁸ [REDACTED].

⁴⁸⁹ [REDACTED].

services as defined in the frame of reference. For example, the CMA determined that certain contracts are for new ERF infrastructure, complex contracts, or may involve local authorities purchasing locked capacity at an ERF over a long period.⁴⁹⁰ As regards the Parties' tender data:

- (a) Veolia's dataset included [redacted] tender bids with an estimated value greater than £[redacted] between 2016 and 2020. The tender data shows that Veolia competed most often with Viridor ([redacted] tenders), followed by FCC ([redacted] tenders) and Suez ([redacted] tenders). Amey, Cawleys, and Renewi competed in [redacted] tenders each. Veolia won [redacted] tenders and lost [redacted], with [redacted] not being awarded.⁴⁹¹ Of the [redacted] tenders that Veolia lost, it lost [redacted] to Beauparc, [redacted] to a bid by Cory (shared with Hills Waste Solutions), and [redacted] to a bid by Suez (shared with Hills Waste Solutions).
- (b) Suez's dataset included [redacted] tender bids for incineration services between 2017 and 2020 (with no further filtering by bid size), of which [redacted] included information on rival bidders. Veolia competed most often with Suez, participating in [redacted] tenders. Viridor and FCC competed in [redacted] tenders each, Biffa in [redacted], Beauparc in [redacted], and a tail of 14 competitors competed in one tender each. Suez won [redacted] tenders, [redacted] of which was split with Viridor. Of the [redacted] tenders that Suez did not win, [redacted] were won by Veolia and the remaining [redacted] were won by [redacted] different competitors.

401. In the round, the tender data analysis shows that the Parties appear to compete regularly with each other, as well as with Viridor, FCC, and a longer tail of competitors. The CMA notes that the tender data relates to competition across the UK. Therefore, the interpretation of this data is not straightforward as competition takes place at the local level, and the CMA has put limited weight on this evidence in assessing local competition.

Closeness of competition

402. The CMA examined the closeness of competition between the Parties and considered within its assessment:

- (a) The Parties' tender data (discussed at paragraphs 400 and 401);
- (b) Evidence from third parties; and

⁴⁹⁰ The CMA notes that Veolia's tender data includes the [redacted] tender bid which is for [redacted]. The Veolia tender data also includes bids for [redacted]. The Suez tender data includes [redacted]. The Suez tender data includes [redacted].

⁴⁹¹ These two tenders were for [redacted]. Veolia submitted that the [redacted] contract has not been awarded yet and the [redacted] has not been awarded yet as [redacted].

- (c) Evidence from internal documents.

Evidence from third parties

403. The third party evidence shows that Veolia and Suez are close competitors in the supply of incineration services across the UK. Third parties submitted that both Parties have a large presence in all regions of the UK with strong track records and that they often compete against each other in tenders. Third parties also submitted that the Parties have an especially strong presence in the North of England. In particular:

- (a) As part of its merger investigation, the CMA asked local authorities which waste management companies would be able to meet their incineration services needs. 18 of the 19 respondents listed Veolia and rated it as a strong competitor. Local authorities highlighted that Veolia has significant experience and a good track record⁴⁹² in the market with a large market share.⁴⁹³ Many local competitors submitted that Veolia is strong within its local area due to having a nearby facility.⁴⁹⁴ 16 of the 19 respondents listed Suez as being able to meet their needs and rated Suez as a strong competitor (although less strong than Veolia). Local authorities noted that Suez has significant experience in the sector⁴⁹⁵ and a large market share.⁴⁹⁶ In terms of geographic reach, several respondents indicated that Suez has facilities across the country,⁴⁹⁷ but that it is especially strong in the North East of England;⁴⁹⁸ and
- (b) The CMA asked competitors which suppliers are Veolia's and Suez's closest competitors in incineration services. With regard to Veolia, five of the seven respondents listed Suez and indicated that it is a strong competitor to Veolia. Competitors noted that Suez is a leading competitor⁴⁹⁹ and has a large market share with a strong track record⁵⁰⁰ and operational knowledge. With regard to Suez, six out of the seven respondents listed Veolia and indicated that it is a strong competitor to Suez. Competitors also submitted that Veolia is a leading competitor⁵⁰¹

⁴⁹² [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

⁴⁹³ [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

⁴⁹⁴ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

⁴⁹⁵ [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

⁴⁹⁶ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

⁴⁹⁷ [REDACTED], [REDACTED], [REDACTED], and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

⁴⁹⁸ [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

⁴⁹⁹ [REDACTED]'s response to the CMA disposal competitors questionnaire.

⁵⁰⁰ [REDACTED]'s response to the CMA disposal competitors questionnaire.

⁵⁰¹ [REDACTED]'s response to the CMA disposal competitors questionnaire.

and has a large market share with a strong track record and operational knowledge.⁵⁰²

404. In addition, several third parties raised concerns in relation to this theory of harm, and submitted that the Parties were particularly close competitors in the North of England:

- (a) A local authority submitted that Suez is dominant in the North East and that it is not uncommon to see the Parties bid against each other for tenders;⁵⁰³
- (b) One competitor submitted that Veolia and Suez are both significant competitors in the supply of incineration services and that it believed that the main objective of the Merger was to 'control the market'. The competitor also submitted that the Merged Entity would have a very strong presence in the North of England, because Suez already has a 'virtual monopoly' in the North East;⁵⁰⁴
- (c) Another competitor submitted that the location of Veolia and Suez's assets created regional hotspots where the Parties are especially strong. The competitor submitted that the Parties are especially strong in the North East of England;⁵⁰⁵ and
- (d) Another competitor submitted that both Veolia and Suez are large competitors and that absent the Merger, there would likely to be competition between Veolia and Suez in the North West of England where both Parties have secured planning permission to build new facilities.⁵⁰⁶

Evidence from internal documents

405. A Veolia internal document describes [REDACTED].⁵⁰⁷

406. A Suez internal document [REDACTED].⁵⁰⁸ In particular, the document discusses [REDACTED]. Similarly, a Suez internal document [REDACTED].⁵⁰⁹ Both these documents [REDACTED].

⁵⁰² [REDACTED]'s response to the CMA disposal competitors questionnaire.

⁵⁰³ Note of call with [REDACTED], dated 9 August 2021.

⁵⁰⁴ Note of call with [REDACTED], dated 15 April 2021.

⁵⁰⁵ Note of call with [REDACTED], dated 8 April 2021.

⁵⁰⁶ Note of call with [REDACTED], dated 14 April 2021.

⁵⁰⁷ [REDACTED].

⁵⁰⁸ [REDACTED].

⁵⁰⁹ [REDACTED].

Conclusion on the closeness of competition between the Parties

407. For the reasons set out above, the CMA believes that the Parties have a large presence across the UK with strong track records and an especially strong presence in the North East of England where they compete closely against each other. Additionally, the CMA believes that evidence from internal documents shows that the Parties monitor each other's activities in local areas across the UK. The CMA notes that the evidence from third parties and internal documents relates mostly to competition across the UK. Therefore, the interpretation of this data is not straightforward as competition takes place at the local level, and the CMA has put limited weight on this evidence in assessing local competition (except where it pertains to the local area in question).

Competitive constraints

408. In assessing the competitive constraints from other alternatives, the CMA has considered:

- (a) The Parties' tender data (discussed at paragraphs 400 and 401);
- (b) Evidence from third parties; and
- (c) Evidence from internal documents.

Evidence from third parties

409. The CMA asked third parties to identify the strongest competitors in incineration services in the UK. The available evidence suggests that while Viridor and FCC are significant competitors to the Merged Entity, there is a long tail of suppliers in the market which are likely to be weak competitors. Specifically:

- (a) **Viridor.** Municipal customers were asked by the CMA to list the incineration services suppliers which they believe would be able to meet their disposal needs if they were to issue a tender today. Of the 19 respondents to this question, 16 mentioned Viridor. Municipal customers rated Viridor as a strong competitor with a similar strength to Suez, although it was not rated as strong as Veolia.

Some municipal customers told the CMA that Viridor has a large market

share⁵¹⁰ and significant experience and expertise.⁵¹¹ For example, one local authority submitted that Viridor is the only competitor with similar experience to the Parties and that it is focussed on incineration services.⁵¹² Another submitted that Viridor is one of the main competitors to the Parties in this market.⁵¹³ A consultant which advises local authorities on waste procurements also said that Viridor is the largest competitor to the Parties.⁵¹⁴ However, some municipal customers rated Viridor lower on the basis that it does not operate in the same area as the local authority⁵¹⁵ and that it does not have much spare capacity.⁵¹⁶

All but one competitor that responded to the CMA's merger investigation referred to Viridor as a strong competitor. Viridor was rated as a stronger competitor than Veolia, but a slightly weaker competitor than Suez. Competitors submitted that Viridor is a leading market competitor with a large market share and has the largest ERF fleet.⁵¹⁷ One competitor said that Viridor has several facilities in the South of England with sufficient merchant capacity to compete for both long and short term contracts. The competitor further added that Viridor has a pipeline of new projects.⁵¹⁸ Finally, one competitor submitted that Viridor has a strong track record and operational knowledge.⁵¹⁹

- (b) **FCC.** FCC was referred to by 15 of the 19 local authorities and considered to be a moderately strong competitor by respondents. Municipal customers told the CMA that FCC has the size, strength, and experience to be a serious alternative to the Parties and that it has a large UK position with significant experience.⁵²⁰ However, some local authorities also told the CMA that FCC has a more scattered presence across the UK and it has a limited presence in their area.⁵²¹ One local authority said that financing is an issue with FCC.⁵²²

Eight of the nine competitors identified FCC as a competitor, but rated it as a weaker competitor than Veolia, Suez and Viridor. While two

⁵¹⁰ [redacted], [redacted], [redacted], [redacted], [redacted]'s responses to the CMA's municipal customers questionnaire. Note of call with [redacted], dated 17 May 2021.

⁵¹¹ [redacted], [redacted], and [redacted]'s responses to the CMA's municipal customers questionnaire.

⁵¹² Note of call with [redacted], dated 13 October 2021.

⁵¹³ Note of call with [redacted], dated 18 May 2021.

⁵¹⁴ Note of call with [redacted], dated 6 October 2021.

⁵¹⁵ [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's municipal customers questionnaire.

⁵¹⁶ [redacted]'s response CMA's municipal customers questionnaire.

⁵¹⁷ [redacted], [redacted] and [redacted]'s responses to the CMA's disposal competitors questionnaire.

⁵¹⁸ [redacted]'s response to the CMA's disposal competitors questionnaire.

⁵¹⁹ [redacted]'s response to the CMA's disposal competitors questionnaire.

⁵²⁰ [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's municipal customers questionnaire.

⁵²¹ [redacted], [redacted] and [redacted]'s responses to the CMA's municipal customers questionnaire.

⁵²² [redacted]'s response to the CMA's municipal customers questionnaire.

competitors said FCC is a leading competitor with a large market share,⁵²³ one competitor said it had experienced limited growth in the last few years.⁵²⁴

(c) **Biffa.** Biffa was referred to by 6 of the 19 local authorities and was considered a relatively weak competitor by respondents. One respondent noted that Biffa does not have any of its own ERFs, but instead only has contracts to access ERF capacity.⁵²⁵ Biffa was only mentioned by one competitor which responded to the CMA's merger investigation.

(d) **Cory.** Another competitor, Cory, was listed by five of the 17 local authorities and was considered a relatively weak competitor by respondents. One customer said that Cory is strong in London and has contracts with several London Boroughs.⁵²⁶ However, another local authority close to London said that while Cory is building a new facility near an existing facility in Belvedere, this is hampered by the fact that deliveries must be made by barge.⁵²⁷ A London borough also said Cory is a weak competitor due to transport costs.⁵²⁸ Cory was mentioned by three competitors which responded to the CMA's merger investigation and was considered a moderately strong competitor by respondents.

(e) **Others.** Several other competitors were also named a few times or less by competitors and municipal customers.

410. With regard to constraint from RDF exports, only one competitor identified RDF exports as a constraint and considered it a weak constraint.⁵²⁹ Similarly, only one municipal customer discussed RDF exports in the context of rating Biffa's competitive strength in the supply of incineration services.⁵³⁰ The local authority in question considered Biffa to be a moderately strong competitor on the basis that Biffa relies on WTI to export its RDF waste as it does not have its own ERFs.

411. With regard to constraint from landfill, one respondent to the CMA's merger investigation submitted that, pushed by UK Government's policies aiming at decreasing the volume of waste to landfill (including through the imposition of a landfill tax which has consistently increased in recent years), incineration is becoming the main disposal method for residual waste and

⁵²³ [redacted] and [redacted]'s responses to the CMA's disposal competitors questionnaire.

⁵²⁴ [redacted]'s responses to the CMA's disposal competitors questionnaire.

⁵²⁵ [redacted]'s response to the CMA's municipal customers questionnaire.

⁵²⁶ [redacted]'s response to the CMA's municipal customers questionnaire.

⁵²⁷ [redacted]'s response to the CMA's municipal customers questionnaire.

⁵²⁸ [redacted]'s response to the CMA's municipal customers questionnaire.

⁵²⁹ [redacted]'s response to the CMA's disposal competitors questionnaire.

⁵³⁰ [redacted]'s response to the CMA's municipal customers questionnaire.

disposal via landfill only becomes a viable alternative where the gate fee charged by a supplier of incineration services is materially higher than that charged at the closest landfill (£20-30 per tonne).⁵³¹

412. Overall, the CMA notes that the evidence from third parties suggests that Viridor, and to some extent FCC, will provide competitive constraint on the Merged Entity. The evidence from third parties relates to competition across the UK. Therefore, the interpretation of this data is not straightforward as competition takes place at the local level, and the CMA has put limited weight on this evidence in assessing local competition.

Evidence from internal documents

413. The CMA received relatively limited evidence from internal documents in relation to competitive constraints in the supply of incineration services. However, the limited relevant documents received indicate that the Parties monitor each other and Viridor most closely, and monitor FCC along with other competitors to a lesser extent. For example:

(a) Several Veolia internal documents [REDACTED]. [REDACTED];⁵³²

(b) A Suez internal document [REDACTED];⁵³³ and

(c) A Suez internal document [REDACTED].⁵³⁴

Conclusion on competitive constraints

414. For the reasons set out above, the CMA believes that while Viridor and FCC will provide some competitive constraint on the Merged Entity, other suppliers in the market are likely to be weak competitors. The CMA notes that the evidence from third parties and from the internal documents relates to competition across the UK. Therefore, the interpretation of this data is not straightforward as competition takes place at the local level, and the CMA has put limited weight on this evidence in assessing local competition.

Local analysis shares of supply

415. The evidence presented above shows that the Parties are generally close competitors across the UK. However, the evidence also indicates that competition for the supply of incineration services takes place at the local

⁵³¹ Note of call with [REDACTED], dated 6 October 2021.

⁵³² [REDACTED].

⁵³³ [REDACTED].

⁵³⁴ [REDACTED].

level. The CMA therefore carried out local area analysis to identify specific areas where the Merger may give rise to a realistic prospect of an SLC.

Methodology

416. A detailed description of the CMA’s local area analysis methodology is available in **ANNEX 1 – Local Area Analysis Methodology**. In summary, the CMA adopted a filtering approach to the analysis. Catchment areas were calculated using 80% of 2020 customer volumes treated using Controlled Merchant Capacity. The CMA then calculated the weighted average catchment area across all of Veolia and Suez’s sites, where the volume treated using merchant capacity was used as the weight for both driving time and driving distance.
417. The CMA then calculated shares of supply based on Controlled Merchant Capacity for the greater of the individual catchment area and the weighted catchment area. Weighted shares of supply were used as location is cited as an important competitive parameter by third parties. The CMA considers that competition concerns may arise in areas where the Parties’ combined share of supply exceeds 30% with a significant increment.⁵³⁵

Overview of results

418. Based on the methodology referenced above, the CMA believes that competition concerns would arise in relation to the areas identified in **Table 3** below, as a result of the Merger. The CMA provides further detail on these local areas below.

Table 3: Parties’ local area shares of supply for incineration services

Centroid site	Veolia or Suez site	Driving distance or time catchment area	Catchment area size	Combined share of supply (increment)
Marchwood	Veolia	Distance	[X] km	[30-40%] ([10-20%])
Kemsley	Suez fuel supply agreement	Time	[X] mins	[30-40%] ([10-20%])
Teesside	Suez	Distance	[X] km	[40-50%] ([10-20%])
Wilton 11	Suez	Distance	[X] km	[30-40%] ([10-20%])
Wilton 11	Suez	Time	[X] mins	[30-40%] ([10-20%])

Source: CMA calculations

⁵³⁵ Generally, the CMA regards 5% as a significant increment, but a lower increment may be significant where the Parties’ combined shares of supply is high.

Teesside and Yorkshire

419. Consistent with the evidence set out above, which shows that the Parties have particularly strong positions in the North East of England, the CMA believes that competition concerns will arise as a result of the Merger in the Teesside and Yorkshire local areas. This includes Suez's Teesside and Wilton 11 facilities around Teesside, and the Ferrybridge facilities (operated by WTI) in Yorkshire where [REDACTED].
420. The weighted shares of supply for the Teesside catchment area are based on a [REDACTED] km catchment area and the weighted shares of supply for the Wilton 11 catchment area are based on catchment areas of [REDACTED] km and [REDACTED] minutes. Aside from Suez's Teesside and Wilton 11 facilities, the catchment areas also include the Ferrybridge FM2 facility where Suez has a Fuel Supply Agreement. Veolia's Leeds facility, as well as the Ferrybridge FM1 and Ferrybridge FM2 facilities where [REDACTED] lie within the catchment areas and Veolia's Sheffield facility lies within the Wilton 11 catchment area when considering driving distance. The shares of supply are presented in **Table 4** below.

Table 4: Local area shares of supply for Suez's Teesside and Wilton 11 ERFs

Entity	Shares of supply (%)		
	Teesside ([REDACTED] km)	Wilton 11 ([REDACTED] km)	Wilton 11 ([REDACTED] minutes)
Veolia	[10-20]%	[10-20]%	[10-20]%
Suez	[30-40]%	[10-20]%	[10-20]%
Merged Entity	[40-50]%	[30-40]%	[30-40]%
WTI	[30-40]%	[50-60]%	[50-60]%
Amey	[10-20]%	[5-10]%	[5-10]%
Total	100%	100%	100%

Source: CMA calculations

421. The weighted shares of supply show that the Merged Entity will be the largest or second largest supplier in the area, depending on which catchment area is considered. Post-Merger, WTI would be the only major competitor in the local area (though Veolia submitted [REDACTED]).⁵³⁶ In addition, Amey is exiting the UK waste market and it is currently unclear what will happen to this capacity.
422. Veolia submitted that a new merchant ERF near Kingston-Upon-Hull which is operated by Spencer with 182 kilo-tonnes per annum (**ktpa**) of Controlled Merchant Capacity is expected to become operational in 2021. This facility [REDACTED]. However, even when the Spencer facility is taken into account, the Parties' combined share of supply is still above 30% (with a [10-20]%

⁵³⁶ [REDACTED].

increment) when considering driving time. Therefore, the CMA does not believe that, even with this new merchant ERF, there is sufficient constraint on the Parties' facilities at Teesside and Wilton.

South East England

423. Within South East England, two facilities have catchment areas which fail the CMA's filter: Marchwood and Kemsley.
424. The weighted shares of supply for the Marchwood catchment area are based on a [redacted] km catchment area. Aside from Veolia's Marchwood facility, the Marchwood catchment area includes Veolia's Newhaven, SELCHP, Portsmouth, and Chineham facilities and Suez's Avonmouth and Severnside facilities. These weighted shares of supply are presented in **Table 5** below.

Table 5: Local area shares of supply for Veolia's Marchwood ERF

Entity	Shares of supply
	Marchwood ([redacted] km)
Veolia	[20-30]%
Suez	[10-20]%
<i>Merged Entity</i>	<i>[30-40]%</i>
WTI	[0-5]%
FCC	[5-10]%
Cory	[5-10]%
Viridor	[40-50]%
Others	[10-20]%
Total	100%

Source: CMA calculations

425. The weighted shares of supply show that the Merged Entity would be the second largest supplier in the area. In the Marchwood area, the Merger would reduce the number of competitors with shares over 10% from three to two. The Parties would have a combined share of supply of [30-40]% with a [10-20]% increment, post-Merger.
426. Veolia submitted that two new ERFs are due to open in the near future in:
537

- (a) Bridgwater in 2022 with 30 ktpa of Controlled Merchant Capacity; and
- (b) in Slough in 2025 with 450 ktpa of Controlled Merchant Capacity.

537 [redacted].

427. The CMA considers that the Bridgwater ERF is too far from Veolia's Marchwood site to yield much competitive constraint and Slough is opening too far into the future to be considered within the competitive assessment.
428. Both Parties have [REDACTED]. The weighted shares of supply for [REDACTED] at the facility is based on a [REDACTED] minute catchment area. Aside from [REDACTED] at the Kemsley ERF, Veolia's Newhaven and SELCHP sites are included in the catchment area. The weighted shares of supply are presented in **Table 6** below.

Table 6: Local area shares of supply for the Kemsley ERF

Entity	Shares of supply
	Suez fuel supply agreement ([REDACTED] mins)
Veolia	[10-20]%
Suez	[5-10]%
Merged Entity	[30-40]%
WTI	[40-50]%
Cory	[10-20]%
FCC	[10-20]%
Viridor	[0-5]%
Bouygues	[0-5]%
Others	[0-5]%
Total	100%

Source: CMA calculations

429. The weighted shares of supply for the Kemsley local area in **Table 6** show that the Merged Entity would have a weighted share of supply of [30-40]% with an increment of approximately [5-10]%. The Merger would reduce the number of competitors with shares over 10% in the local area from four to three. The Parties pointed out that there are additional competitors (including Viridor and Bouygues) slightly further away that would be included if the catchment area was calculated on the basis of driving time for Veolia's customers or on the basis of driving distance; and that most customers are located some way away from Kemsley.⁵³⁸ Nevertheless, the CMA notes that these additional competitors have shares of less than 10% even on alternative bases, that the location of customers is difficult to take into account systematically and that the position of customers closer to Kemsley should not be ignored.
430. The CMA also notes that Veolia is [REDACTED]; and Suez is due to operate a new ERF which is currently in commissioning at the Charlton Lane Eco Park in Surrey which will be able to process up to [REDACTED] ktpa. These new facilities would likely lead to the Merged Entity increasing its share of supply in the South East England local area.⁵³⁹

⁵³⁸ [REDACTED].

⁵³⁹ [REDACTED].

431. Veolia submitted that its Newhaven facility is [REDACTED].⁵⁴⁰ The CMA nevertheless considers that competition from Newhaven [REDACTED] is relevant. The CMA notes that Suez also has a [REDACTED]. However, this may not be the case in the future.

Barriers to entry and expansion

432. Veolia submitted that barriers to entry in this market are low, as evidenced by the development of merchant facilities in recent years.⁵⁴¹ Veolia also submitted that local authority procurement processes have changed to lower barriers to entry in recent years by separating different waste management services into separate contracts.⁵⁴²
433. Third parties that responded to the CMA's merger investigation indicated that barriers to entry in incineration services are high. In particular, several competitors told the CMA that track record is important when trying to win incineration services contracts.⁵⁴³ Furthermore, several respondents told the CMA that it is important to control a large quantity of waste or have anchor contracts in place to gain sufficient financing in order to compete in this market or have financial backing in place to provide guarantees and covenants.⁵⁴⁴
434. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC in the supply of non-hazardous waste incineration services at local level in the Teesside, Wilton 11, Marchwood, and Kemsley local areas as a result of the Merger.

Conclusion on horizontal unilateral effects in non-hazardous waste incineration services

435. For the reasons set out above, the Merged Entity would be the largest or second largest supplier in the Teesside and Wilton 11 catchment areas and face limited competitive constraints from rival suppliers in these areas, principally WTI.
436. Similarly, the Merged Entity would be the second largest supplier in the Marchwood, and Kemsley catchment areas and face limited competitive

⁵⁴⁰ [REDACTED].

⁵⁴¹ [REDACTED].

⁵⁴² [REDACTED].

⁵⁴³ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]'s responses to the CMA's disposal competitors questionnaire.

⁵⁴⁴ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]'s responses to the CMA's disposal competitors questionnaire.

constraints from rival suppliers in these areas; principally Viridor at Marchwood and WTI at Kemsley.

437. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of non-hazardous waste incineration services at local level in the Teesside, Wilton 11, Marchwood, and Kemsley local areas.

Horizontal unilateral effects in the supply of non-hazardous waste sorting services

438. The Parties overlap in the supply of non-hazardous waste sorting services. The Parties own Controlled Merchant Capacity at MRFs across the UK which they can either use to supply their own customers with or which they can sell to other competitors. In assessing this theory of harm, the CMA has considered:

- (a) The frame of reference;
- (b) Submissions from the Parties;
- (c) The closeness of competition between the Parties;
- (d) The competitive constraints from other alternatives; and
- (e) The analysis of local shares of supply.

Frame of reference

Product scope

- *Parties' submissions*

439. Veolia submitted that the sorting of non-hazardous waste at MRFs should be considered as a separate frame of reference.⁵⁴⁵ Veolia also submitted that the majority of MRFs in the UK are operated for local authorities under PPP/PFI contracts.⁵⁴⁶ As with ERFs, the majority of the capacity at these facilities is locked for the exclusive use of the local authority (or authorities) holding the PPP/PFI contract. Veolia submitted that there is no competition for this locked capacity.

⁵⁴⁵ [REDACTED].

⁵⁴⁶ [REDACTED].

440. However, the Controlled Merchant Capacity can be utilised by the waste management company which operates the MRF for commercial purposes. Veolia therefore submitted that the narrowest candidate product frame of reference is the sale of available MRF merchant capacity to third parties.⁵⁴⁷

441. Suez submitted that the EC has previously found that mechanical sorting of dry mixed recyclables with an MRF to constitute a distinct market.⁵⁴⁸ In that case, the EC did not consider further segmentation by material type. Suez therefore considers that mechanical sorting of non-hazardous waste constitutes a distinct product market.⁵⁴⁹

- *Precedents*

442. The CMA has not previously considered a market for sorting of non-hazardous waste. The EC previously noted that sorting, incineration, and landfill constituted distinct segments given the differences in treatment methods.⁵⁵⁰ The French Competition Authority has identified a separate market for the sorting of non-hazardous waste, albeit on a case-by-case basis, while leaving the exact delimitation of this market open.⁵⁵¹

- *Evidence from third parties*

443. A competitor submitted that all MRFs are generally the same because they take in household waste, which has similar components.⁵⁵² Another competitor submitted that there is little differentiation between UK MRFs since the majority of MRFs accept the same composition of recyclates with some differentiation on the inclusion of glass.⁵⁵³

444. A competitor made the distinction between ‘merchant MRFs’ which are commercially available to process recyclates; and ‘dedicated MRFs’ where capacity is locked to a local authority under contract.⁵⁵⁴ This evidence is consistent with the CMA’s understanding of the operation of MRFs: certain capacity is allocated to the local authority and not available for use for other purposes; the remaining capacity (Controlled Merchant Capacity) is

⁵⁴⁷ [REDACTED].

⁵⁴⁸ [REDACTED].

⁵⁴⁹ [REDACTED].

⁵⁵⁰ EC’s decision of 30 July 2009 in case COMP/M.5464, *Veolia Eau/Société des Eaux de Marseille/Société des Eaux d’Arles/Société Stéphanoise des Eaux*, paragraph 28.

⁵⁵¹ Decisions of the French Competition Authority no. 17-DCC-40 of 29 March 2017 relating to the acquisition of sole control of Coved by Paprec Group, paragraphs 53-54 and decisions of the French Competition Authority no. 10-DCC-114 of 10 September 2010 relating to the acquisition of sole control of ISS Environnement by Paprec France, paragraph 19.

⁵⁵² Note of call with [REDACTED], dated 20 April 2021.

⁵⁵³ [REDACTED]’s response to the CMA’s disposal competitors questionnaire.

⁵⁵⁴ [REDACTED]’s submission to the CMA of 5 May 2021.

available for use by others to dispose waste and competition occurs specifically with respect to Controlled Merchant Capacity.

445. The CMA believes that it is appropriate to segment Controlled Merchant Capacity from the capacity that is locked for the exclusive use of local authorities.

- *Conclusion on product scope*

446. For the reasons set out above, the CMA has considered the impact of the Merger on competition on the supply of non-hazardous waste sorting services using Controlled Merchant Capacity.

Geographic scope

- *Parties' submissions*

447. Veolia submitted that previous merger investigations have examined the sorting of non-hazardous waste on a regional and/or national basis, and that previous merger investigations considered local markets comprising catchment areas of 150km and 200km. Veolia provided information on the basis of a GB-wide market, as well as local catchment areas of (i) 100km, (ii) 200km, and (iii) the driving distance and drive time in which 80% of customer volumes were received in 2020.⁵⁵⁵

448. Suez submitted that the EC has previously considered that the geographic market for mechanical sorting of dry mixed recyclables with an MRF in the UK could be national in scope or regional with a radius of 200km from each facility, but ultimately did not conclude on this point.⁵⁵⁶

449. Suez further submitted that the catchment areas of MRFs can vary significantly and that MRFs may be built primarily to sort waste from specific regions, but spare capacity can be filled with waste from further afield.⁵⁵⁷ Suez therefore considered that it would be appropriate to consider these markets on a national and regional basis.

- *Precedents*

450. The EC previously considered the geographic market for treatment of waste at MRFs, but ultimately left the definition open. However, the EC did

⁵⁵⁵ [REDACTED].

⁵⁵⁶ [REDACTED].

⁵⁵⁷ [REDACTED].

consider shares on a national and regional basis and considered local catchment areas of 150km and 200km from the target's MRFs.⁵⁵⁸

- *Evidence from third parties*

451. The CMA asked third party competitors that own Controlled Merchant Capacity at MRFs over what approximate driving distance they compete for business. The responses ranged from 15 miles to 146 miles, although the majority of responses were in the 20-40 mile range.⁵⁵⁹ This evidence suggests that the frame of reference is local, albeit with significant differences between catchment areas.

452. This information was confirmed by competitors. One competitor stated that MRFs will generally take waste from local areas, but that sometimes waste could travel long distances.⁵⁶⁰ Another competitor stated that competition depends on the number of MRFs in a given area, suggesting the frame of reference is local.⁵⁶¹

- *Conclusion on geographic scope*

453. For the reasons set out above, the CMA assessed competition for the supply of non-hazardous waste sorting services at a local level.

Conclusion on frame of reference

454. For the reasons set out above, the CMA assessed competition for the supply of non-hazardous waste sorting services using Controlled Merchant Capacity at the local level (the **sorting services**).

Parties' submissions

455. Veolia submitted that the Merger will not give rise to competition concerns for sorting of non-hazardous waste on the basis that:

- (a) The Parties' combined share of supply is low;
- (b) There are numerous rivals that compete intensively;

⁵⁵⁸ EC's decision of 3 August 2010 in case COMP/M.5901, *Montagu/GIP/Greenstar*, paragraphs 35-37.

⁵⁵⁹ [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to the CMA's disposal competitors questionnaire.

⁵⁶⁰ Note of call with [REDACTED], dated 20 April 2021.

⁵⁶¹ Note of call with [REDACTED], dated 7 May 2021.

(c) Contracts are allocated to private operators through structured and highly competitive tenders; and

(d) Barriers to entry are low and decreasing.⁵⁶²

456. Further, Veolia submitted that no competition concerns arise when considering local markets, irrespective of the radius or local catchment areas considered.⁵⁶³

Closeness of competition and competitive constraints

457. In assessing the closeness of competition and constraints from other alternatives, the CMA has considered evidence submitted by third parties in response to the CMA's merger investigation and evidence from the Parties' internal documents.

Evidence from third parties

458. The CMA asked municipal customers which companies they consider would be able to meet their treatment of recyclates needs (eg sorting at an MRF) if they issued a tender today. Biffa was identified most often by 13 of the 16 respondents and was rated as a strong competitor, albeit weaker than Veolia and Suez. Veolia and Suez were both identified by 12 respondents and were both rated as strong competitors with Veolia being considered stronger than Suez. Viridor was identified by nine respondents and was rated as a similarly strong competitor to the Parties and FCC was identified by six respondents and was rated as a moderately strong competitor. The CMA believes that Viridor's rating is based on its position prior to the divestment of a number of its MRFs to Biffa. Fifteen other competitors were identified at least once by respondents.

459. The CMA also asked competitors which companies they considered to be their strongest competitors in the UK market for sorting services. Biffa was identified most often, by seven of the nine respondents, and was rated as the strongest competitor in the market. Veolia were identified by six respondents and Suez by five and both were rated as strong competitors. Viridor and Beauparc were identified by four respondents and were likewise rated as strong competitors. 18 other competitors were identified at least once by respondents.

⁵⁶² [REDACTED].

⁵⁶³ [REDACTED].

Evidence from internal documents

460. Suez often appears as one of Veolia's main competitors in documents discussing contracts that include waste sorting. For instance, [REDACTED].⁵⁶⁴ The same companies appear in a list of competitors for a contract with London Luton Airport.⁵⁶⁵ While the CMA has not seen many internal documents dedicated exclusively to the supply of sorting services, internal documents that discuss sorting services amongst other services show that the Parties monitor each other.

Conclusion on closeness of competition and competitive constraints

461. For the reasons set out above, the CMA believes that the available evidence indicates that the Parties may be close competitors, but that they would face constraints from certain suppliers, with Biffa being the strongest, post-Merger. The CMA notes that the evidence from third parties and internal documents relates to competition across the UK. Therefore, the interpretation of this data is not straightforward as competition takes place at the local level, and the CMA has put limited weight on this evidence in assessing local competition.

Local analysis shares of supply

462. The evidence presented above shows that the Parties may generally be close competitors across the UK. However, the evidence also indicates that competition for the supply of sorting services takes place at the local level. The CMA therefore carried out local area analysis to identify specific areas where the Merger may give rise to a realistic prospect of an SLC.

Methodology

463. The CMA has taken the same approach to its local area analysis as described in the theory of harm relating to horizontal unilateral effects for the supply of incineration services (see paragraph 415 above). The weighted average catchment areas for the Parties' MRF sites were [REDACTED]km when considering driving distance and [REDACTED] minutes when considering driving time.

⁵⁶⁴ [REDACTED].

⁵⁶⁵ [REDACTED].

Overview of results

464. Using the CMA's methodology described above, the CMA found no local areas where the Merged Entity's combined weighted share of supply would exceed 25% with a significant increment.

Conclusion on horizontal unilateral effects in non-hazardous waste sorting services

465. For the reasons set out above, the CMA has not identified any local areas where the Merger would give rise to competition concerns in the supply of sorting services.
466. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of supply of non-hazardous waste sorting services at local level.

Horizontal unilateral effects in the supply of organic waste composting services at open-windrow composting (OWC) facilities

467. The Parties overlap in the supply of organic waste composting services at OWC facilities. Composting is the process by which a part of the organic matter of waste is decomposed by the activity of microorganisms in the presence of oxygen. In assessing this theory of harm, the CMA has considered:
- (a) The frame of reference;
 - (b) Submissions from the Parties;
 - (c) The closeness of competition between the Parties;
 - (d) The competitive constraints from other alternatives;
 - (e) The analysis of local shares of supply, and
 - (f) Barriers to entry and expansion.

Frame of reference

Product scope

- *Parties' submissions*

468. Veolia submitted that there are separate markets for the supply of organic composting services at OWC facilities and IVC facilities.⁵⁶⁶

469. Suez submitted that within the treatment of non-hazardous waste in the UK, it considers (i) mechanical sorting of non-hazardous waste; (ii) biological treatment of non-hazardous waste; and (iii) hybrid treatments of non-hazardous waste to constitute distinct product markets.⁵⁶⁷ Suez's biological treatment facilities perform a mix of composting and biologic treatment services.⁵⁶⁸

- *CMA's assessment*

470. The CMA has not previously considered composting services. The EC has previously considered material recovery and has segmented this frame of reference by the types of material being recovered.⁵⁶⁹ The EC considered that this was because there is no supply-side substitutability between the different waste types. The EC identified the composting of fermentable waste (green waste and bio-waste) as a separate segment in the broader material recovery market.⁵⁷⁰

- *IVC facilities*

471. The CMA considered whether the product scope should include the supply of organic waste composting services at both OWC and IVC facilities as the Parties overlap in both types of facility. IVC facilities can accept both garden and food waste whereas OWC facilities can only accept garden waste.⁵⁷¹

472. Veolia submitted that in practise IVC facilities do not compete with or constrain OWC facilities.⁵⁷² In particular, there are important technological

⁵⁶⁶ [REDACTED].

⁵⁶⁷ [REDACTED].

⁵⁶⁸ [REDACTED].

⁵⁶⁹ EC's decision of 25 June 2014 in case COMP/M.7137, *EDF/Dalkia*, paragraph 168; EC's decision of 30 July 2009 in case COMP/M.5464, *Veolia Eau/Société des Eaux de Marseille/Société des Eaux d'Arles/Société Stéphanoise des Eaux*, paragraph 29.

⁵⁷⁰ EC's decision of 3 August 2010 in case COMP/M.5901 *Montagu/GIP/Greenstar*, paragraph 20.

⁵⁷¹ [REDACTED].

⁵⁷² [REDACTED].

differences: OWC technology is used to process garden waste in an open environment where the material breaks down in the presence of oxygen, whereas IVC technology is used to process both garden waste and food waste in an enclosed, monitored and temperature-controlled environment. Further, OWC treatment is significantly cheaper than IVC treatment, with [REDACTED].⁵⁷³ Therefore, it is uncommon for material to go to alternative treatment sites.

473. The CMA did not receive evidence of significant competition between OWC and IVC facilities and therefore believes that it is appropriate to consider these facilities separately. With regard to IVC, both Parties operate such facilities but the CMA found no local areas of concern.⁵⁷⁴ As such, the CMA has focused its investigation on the supply of organic waste composting services at OWC facilities.

- *Anaerobic digestion facilities*

474. The CMA considered whether the product scope should be widened to include anaerobic digestion (**AD**) facilities. AD facilities operate differently to composting facilities in that they produce biogas which can be used to generate electricity.⁵⁷⁵ Further, AD facilities can only accept food waste.

475. Veolia does not operate any AD facilities while Suez only operates one AD facility in the UK.⁵⁷⁶

476. The CMA notes that AD facilities are not a relevant alternative to OWC facilities as they process different types of waste, and therefore has not considered AD facilities further.

• *Conclusion on product scope*

477. For the reasons set out above, the CMA believes that the appropriate product frame of reference is the supply of organic waste composting services at OWC facilities.

⁵⁷³ Veolia's OWC gate fees are £[REDACTED] and IVC gate fees are £[REDACTED] ([REDACTED]).

⁵⁷⁴ The CMA found no local catchment areas where the Merged Entity's combined weighted share of supply would exceed 25% with a significant increment.

⁵⁷⁵ [REDACTED].

⁵⁷⁶ [REDACTED].

Geographic scope

- *Parties' submissions*

478. Veolia submitted that the CMA can leave the geographic frame of reference open as no competition concerns arise on any basis.⁵⁷⁷

479. Veolia provided information on the basis of a UK-wide frame of reference, as well as for local catchment areas based on the driving distance and driving time in which 80% of customer volumes were received in 2019.

480. Suez submitted that waste into its biological treatment facilities is almost exclusively sourced from the region where the facility is located.⁵⁷⁸

- *CMA's assessment*

- *Precedent*

481. The CMA has not previously considered this geographic frame of reference.⁵⁷⁹

- *Evidence from third parties*

482. The CMA asked third party competitors that operate composting facilities over what approximate driving distance they compete for business. The responses varied in range from 10 miles up to 100 miles. This evidence suggests that the frame of reference is local, albeit with significant differences between catchment areas.

483. Third parties also provided additional evidence that the geographic frame of reference is local. In particular, one local authority told the CMA that locality is a key factor it considers when deciding which supplier of composting services to use.⁵⁸⁰ One competitor also told the CMA that competition depends on the capacity of local facilities up to 40 miles.⁵⁸¹ Another competitor told the CMA that competition between composting facilities is generally local.⁵⁸²

⁵⁷⁷ [REDACTED].

⁵⁷⁸ [REDACTED].

⁵⁷⁹ [REDACTED].

⁵⁸⁰ Note of call with [REDACTED], dated 19 May 2021.

⁵⁸¹ Note of call with [REDACTED], dated 2 June 2021.

⁵⁸² Note of call with [REDACTED], dated 20 April 2021.

- *Conclusion on geographic scope*

484. For the reasons set out above, the CMA believes that competition in the supply of organic waste composting services at OWC facilities is local and is affected by the distance that waste needs to be transported. The CMA has therefore adopted a local geographic frame of reference.

Conclusion on frame of reference

485. For the reasons set out above, the CMA believes that the appropriate frame of reference is the supply of organic waste composting services at OWC facilities at local level (**composting services**).

Parties' submissions

486. Veolia submitted that the Merger will not give rise to competition concerns on a national market for composting of organic waste on the basis that:

- (a) The Parties' share of supply will remain low;
- (b) The Parties' share of supply may decrease due to the expiry of site permits;
- (c) The Parties' sites are geographically complementary;
- (d) The segment is highly fragmented and the Parties will continue to face competition from a large number of rivals; and
- (e) The composting segment is expanding.⁵⁸³

Closeness of competition

487. The CMA examined the closeness of competition between the Parties and considered within its assessment evidence submitted by third parties in response to the CMA's merger investigation. The evidence gathered relates to composting services irrespective of facility type, but the CMA considers the evidence is nonetheless relevant when only considering treatment at OWC facilities.

⁵⁸³ [REDACTED].

Evidence from third parties

488. The third party evidence shows that Veolia and Suez are close competitors in the supply of composting services. Third parties submitted that the Parties have a large UK-wide presence.
489. In particular, municipal customers most often named Veolia and Suez when asked which companies could service their needs with regard to treatment of organics (including IVC, OWC and AD). In doing so, municipal customers highlighted the Parties' track record of running composting facilities and their UK-wide presence.⁵⁸⁴ One municipal customer identified Veolia and Suez as the 'biggest players' ahead of Viridor, Biffa and FCC.⁵⁸⁵
490. In addition, nearly half of the competitors that responded to the CMA identified Suez as one of Veolia's strongest competitors in the treatment of organic waste. By comparison, all other competitors were seen as weaker than Suez. More than half of the competitors also identified Veolia as one of Suez's strongest competitors. One competitor in composting services explained its high ratings of the Parties as being due to their size and scale.⁵⁸⁶ Another competitor highlighted Veolia's strong presence in the UK, track record and financial standing in support of the rating given.⁵⁸⁷

Conclusion on the closeness of competition between the Parties

491. For the reasons set out above, the CMA believes that the available evidence is indicative that Veolia and Suez compete closely in the supply of composting services. The CMA notes that the evidence from third parties relates to competition at the national level. Therefore, the interpretation of this data is not straightforward as competition takes place at the local level, and the CMA has considered the limitations of this evidence in assessing local competition.

Competitive constraints

492. In assessing the competitive constraints from other alternatives, the CMA considered evidence submitted by third parties in response to the CMA's merger investigation. The evidence gathered relates to composting services irrespective of facility type, but the CMA considers the evidence is nonetheless relevant for treatment at OWC facilities.

⁵⁸⁴ [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's municipal customers questionnaire.

⁵⁸⁵ [REDACTED]'s response to the CMA's municipal customers questionnaire.

⁵⁸⁶ [REDACTED]'s response to the CMA's disposal customers questionnaire.

⁵⁸⁷ [REDACTED]'s response to the CMA's disposal customers questionnaire.

Evidence from third parties

493. In response to the CMA's merger investigation, customers and competitors identified Veolia and Suez as strong competitors. Respondents also listed Biffa, Envar, Viogen and FCC as strong competitors.
494. Customers identified Veolia and Suez as suppliers more frequently than Biffa, Biogen and FCC. However, respondents considered all of these suppliers to be similarly strong as competitors.
495. Competitor submissions identified Veolia as being the strongest competitor followed by Suez and Biffa. Competitor submissions identified Envar and FCC as weaker competitors.
496. While other suppliers were also identified by customers and competitors, none other than Viridor received more than three mentions by either customers or competitors. Both local authorities and competitors identified a long tail of suppliers, with for example, 22 composting services suppliers being mentioned by local authorities (each receiving three mentions or less).
497. However, the third party feedback also suggests that some of these competitors may operate only locally or at regional level and may not have the same scale of operations as the Parties. For example:
- (a) Several municipal customers assessed the competitors' strength by reference to their local or regional capabilities.⁵⁸⁸
 - (b) Two competitors that responded to the CMA's merger investigation provided their rating on competitors solely by reference to their activities in a designated local area;⁵⁸⁹ and
 - (c) Another competitor submitted that there are a number of competitors in the composting sector (OWC and IVC) which compete largely on a regional basis.⁵⁹⁰

Conclusion on competitive constraints

498. For the reasons set out above, the CMA believes that there are a small number of suppliers that appear to compete across the UK, with several additional competitors operating on a regional or local basis. The CMA

⁵⁸⁸ [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's municipal customers questionnaire.

⁵⁸⁹ [redacted] and [redacted]'s responses to the CMA's disposal competitors questionnaire.

⁵⁹⁰ [redacted]'s response to the CMA's disposal competitors questionnaire.

notes that the evidence from third parties relates to competition at the national level. The interpretation of this data is not straightforward as competition takes place at the local level, and the CMA has considered the limitations of this evidence in assessing local competition.

Local analysis shares of supply

Methodology

499. A full description of the CMA’s local area analysis methodology is available in **ANNEX 1 – Local Area Analysis Methodology**. The methodology follows the same approach as incineration services as summarised in paragraph 416 above. Data limitations meant there are some differences with the approach taken in incineration services which are described in **ANNEX 1 – Local Area Analysis Methodology**.

Overview of results

500. Based on the methodology references above, the CMA believes that competition concerns would arise in relation to the two facilities identified in **Table 7** below, as a result of the Merger. The CMA provides further detail on these local areas below.

Table 7: Parties’ local area shares of supply for composting services

Centroid site	Veolia or Suez site	Driving distance or time catchment area	Catchment area size	Combined share of supply (increment)
Coven	Veolia	Time	[X] mins	[30-40%] ([5-10%])
Packington	Suez	Distance	[X] km	[40-50%] ([5-10%])
Packington	Suez	Time	[X] mins	[40-50%] ([10-20%])

Source: CMA calculations

501. Veolia’s Coven facility is close to Suez’s Packington facility (47 km driving distance between them), and therefore, the CMA considered these overlaps as one local area.
502. The local area weighted shares of supply for the catchment areas around Veolia’s Coven and Suez’s Packington facilities are presented in **Table 8** below. The weighted shares of supply for Veolia’s Coven facility are based upon a catchment area of [X] minutes driving time and the weighted shares of supply for Suez’s Packington facility are based upon catchment areas of [X] km driving distance and [X] minutes driving time. The Coven catchment area also includes Veolia’s Acton and Telford facilities. The Packington driving distance catchment area also includes Veolia’s Ling Hall facility and the Packington driving time catchment area also includes Veolia’s Ling Hall and Telford facilities.

Table 8: Local area shares of supply for the Coven and Packington OWC facilities.

Entity	Shares of supply (%)		
	Coven (driving time)	Packington (driving distance)	Packington (driving time)
Veolia	[20-30%]	[5-10%]	[10-20%]
Suez	[5-10%]	[40-50%]	[30-40%]
Merged Entity	[30-40%]	[40-50%]	[40-50%]
Hollybush Recycling	[30-40%]	[10-20%]	[10-20%]
Lodgewood Recycling	[10-20%]	[0-5%]	[0-5%]
Berkswell Recycling	[0-5%]	[20-30%]	[10-20%]
Others	[10-20%]	[10-20%]	[20-30%]
Total	100%	100%	100%

Source: CMA calculations

503. The weighted shares of supply show that for the Coven and Packington facilities the Merged Entity would have a combined weighted share of supply between [30-50]% with an [5-10]% increment.
504. Post-Merger, in each of the above catchment areas, the Parties will be the largest supplier. Further, the Merger would reduce the number of suppliers with a share of supply exceeding 10% from four to three, though the relevant other suppliers depends on the centroid facility.
505. Considering the catchment area with Veolia’s Coven facility as the centroid, Veolia submitted that there are numerous other key players within this catchment area, eight of which are closer to Coven than Suez’s closest facility (Packington).⁵⁹¹ The CMA’s shares of supply estimates included all relevant facilities identified by Veolia in its calculations and accounts for the distance by using weighted shares of supply. The CMA notes that Hollybush Recycling would have a similar weighted share as the Parties and is only 9km away from Coven. As such, the CMA considers that Hollybush Recycling would pose a strong constraint on the Merged Entity. Only one other facility (Lodgewood Recycling) would have a weighted share of supply above 10% and thus pose a moderate constraint on the Parties. The CMA considers that all other facilities would exert a limited competitive constraint on the Merged Entity.
506. Veolia further submitted that shares centred on Coven are higher due to Veolia’s facility at Telford, which is 63km from Suez’s closest facility, Packington.⁵⁹² While the CMA acknowledges this, it notes that, in any case, the Parties’ combined share of supply using Packington as the centroid facility exceeds the 35% threshold by some margin.

⁵⁹¹ [REDACTED].

⁵⁹² [REDACTED].

507. Considering the catchment area with Suez's Packington facility as the centroid facility, Veolia submitted that there are five competing sites closer to Packington than Veolia's Ling Hall facility, 10 sites closer than Veolia's Coven facility and many other competitors a little further away.⁵⁹³ Veolia further stated that unweighted shares are below 30%, with the exception of a narrow band that just captures Coven and misses other competitors, and is thus unrepresentative.
508. The CMA notes its shares of supply estimates include all facilities identified by Veolia and it accounted for distance and volumes of each facility by using weighted shares of supply. The CMA further notes that post-Merger the Parties would have a share of supply close to [40-50]%. While two other suppliers with shares exceeding 10% would remain, these suppliers would be substantially smaller than the Parties and as such only pose a limited to moderate constraint on the Parties.

Barriers to entry and expansion

509. The Parties did not make any submissions regarding barriers to entry and expansion in the market for organic waste composting services.
510. Third parties that responded to the CMA's merger investigation submitted that barriers to entry are high. In particular, all competitors submitted that gaining the necessary permits and complying with regulations is a barrier to entry.⁵⁹⁴ Several respondents also submitted that access to finance and access to the skills and knowledge necessary to operate a particular composting facility are also barriers to entry.⁵⁹⁵
511. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC in the supply of organic waste composting services at OWC facilities at local level.

Conclusion on horizontal unilateral effects in organic waste composting services at OWC facilities

512. For the reasons set out above, in the Coven and Packington catchment areas, the CMA believes that the Parties would become the largest supplier

⁵⁹³ [redacted].

⁵⁹⁴ For instance, see [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's disposal competitors questionnaire.

⁵⁹⁵ [redacted] and [redacted]'s responses to the CMA's disposal competitors questionnaire. On balance, [redacted] affirmed that CAPEX requirements are limited.

and the Merger would reduce the number of competitors with a share of supply exceeding 10% from four to three.

513. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of organic waste composting services at OWC facilities at local level in the Coven and Packington local areas.

Horizontal unilateral effects in the supply of non-hazardous waste disposal services via landfill

514. The Parties overlap in the supply of non-hazardous waste disposal services via landfill. The Parties own and operate landfill sites across the UK. In assessing this theory of harm, the CMA has considered:

- (a) The frame of reference;
- (b) The closeness of competition between the Parties;
- (c) The competitive constraints from other alternatives; and
- (d) The analysis of local shares of supply.

Frame of reference

Product scope

515. Veolia submitted that the appropriate product frame of reference is the disposal of non-hazardous waste by landfill. Veolia also submitted that there is a degree of substitutability between different methods of treatment, particularly between landfill and incineration, but the precise definition can be left open given the absence of any competition concerns.⁵⁹⁶
516. Previous OFT decisions have defined a market for the disposal of non-hazardous waste by landfill on the basis of insufficient substitutability between landfill and other forms of waste disposal along with substantial price differences.⁵⁹⁷ Further, previous OFT decisions have found a distinction between the disposal of hazardous and non-hazardous waste via landfill.⁵⁹⁸

⁵⁹⁶ [REDACTED].

⁵⁹⁷ OFT's decision of 17 September 2004, completed acquisition by Cholet Acquisitions 2 Limited of the UK landfill and energy business of Shanks Group plc, paragraph 13.

⁵⁹⁸ OFT's decision of 11 May 2005, completed acquisition by Augean plc of Atlantic Waste Holdings Limited and Waste Holding Limited, paragraph 6.

517. The CMA has received no evidence to suggest a different frame of reference would be appropriate.
518. For the reasons set out above, the CMA has considered the impact of the Merger on the supply of non-hazardous waste disposal services via landfill.

Geographic scope

519. Veolia submitted that previous OFT cases had made a distinction between landfill sites that are linked by road and those that are linked by road and rail.⁵⁹⁹ The OFT further stated that the exact distance that customers are willing to travel to access a landfill site or transfer station is likely to vary depending on local circumstances. OFT precedents have considered competition at the local level and specifically considered competition at a 10 mile radius around merging parties' sites.⁶⁰⁰
520. Consistent with the OFT precedents, Veolia submitted information using a 10 mile and 100km radius around each of the Parties' landfill sites.⁶⁰¹ The Parties also submitted information on three further bases: (i) 80% revenue catchment areas; (ii) regional shares of supply; (iii) national shares of supply. Veolia submitted that the Merged Entity's landfill activities cannot give rise to competition concerns on any market definition, thus the precise geographic market definition can be left open.
521. The CMA asked third party competitors which operate landfill sites over what approximate driving distance they compete for business. The responses varied from 30 miles to up to 125 miles. This evidence shows that the supply of non-hazardous waste disposal services via landfill is local, albeit with significant differences between local catchment area sizes.
522. For the reasons set out above, the CMA has assessed competition for the supply of non-hazardous waste disposal services via landfill at a local level.

Conclusion on frame of reference

523. For the reasons set out above, the CMA has assessed competition for the supply of non-hazardous waste disposal services via landfill at a local level. However, it was not necessary for the CMA to reach a conclusion on the

⁵⁹⁹ OFT's decision of 17 September 2004, completed acquisition by Cholet Acquisitions 2 Limited of the UK landfill and energy business of Shanks Group plc, paragraph 14.

⁶⁰⁰ OFT's decision of 17 September 2004, completed acquisition by Cholet Acquisitions 2 Limited of the UK landfill and energy business of Shanks Group plc, paragraph 19.

⁶⁰¹ [REDACTED].

exact frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Closeness of competition and competitive constraints

524. In assessing closeness of competition and competitive constraints from other alternatives, the CMA has considered evidence submitted by third parties in response to the CMA's merger investigation.

Evidence from third parties

525. The CMA asked municipal customers which companies they consider would be best able to meet their needs as regards the disposal of residual waste by landfill. Veolia, Suez, and Biffa were identified most often with respondents rating Biffa and Veolia strongest, ahead of Suez. Viridor and FCC were also named by several respondents and received the same or a similar average rating to Suez. Six other competitors were also mentioned by respondents.
526. The CMA also asked competitors which companies they considered to be their strongest competitors in the UK market for non-hazardous landfill services. Veolia and FCC were identified most often with Veolia rated as a strong competitor and FCC as a moderately strong competitor. Biffa was also identified by several respondents who considered it to be a strong competitor. Suez and Viridor were identified by a few respondents each with respondents rating them as moderately strong competitors. Four other competitors were identified by at least one respondent.

Conclusion on closeness of competition and competitive constraints

527. For the reasons set out above, the CMA believes that the Parties may be close competitors but would face competitive constraints from Biffa and FCC and some weaker competitive constraint from Viridor and a long tail of competitors, post-Merger. The CMA notes that the evidence from third parties relates to competition across the UK. Therefore, the interpretation of this data is not straightforward as competition takes place at the local level, and the CMA has taken into account the limitations of this evidence in assessing local competition.

Local analysis shares of supply

528. The evidence presented above shows that the Parties may be generally close competitors across the UK. However, the evidence also indicates that competition for the supply of landfill services takes place at the local level.

The CMA has therefore carried out local area analysis to identify specific areas where the Merger may give rise to a realistic prospect of an SLC.

Methodology

529. The CMA has taken the same approach to its local area analysis as described above in relation to incineration services (see paragraph 416), calculating 80% catchment areas on the basis of revenue rather than volumes. The CMA calculated the weighted average catchment area across all of Veolia and Suez's landfill sites, where volume treated was used as the weight. The weighted average catchment areas for the Parties' sites was [redacted] km when considering driving distance and [redacted] minutes when considering driving time. The CMA calculated weighted shares of supply using the volume of each facility and its distance from the centroid facility.

Overview of results

530. Based on this methodology, the CMA found no local areas where the Merged Entity's combined weighted share of supply would exceed 25% with a significant increment.

Conclusion on horizontal unilateral effects in non-hazardous waste disposal services via landfill

531. For the reasons set out above, the CMA has not identified any local areas where the Merger would give rise to competition concerns in the supply of non-hazardous waste disposal services via landfill.
532. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of non-hazardous waste disposal services via landfill at a local level.

Horizontal unilateral effects in the supply of wood waste processing services

533. The Parties overlap in the supply of wood waste processing services. The Parties provide these services to customers at wood processing facilities across the UK. In assessing this theory of harm, the CMA has considered:
- (a) The frame of reference;
 - (b) Shares of supply;
 - (c) The closeness of competition between the Parties; and

(d) The competitive constraints from other alternatives.

Frame of reference

534. The Parties overlap in the supply of wood waste processing services. Veolia manages just over [REDACTED] ktpa of wood and Suez [REDACTED] ktpa.⁶⁰² Wood processed by Veolia comes from three sources: [REDACTED].⁶⁰³
535. Wood is collected separately from dry mixed recyclables and is sent to specific wood processing and recovery sites.⁶⁰⁴ Veolia processes wood at [REDACTED] ([REDACTED]) and Suez processes wood at [REDACTED] facilities ([REDACTED]).⁶⁰⁵

Product scope

536. The EC previously found that the market for material recovery can be segmented into each type of material to be recovered, as there is no substitutability between different types of waste.⁶⁰⁶
537. The CMA received no evidence that would suggest departing from the approach previously adopted by the EC with respect to wood waste processing.
538. The CMA therefore considered that the appropriate product frame of reference is the supply of wood waste processing services. However, given that competition concerns do not arise on any plausible basis, the CMA has not had to conclude on this frame of reference.

Geographic scope

539. Veolia provided information on the market for the recovery of wood at national level but submitted that market definition can be left open.⁶⁰⁷
540. The Parties principally source wood from their contracts with local authorities, as a by-product of their municipal activities.⁶⁰⁸ The Parties then transport the collected wood to different facilities and process it. For instance, Veolia submitted that Suez [REDACTED].⁶⁰⁹

⁶⁰² [REDACTED].

⁶⁰³ [REDACTED].

⁶⁰⁴ [REDACTED].

⁶⁰⁵ [REDACTED].

⁶⁰⁶ EC's decision in case COMP/M.7137, *EDF/Dalkia*, 25 June 2014, paragraph 168; EC's decision in case COMP/M.5464, *Veolia Eau/Société des Eaux de Marseille/Société des Eaux d'Arles/Société Stéphanoise des Eaux*, 30 July 2009, paragraph 29.

⁶⁰⁷ [REDACTED].

⁶⁰⁸ [REDACTED].

⁶⁰⁹ [REDACTED].

541. On a cautious basis, the CMA assessed the impact of the Merger on both a national and local basis, however, given that competition concerns do not arise on any plausible basis, the CMA has not had to conclude on the geographic frame of reference.

Conclusion on frame of reference

542. For the reasons set out above, the CMA assessed competition for the supply of wood waste processing services at national and local level. However, it was not necessary for the CMA to reach a conclusion on the exact frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Shares of supply

543. Veolia submitted that the Merger will not give rise to competition concerns in the wood processing segment for the following reasons: (i) the Merged Entity will have low shares of supply; (ii) the Merged Entity will face strong competition from its rivals; and (iii) the Parties are not close competitors.⁶¹⁰

544. The CMA found that Merged Entity would have a low combined share of supply in the UK ([10-20]%) by volumes managed, behind Stobart ([40-50]%) and AW Jenkinson ([20-30]%), the two leading suppliers.

545. The CMA also considered shares of supply at the local level, using catchment areas of 80% volumes. However, the local analysis did not identify any catchment area where the Parties' combined share of supply was above 25%.⁶¹¹

Closeness of competition

546. The CMA examined the closeness of competition between the Parties and considered within its assessment:

- (a) Submissions from the Parties;
- (b) Evidence from third parties; and
- (c) Evidence from internal documents.

⁶¹⁰ [REDACTED].

⁶¹¹ Shares of supply were calculated using input volumes. The Parties' combined share of supply did not exceed 25% for any catchment area whether based on driving time or distance and whether using individual or weighted average catchment areas.

547. Veolia submitted that the Parties do not compete closely and that there are significant competitors in wood recycling, including [REDACTED], [REDACTED], [REDACTED] and [REDACTED].⁶¹²
548. The evidence from third parties was mixed with one competitor submitting that the Parties competed 'heavily' for waste wood processing.⁶¹³ However, another competitor submitted that the Parties are not particularly close competitors and that the volume of wood under the Parties' control would not differ greatly post-Merger.⁶¹⁴
549. A further competitor submitted that the Parties have limited wood processing capacity and focus their activities on municipal contracts in which wood is a secondary commodity.⁶¹⁵
550. The Parties' internal documents do not suggest that they are close competitors in wood waste processing services. A Veolia internal document mentions [REDACTED].⁶¹⁶ Suez internal documents also suggest that the company does not monitor any specific competitor on wood recycling.⁶¹⁷

Conclusion on closeness of competition

551. For the reasons set out above, the CMA believes that the Parties are not particularly close competitors in the supply of wood waste processing services.

Competitive constraints

552. Veolia submitted that Suez is not active in wood brokerage activities and that Veolia's strongest competitors in this segment are [REDACTED] and [REDACTED]. Veolia further submitted that it competes at regional level with other large wood sorting and processing players such as [REDACTED], [REDACTED], [REDACTED] and [REDACTED].⁶¹⁸
553. Third parties also acknowledged the existence of several competitors to the Parties, including Enva, Bodens, Plevin and the Jack Moody group.
554. The Parties' internal documents discussed in paragraph 550 above are consistent with the Parties' submissions and indicate that there are several

⁶¹² [REDACTED].

⁶¹³ [REDACTED]'s response to the wood processing questionnaire.

⁶¹⁴ [REDACTED]'s response to the wood processing questionnaire.

⁶¹⁵ [REDACTED]'s response to the wood processing questionnaire.

⁶¹⁶ [REDACTED] and [REDACTED].

⁶¹⁷ For instance, [REDACTED].

⁶¹⁸ [REDACTED].

other competitors that could provide a constraint to the Parties, post-Merger.

Conclusion on horizontal unilateral effects in relation to the supply of wood waste processing services

555. For the reasons set out above, the CMA believes that the Parties are not particularly close competitors and would continue to face significant constraints from Stobart and AW Jenkinson, two large national providers, and a number of other material competitors, post-Merger.
556. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of wood waste processing services on a national or local level.

Horizontal unilateral effects in the operation and maintenance (O&M) of water and wastewater treatment facilities for industrial customers

557. The Parties overlap in the O&M of water and wastewater treatment facilities for industrial customers: each Party provides such services to a range of business across the UK. In assessing this theory of harm, the CMA has considered:
- (a) The frame of reference;
 - (b) The shares of supply;
 - (c) The closeness of competition between the Parties;
 - (d) Competitive constraints from other suppliers;
 - (e) Barriers to entry and expansion.

Frame of reference

Product scope

558. The Parties overlap in the O&M of water and wastewater treatment facilities for industrial customers.
559. Water and wastewater treatment facilities provide the quantity and quality of water required, according to customer specifications, for the supply of treated water, drinking water, or wastewater treatment. The O&M of water and wastewater treatment facilities can either be provided by the owner of

the facility or it can be contracted out to third parties such as Veolia and Suez.⁶¹⁹

560. Veolia submitted that while the EC has previously considered several distinctions in the O&M of water and/or wastewater facilities, the precise definition can be left open since there is no realistic prospect that the Merger would result in competition concerns in relation to O&M of water and wastewater treatment facilities on any basis.⁶²⁰ Suez submitted that the relevant overlap market is the market for O&M services related to water and wastewater treatment facilities for industrial customers.⁶²¹
561. The CMA has not previously considered the O&M of water and wastewater treatment facilities. As such, in line with the decisional practice of the EC, the CMA considered the segmentations set out below:⁶²²
- (a) By type of water treated (water or wastewater); and
 - (b) By type of customer industry and size of contracts.

- *Segmentation by type of water treated*

562. Veolia submitted that the skills and resources required to operate and maintain water and wastewater treatment facilities are essentially the same. Therefore, almost all O&M suppliers offer O&M services for both water and wastewater treatment facilities.⁶²³
563. The majority of the third parties that responded to the CMA's merger investigation submitted that there is a distinction between the types of water treated.⁶²⁴ For example, one third party submitted that although the same suppliers tend to bid for water and wastewater contracts, treatments for water and wastewater are fundamentally different and need different types of equipment such as tanks, pumps and filtration systems.⁶²⁵ This is also supported by the tender data submitted by the Parties, which shows

⁶¹⁹ [REDACTED].

⁶²⁰ [REDACTED].

⁶²¹ [REDACTED].

⁶²² EC's decision of 27 April 2010 in case COMP/M.5724, *Suez Environnement/Agbar*; EC's decision of 28 October 2010 in case COMP/M.5934, *Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group*; EC's decision of 19 July 2017 in case COMP/M.8452, *Suez/GE Water And Process Technologies*. The CMA notes that ultimately the market definition was left open by the EC in these cases.

⁶²³ [REDACTED]. Veolia stated that it is only aware of [REDACTED] that provides services for wastewater treatment facilities only.

⁶²⁴ [REDACTED] and [REDACTED]'s responses to the CMA's operation and maintenance competitors (**O&M competitors**) questionnaire, and [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's operation and maintenance customers (**O&M customers**) questionnaire.

⁶²⁵ Note of the call with [REDACTED], dated 3 June 2021.

that the tenders are usually for either water or wastewater treatment but not both.

564. Although the CMA recognises the differences between treatments for water and wastewater, given that similar competitive conditions appear to prevail in both these segments, with suppliers offering both types of treatments, the CMA has considered the O&M of water and wastewater treatment facilities within the same frame of reference.

- *Segmentation by customer industry and size of contracts*

565. Veolia submitted that there are no segmentations between customers on the basis of controlled, advanced and high-risk industries and/or by the size/complexity of contracts. Veolia submitted that while O&M services are tailored to the specific requirements of customers based on the type and nature of facilities, the essential elements of O&M requirements are similar between customer groups, and technical requirements do not differ across industries.⁶²⁶

566. Further, Veolia submitted that because each customer has different requirements, all suppliers of O&M of water and wastewater treatment facilities provide flexibility in the solutions they offer. This means that O&M suppliers are capable of supplying all types of customers and that customers have access to a wide range of potential suppliers, irrespective of their specific size, requirements or industry.⁶²⁷ According to the Parties, all of their competitors are able to compete for the full range of contracts. The solutions offered by Veolia, Suez and their competitors are tailored to the specific requirements of their customers' effluent or clean water requirements, based on the type and nature of the facility, not its size.⁶²⁸ In addition, Veolia submitted that in the O&M of water and wastewater treatment facilities, the ability of a wide range of suppliers to compete for existing client-specific contracts is strengthened by the transfer of staff under TUPE to a new operator, ensuring that the necessary technical knowledge is also transferred.⁶²⁹

567. The evidence available to the CMA shows that competition in the O&M of water and wastewater treatment facilities for more complex and larger contracts may be distinct from less complex, smaller contracts. In particular:

⁶²⁶ [REDACTED].

⁶²⁷ [REDACTED].

⁶²⁸ [REDACTED].

⁶²⁹ [REDACTED].

- (a) The majority of third parties submitted that there is a segmentation on the basis of customer industry⁶³⁰ and size⁶³¹ of contracts. For example, one customer submitted that while it would not discount a supplier with no experience in its industry, it would prefer a supplier with previous knowledge and expertise;⁶³² and
- (b) Some third parties submitted that Veolia and Suez are two of a limited number of competitors with the scale and know-how necessary to service large water and wastewater O&M contracts, and that small companies do not have the requisite know-how and insurances for large customers.⁶³³

Conclusion on product scope

568. For the reasons set out above, the CMA believes that the appropriate product frame of reference is the O&M of water and wastewater treatment facilities for industrial customers. The CMA has considered any difference in competition based upon type of water treated, customer industry and/or size of contract in the competitive assessment.

Geographic scope

569. Veolia submitted that although there are differences in regulation between England & Wales, Scotland and Northern Ireland, these do not materially affect the ability of suppliers to compete for customers.⁶³⁴ Suez submitted that it is appropriate to assess market shares on at least a UK-wide, and likely an EEA and UK-wide, basis.⁶³⁵
570. The EC, in previous decisions, considered the geographic frame of reference to be at least national.⁶³⁶
571. The available evidence does not suggest that the market is wider than national.⁶³⁷ In particular, several third parties submitted that companies without a UK physical presence rarely compete in the UK, and that companies without a UK presence would need to sub-contract in order to do so. Almost all customers also submitted that they would not consider

⁶³⁰ [redacted] and [redacted]'s responses to the CMA's O&M competitors questionnaire, and [redacted], [redacted], [redacted] and [redacted]'s responses to CMA's O&M customer questionnaires.

⁶³¹ [redacted] and [redacted]'s responses to the CMA's O&M competitors questionnaire, and [redacted], [redacted], [redacted], [redacted]'s responses to CMA's O&M customer questionnaires.

⁶³² [redacted]'s response to CMA's O&M customer questionnaire.

⁶³³ Note of calls with [redacted], dated 26 May 2021 and [redacted], dated 24 May 2021.

⁶³⁴ [redacted].

⁶³⁵ [redacted].

⁶³⁶ EC's decision of 27 April 2010 in case COMP/M.5724, *Suez Environnement/Agbar*; EC's decision of 28 October 2010 in case COMP/M.5834, *Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group*.

⁶³⁷ [redacted]'s response to the CMA's O&M competitors questionnaire, and [redacted], [redacted], [redacted] and [redacted]'s responses to CMA's O&M customer questionnaires. Note of call with [redacted], dated 15 April 2021.

using a non-UK supplier without a local presence. One customer submitted that at a minimum, companies need to have on-site presence to be able to provide certain support services.

Conclusion on geographic scope

572. For the reasons set out above, the CMA believes that the appropriate geographic frame of reference for the O&M of water and wastewater treatment facilities is national. However, to the extent appropriate, the CMA has taken account of competition from companies outside the UK in the competitive assessment.

Conclusion on frame of reference

573. For the reasons set out above, the CMA believes that the appropriate frame of reference is the O&M of water and wastewater treatment facilities for industrial customers in the UK.

Shares of supply

Parties' submissions

574. Veolia submitted estimates of shares of supply of O&M of water and wastewater facilities for UK industrial customers, estimating a combined share of supply of no more than 20% on the basis of number of contracts.⁶³⁸ Veolia was unable to estimate its competitors' shares of supply.⁶³⁹ The CMA does not consider that these estimates provide a meaningful indication of competitive conditions given that they do not take the size of the contract into account and as such has not placed material evidential weight on these estimates.
575. Suez separately submitted estimated shares of supply of O&M of water and wastewater treatment facilities for UK industrial customers on the basis of revenues.⁶⁴⁰ These are set out in **Table 9** below.

⁶³⁸ [REDACTED].

⁶³⁹ [REDACTED]. Veolia highlighted the EC's findings in *Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group*: 'there are no authoritative public sources from which their market shares figures can be exactly calculated as contrary to the regulated water companies, industrial customers are not obliged to offer contracts through regular tender procedures and even in that case, the market is not transparent [...and...] the customers' base is very fragmented and the types of contracts used by clients vary to a large extent depending on their needs.' (EC's decision of 28 October 2010 in case COMP/M.5834, *Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group*, paragraph 75).

⁶⁴⁰ [REDACTED]. Suez used [REDACTED]. Veolia submitted that it considers this to be a significant underestimate because France and the UK are the countries in Europe most open to outsourcing industrial water O&M operations.

576. Veolia submitted that Suez’s estimates exclude several contracts with the Ministry of Defence (**MOD**). Veolia submitted that three of these contracts, [REDACTED], have a combined annual O&M revenue of around £[REDACTED] in 2019 and 2020.⁶⁴¹ Veolia also submitted that even on a cautious basis, the shares mentioned in **Table 9** are below the level at which a realistic prospect of an SLC may arise.⁶⁴² Veolia further submitted that even these low combined shares overstate the current competitive dynamics because [REDACTED].⁶⁴³

CMA’s assessment

577. **Table 9** shows shares of supply for the O&M of water and wastewater treatment facilities for UK industrial customers, both including and excluding the MOD contracts. The CMA used Suez’s estimates of third party revenues which were adjusted using responses to its questionnaire.

Table 9: Shares of supply for O&M of water and wastewater treatment facilities, based on revenues

Entity	Share of supply (excluding MOD contracts)	Share of supply (including MOD contracts)
Veolia	[5-10]%	[10-20]%
Suez	[10-20]%	[5-10]%
<i>Merged Entity</i>	[20-30]%	[20-30]%
SAUR	[5-10]%	
EPS Water	[0-5]%	
Glan Agua UK	[0-5]%	
Coffey Water	[0-5]%	
Severn Trent Operational Services	[0-5]%	
Aqua Consultants	[0-5]%	
Kelda Water Services	[0-5]%	
Alpheus Environmental	[0-5]%	
Ecolutia	[0-5]%	
Evoqua	[0-5]%	
Others	[10-20]%	[70-80]%
Total	100%	100%

Source: Suez’s share of supply estimates, [REDACTED] and CMA calculations

578. The CMA believes that the shares of supply in **Table 9** may significantly understate the Parties’ strength. In particular:

- (a) **Feedback from third parties:** Third parties submitted that Veolia and Suez have very strong positions in the O&M of water and wastewater treatment facilities, particularly for large and complex projects. One competitor estimated that the Parties have a combined share of supply of over 50% in the O&M market and are especially strong in high risk industries.⁶⁴⁴ While the CMA has not been able to verify the competitor’s

⁶⁴¹ [REDACTED]. The CMA notes [REDACTED] that for servicing MOD contracts, suppliers have to adhere to specific legal requirements, as mentioned at paragraph 576(b) below.

⁶⁴² [REDACTED].

⁶⁴³ [REDACTED]; and [REDACTED].

⁶⁴⁴ [REDACTED]’s response to CMA’s O&M competitor questionnaire and note of call with [REDACTED], dated 15 April 2021.

submissions on the Parties' shares of supply, it notes that these estimates are generally in line with other evidence available regarding the Parties' market position, including feedback from other third parties.

- (b) **Industry Reports:** An industry report (GWI) sets out that the Parties have a combined share of supply of 50-60% in the combined UK market for O&M and design-build-operate (**DBO**).⁶⁴⁵ Veolia submitted that it has not been able to verify the accuracy of this industry report, but noted that the report stated that Severn Trent was a prominent player.⁶⁴⁶ The CMA notes that while Veolia has questioned the accuracy of this report in relation to the provision of O&M services, it has itself relied on GWI's data to estimate the market size and market shares for other water management technologies markets.⁶⁴⁷ In any case, the CMA is of the view that the share of supply figures from the GWI report may understate the Parties' shares of supply in the O&M of water and wastewater facilities, as the GWI estimates encompass both the O&M and the D&C of water and wastewater facilities in the UK, a segment in which Veolia has limited presence and in which Suez is not active at all.⁶⁴⁸ Further, even if the CMA considers Severn Trent to be a notable supplier in the O&M of water and wastewater facilities (which, as set out in more detail below, has not been reflected in the CMA's market investigation), the evidence from the GWI report still suggests that there are only three large suppliers engaged in the O&M of water and wastewater facilities in the UK.

579. On this basis, the CMA has placed limited evidential weight on the shares of supply estimates set out in **Table 9** in its overall assessment. Due to the lack of reliable evidence, the CMA has also placed limited evidential weight on the shares of supply estimates identified in paragraph 578 above. However, the CMA considers that all available estimates show that the Parties would be the largest supplier post-Merger.

Closeness of competition

580. The CMA examined the closeness of competition between the Parties and has considered within the assessment:

- (a) Submissions from the Parties;
- (b) Evidence from the Parties' tender data;

⁶⁴⁵ [REDACTED].

⁶⁴⁶ [REDACTED].

⁶⁴⁷ [REDACTED].

⁶⁴⁸ [REDACTED].

- (c) Evidence from third parties; and
- (d) Evidence from the Parties' internal documents.

Parties' submissions

581. Veolia submitted that the Parties do not compete closely in this segment.⁶⁴⁹

582. In relation to its tender data, Veolia submitted that:

- (a) In-house delivery is the primary competitive constraint faced by Veolia, with [REDACTED]. Veolia stated that the value of tenders lost to in-house supply range from £[REDACTED] to £[REDACTED], which shows that in-house supply is an alternative for both large and small customers;⁶⁵⁰
- (b) Suez is Veolia's next largest competitor, competing second most frequently against Veolia and winning the most contracts that Veolia loses; and
- (c) There are a significant number of alternative competitors capable of bidding for and winning contracts.⁶⁵¹

583. Veolia also submitted that the Parties' innovation specific to O&M services for industrial customers is [REDACTED] and that each Party spends [REDACTED] on research and innovation globally.⁶⁵² Veolia further submitted that:

- (a) Innovation in the water sector predominantly relates to incremental process improvements, aimed at increasing efficiency and meeting environmental targets. This is done by (i) identifying the best of breed technologies developed by third parties and integrating those into existing services, or (ii) making incremental improvements to existing processes through developing operational and engineering expertise. Environmental standards set by the Government are the driving force of innovation;⁶⁵³
- (b) Both Parties invest only a small proportion of their turnover in R&I globally, ie Veolia invests only [REDACTED] of its annual revenue in Research & Development projects each year and Suez estimates that it invested only [REDACTED] of its EEA (including UK) turnover in water R&I in 2020.⁶⁵⁴ The low

⁶⁴⁹ [REDACTED].

⁶⁵⁰ [REDACTED].

⁶⁵¹ [REDACTED].

⁶⁵² [REDACTED].

⁶⁵³ [REDACTED].

⁶⁵⁴ [REDACTED].

level of global investment reflects that innovation typically takes place locally;⁶⁵⁵

- (c) Digital technologies are important in the O&M for water and wastewater facilities. These digital technologies are provided by third parties to all the Parties' competitors and such technologies provide growth opportunities to a number of other players, including start-ups, major equipment manufacturers and instrumentalists such as [REDACTED], [REDACTED] and [REDACTED], generalists or energy specialists such as [REDACTED] and [REDACTED], and [REDACTED] and [REDACTED].⁶⁵⁶
- (d) Suppliers innovate by developing the know-how necessary to achieve process improvements. These improvements cannot generally be protected by patents or other intellectual rights, and quickly dissipate across the water sector;⁶⁵⁷ and
- (e) The Parties work with the innovative start-ups rather than acquiring them.

584. Veolia also submitted that the ability to offer D&C of water and wastewater facilities did not confer it with an advantage in the supply of O&M services. In this context, Veolia submitted that [REDACTED], and that there was no reason for this strategy to change post-Merger. Veolia also submitted that [REDACTED].

585. Veolia submitted that while the Parties' internal documents set out that innovation is a strategic priority for both Parties, 'innovation' in this context consists of incremental process and engineering improvements, and compliance with Government regulations and customer requirements. Veolia further submitted that the Parties seek to ensure that they are always improving their services and digital solutions to provide customers with effective services, whether through their own, or third party solutions.⁶⁵⁸

Evidence from Parties' tender data

- *Veolia's tender data*

586. Veolia provided data on tenders it competed for from 2016 to 2020 that each had an estimated value greater than £[REDACTED].⁶⁵⁹ This yielded [REDACTED] opportunities, [REDACTED] ([REDACTED]%) of which Veolia won.⁶⁶⁰ Veolia identified the

⁶⁵⁵ [REDACTED].

⁶⁵⁶ [REDACTED].

⁶⁵⁷ [REDACTED].

⁶⁵⁸ [REDACTED].

⁶⁵⁹ [REDACTED].

⁶⁶⁰ [REDACTED].

winning bidder in [REDACTED] [REDACTED] tenders, and bidders other than the winner and itself in [REDACTED].

587. As with the tender analysis conducted for the relevant waste theories of harm in paragraphs 234, 238, 312, 313 and 400, the CMA has conducted both a participation and a loss analysis. The CMA's analysis shows that:

- (a) Suez was Veolia's second most faced competitor ([REDACTED]), with only in-house provision being featured more frequently ([REDACTED]). Only [REDACTED] other competitors faced Veolia in two or more tenders ([REDACTED]), with a long tail of other suppliers competing in one tender each; and
- (b) When considering the occasions where Veolia was unsuccessful in its tender bid against other suppliers, Veolia lost most frequently to Suez. In particular, Suez won [REDACTED] tenders Veolia bid for and lost. In addition, no other competitor (other than in-house provision) won more than [REDACTED].

- *Suez's tender data*

588. Suez provided data on tenders it competed for from 2016 to 2020 that each had an estimated value greater than £[REDACTED].⁶⁶¹ Suez's tender data yielded [REDACTED] opportunities, [REDACTED] ([REDACTED]%) of which Suez won.⁶⁶² Suez was able to identify the winning bidder in [REDACTED] tenders and other bidders in [REDACTED] of these tenders.

589. The CMA's participation and loss analysis showed that:

- (a) [REDACTED] competed most frequently against Suez, participating in [REDACTED] tenders ([REDACTED]%). In comparison, the next most frequent bidder ([REDACTED]), competed in only [REDACTED] tenders ([REDACTED]%). [REDACTED] other suppliers competed in [REDACTED] each; and
- (b) Each of the [REDACTED] tenders that Suez lost were won by different suppliers: Veolia, Aqua, Mourik and Nalco.

590. While Suez initially stated that [REDACTED],⁶⁶³ it did submit [REDACTED].⁶⁶⁴ These examples have not been taken into account in the CMA's tender analysis, as it was unclear whether switching occurred following a tender process.

⁶⁶¹ [REDACTED].

⁶⁶² [REDACTED].

⁶⁶³ [REDACTED].

⁶⁶⁴ [REDACTED].

Conclusion on the Parties' tender data

591. For the reasons set out above, the CMA believes that the Parties' tender data shows that Veolia and Suez frequently bid against each other, and won contracts that the other Party lost more frequently than other competitors. The CMA believes that this suggests that in terms of suppliers in the market, the Parties are each other's closest competitors. While Veolia's bidding data showed that it also frequently loses to in-house supply, the CMA notes that not all customers would be willing to carry out O&M of water and wastewater facilities themselves and this is supported by feedback from third parties discussed in detail below in paragraph 623.

Evidence from third parties

592. The CMA received third party evidence on various factors relevant to the assessment of closeness of competition between the Parties, including the Parties' ability to bid for larger contracts, Veolia and Suez's investment in research and innovation, and the Parties being one of the few vertically integrated suppliers of O&M of water and wastewater treatment facilities for industrial customers.

- *Parties' ability to compete for larger, more complex contracts*

593. While some third parties did not consider the Parties to be equally able to service their needs, expressing a preference for either Veolia or Suez, several third parties submitted that the Parties are close competitors for the O&M of water and wastewater treatment facilities, especially for large contracts, which cannot be served easily by smaller suppliers. In particular:

- (a) One customer submitted that it considers that the Parties are close competitors in the provision of O&M of water and wastewater treatment facilities. While this customer is aware of other companies in the market, it does not consider them to be close competitors to Veolia and Suez, as these companies cannot provide the required scale to larger customers;⁶⁶⁵
- (b) Another customer that identified Veolia and Suez as amongst the strongest suppliers of O&M of water and wastewater treatment facilities stated that, unlike smaller suppliers, the Parties are able to provide 24/7 services to staff customers' sites. This customer also submitted that while Veolia and Suez operate quite differently, both are very competitive on

⁶⁶⁵ Note of call with [REDACTED], dated 24 May 2021.

price. This customer further said that Suez is Veolia's 'biggest' competitor in relation to the O&M of water and wastewater treatment facilities and that the Merger would remove 'Veolia's only legitimate competition in effluent treatment',⁶⁶⁶

- (c) One competitor submitted that larger contracts have larger risks, which narrows the field to a select few competitors at the higher end with more financial magnitude. This competitor submitted that Veolia and Suez are close competitors in O&M of water and wastewater treatment facilities and that in large tenders, both would participate;⁶⁶⁷ and
- (d) Another competitor stated that there is a broader set of competitors in relation to the O&M of water and wastewater treatment facilities for small customers than for large customers, because small customers can be served by local companies. By contrast, there was a limited number of companies that bid for the provision of O&M of water and wastewater treatment facilities to large customers (such as oil refineries, food factories, large breweries) because small companies tend not to have the requisite know-how and insurances for large customers. The competitor referred to both Veolia and Suez as companies able to provide O&M of water and wastewater treatment facilities to large customers. This competitor also stated that it has a [REDACTED]. This is also reflected in the Parties' tender data, which shows that even though [REDACTED] bid for [REDACTED] contracts against Veolia in the last five years, it won [REDACTED]. However, this competitor stated that it understood that the Parties have recently adopted a policy of providing O&M for only those facilities that they design and construct, which has led to this competitor being able to procure more O&M customers.⁶⁶⁸

- *Parties' investment in research and innovation*

594. The available evidence suggests that customers consider innovation capabilities as an important factor in choosing a supplier, and while some third parties identified differences in the Parties' innovation strategies,⁶⁶⁹ and some customers considered Suez to be a stronger innovator than Veolia, several customers submitted that the Parties are among the strongest innovators in the O&M of water and wastewater treatment facilities in the UK. In particular:

⁶⁶⁶ [REDACTED]'s response to CMA's O&M customer questionnaire and note of call with [REDACTED], dated 3 June 2021.

⁶⁶⁷ [REDACTED]' response to the CMA's O&M competitors questionnaire.

⁶⁶⁸ Note of call with [REDACTED], dated 26 May 2021.

⁶⁶⁹ Note of calls with [REDACTED], dated 24 May 2021, [REDACTED], dated 3 June 2021 and [REDACTED], dated 16 June 2021.

- (a) Most of the Parties' customers submitted that innovation capabilities are an important or very important part of a supplier's offerings, with one customer stating that it expects innovative solutions from its suppliers, not just as an add-on, but a requirement.⁶⁷⁰ Another customer stated that it thinks that the Merger will stifle innovation;⁶⁷¹
- (b) One customer submitted that both companies developed and delivered a range of products that could be used in water/wastewater applications and that some of their ranges were for similar equipment. This customer also expressed the concern that the Merger may stifle innovation;⁶⁷²
- (c) One third party stated that for water management companies like Veolia and Suez, innovation provides a competitive advantage and that Suez and Veolia are major players in innovation, spending a considerable proportion of their turnover on innovation.⁶⁷³ Another third party stated that the Merger however would reduce some choice in relation to technology if Suez's R&D business is absorbed into Veolia. However, this third party also stated that in the UK, Veolia and Suez are not seen as a dominant force that bring particular innovation to the water sector;⁶⁷⁴
- (d) One competitor submitted that Veolia and Suez are particularly strong in innovation due to their patent holdings. The competitor stated that Veolia and Suez together submitted over 350 patent filings in the past two years, and that this was far more than other suppliers filed in the same period. The competitor noted by way of example that it had submitted less than 10% of the number of Veolia's and Suez's filings. This competitor also submitted that the Parties use patents as a way to obtain an 'unassailable commercial position on certain types of solutions' ie, to block or prevent other suppliers from the practice or commercial exploitation of a modified version of the device or process underlying the patented invention, meaning that the Parties used patents to remain ahead of their competitors;⁶⁷⁵
- (e) Some third parties submitted that suppliers of O&M of water and wastewater treatment facilities can deliver innovations through partnerships,⁶⁷⁶ with a few competitors stating that it is easier for large

⁶⁷⁰ Note of call with [REDACTED], dated 26 May 2021.

⁶⁷¹ Note of call with [REDACTED], dated 3 June 2021.

⁶⁷² [REDACTED]'s response to CMA O&M customer questionnaire.

⁶⁷³ Note of call with [REDACTED], dated 16 June 2021.

⁶⁷⁴ Note of call with [REDACTED], dated 1 July 2021.

⁶⁷⁵ [REDACTED]'s response to CMA's O&M competitor questionnaire and [REDACTED]'s response to the CMA's request for information (RFI) dated 20 August 2021.

⁶⁷⁶ [REDACTED] and [REDACTED]'s responses to CMA's O&M competitor questionnaire; notes of calls with [REDACTED], dated 1 July 2021 and Siemens, dated 24 June 2021.

suppliers with a proven track record, such as Veolia and Suez, to establish such partnerships;⁶⁷⁷

- (f) In this context, one third party submitted that while Veolia and Suez are not themselves strong innovators, both Parties have a track record of acquiring start-ups that have developed innovative new technologies. The third party also submitted that Veolia and Suez often do not start marketing their technologies before competitors start gaining presence in the market;⁶⁷⁸ and
- (g) A similar point was made by another third party which submitted that Veolia and Suez invest heavily in research and development and acquire companies that are market leaders in specific technologies citing the example of Suez acquiring GE to access membrane-based water treatment technologies. This competitor also mentioned that Veolia and Suez invest in innovation in response to regulation as well as on their own initiative to constantly improve their processes. This competitor mentioned that it does not invest in innovation or in developing its own technology.⁶⁷⁹

595. With regard to the Parties' submissions on innovation, the CMA notes that while the Parties claim they are not aware of acquisitions being referred to by third parties, they have not addressed Suez's acquisition of GE to access membrane-base water treatment technologies. Further, while the Parties may be investing a relatively small proportion of their global turnover in innovation, the evidence indicates that the amount invested by them is much higher than that invested by some of their competitors.⁶⁸⁰

- *The Parties are vertically integrated*

596. The available evidence shows that, unlike several of their competitors such as Nalco and Evoqua, both Veolia and Suez are vertically integrated suppliers and also provide D&C of water and wastewater facilities. One third party submitted that this vertical integration gives the Parties a competitive advantage over other suppliers as a vertically integrated operator can respond both to specific requests and requests for wider services (construction, operation, etc.), by making competitive offers. The third party submitted that an operator present on the entire water management supply chain can position itself as 'one stop shop' for the client for the various services. Per this third party's experience, a supplier

⁶⁷⁷ [REDACTED], [REDACTED]'s response to CMA's O&M competitor questionnaire.

⁶⁷⁸ Note of call with [REDACTED], dated 17 August 2021.

⁶⁷⁹ Note of call with [REDACTED], dated 26 May 2021.

⁶⁸⁰ [REDACTED]'s response to the CMA's RFI, dated 15 April 2021; note of call with [REDACTED], dated 26 May 2021.

that designs, constructs and installs water management equipment will also be chosen to operate the water management solution in at least 50% of cases. The third party submitted that there is therefore a strong interest in having both D&C and O&M expertise when tendering for the separate services. The third party submitted that the Merger would allow the Parties to combine their different technologies (including innovations), giving them an advantage particularly over smaller competitors, who would have to rely on external partnerships to compete across the entire value chain.⁶⁸¹

597. The importance of such vertical integration was also reflected in the feedback from a customer who mentioned that while it contracted for O&M and D&C services separately, its intention was to select a single provider for both contracts to increase the accountability of the provider on the outputs required from each service.⁶⁸²

Evidence from internal documents

598. The CMA notes that not all of the Parties' internal documents pertaining to O&M of water and wastewater facilities to industrial customers are specific to the UK. Most of these documents appear to discuss innovation technologies and projects on a global basis, with some referring to technologies that are or could also be implemented in the UK. For instance, a Suez internal document [REDACTED]; and [REDACTED].⁶⁸³
599. The Parties' internal documents show that innovation is a strategic priority for both Veolia and Suez. For example:
- (a) One Veolia internal document outlining [REDACTED]. [REDACTED];⁶⁸⁴
 - (b) Another Veolia internal document identifies [REDACTED];⁶⁸⁵ and
 - (c) One Suez internal document [REDACTED]. This document also [REDACTED].⁶⁸⁶
600. The Parties' internal documents also show that the Parties monitor each other and each other's technological developments in the UK and globally, with Suez in particular benchmarking itself against Veolia. For example:

⁶⁸¹ [REDACTED].

⁶⁸² Note of call with [REDACTED], dated 26 May 2021.

⁶⁸³ [REDACTED].

⁶⁸⁴ [REDACTED].

⁶⁸⁵ [REDACTED].

⁶⁸⁶ [REDACTED].

- (a) One Veolia internal document identifies [REDACTED].⁶⁸⁷ In relation to Suez this document states [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED];⁶⁸⁸
- (b) Another Veolia internal document records [REDACTED],⁶⁸⁹ and one notes that [REDACTED]. This document does not mention [REDACTED];⁶⁹⁰
- (c) One Veolia internal document that discusses [REDACTED] notes that [REDACTED]. [REDACTED];⁶⁹¹
- (d) One Suez internal document [REDACTED];⁶⁹²
- (e) Another Suez internal document [REDACTED]. This document [REDACTED]. Further, this document [REDACTED]. Only [REDACTED] are recorded in the document ([REDACTED]);⁶⁹³
- (f) One Suez internal document [REDACTED]. Suez submitted that [REDACTED].⁶⁹⁴ However, the CMA notes that [REDACTED];⁶⁹⁵ and
- (g) A Suez internal document [REDACTED].⁶⁹⁶

CMA conclusion on closeness of competition

601. For the reasons set out above, which includes the Parties' tender data, their position as vertically integrated suppliers, the overall feedback received from third parties and the Parties' internal documents, the CMA believes that the Parties are close competitors in the O&M of water and wastewater treatment systems, especially in relation to large scale contracts.
602. With respect to innovation, the CMA has found that this is a strategic priority for both Parties. In addition to the evidence from third parties and internal documents discussed above, the CMA notes that the number of patents filed by the Parties, especially Suez, is much higher than the patents registered by their competitors. While patents may not be a strong means to deter innovation in the market, the number of patents filed by the Parties suggest that they are more advanced than their competitors by a margin. The CMA also does not consider that the Parties' internal documents only refer to innovation in the context of incremental processes, but that instead the terminology used in these documents including '[REDACTED]',

687 [REDACTED]
 688 [REDACTED].
 689 [REDACTED].
 690 [REDACTED].
 691 [REDACTED].
 692 [REDACTED].
 693 [REDACTED].
 694 [REDACTED].
 695 [REDACTED].
 696 [REDACTED].

[REDACTED], [REDACTED] in the context of innovation all clearly show that both Veolia and Suez have an underlying strategy of competing in the O&M of water and wastewater facilities at least partly by investing in innovation.

603. Furthermore, the CMA believes that the UK businesses of both Veolia and Suez benefit from significant support, in particular innovation and knowhow sharing, from their respective global businesses, and at least to some extent, rely on the ongoing development of technologies, solutions and know how across the global business to be able to deliver large and/or complex projects.

Competitive constraints

604. The CMA assessed the constraint from other alternatives by taking into consideration:

- (a) Submissions from the Parties;
- (b) Evidence from third parties; and
- (c) Evidence from internal documents.

Parties' submissions

605. Veolia submitted that the Parties face strong competition from a large number of suppliers that compete for projects of all sizes, volumes and complexities, with demonstrated experience.⁶⁹⁷ These include [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].⁶⁹⁸ Veolia also submitted that it faces competition from external consultants who help customers to self-deliver services, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].⁶⁹⁹
606. Suez submitted that [REDACTED].⁷⁰⁰
607. Veolia also submitted that suppliers do not need to be vertically integrated and that industrial customers can and do use different operators for D&C and O&M of water and wastewater facilities.

⁶⁹⁷ [REDACTED].

⁶⁹⁸ [REDACTED]; [REDACTED].

⁶⁹⁹ [REDACTED]; [REDACTED].

⁷⁰⁰ [REDACTED].

608. Veolia submitted that there is no differentiation between suppliers to large, more complex contracts and small, less complex contracts,⁷⁰¹ noting that:
- (a) Smaller competitors can win large contracts, giving the example of Alpheus which provides O&M services to GSK's antibiotic facility in Scotland with an annual budget of £2million, which is larger than [REDACTED] and also services Glenmorangie Distillery Company Ltd., with the estimated value of £790,000. Veolia also gave the example of the Qualitech/Plater JV serving Johnson Matthey, with a contract value of £15 million.⁷⁰²
 - (b) Other than servicing MOD or regulated water contracts, there are no onerous legal requirements that suppliers have to adhere to in relation to industrial customers. Veolia submitted that it expects all its competitors to hold the requisite ISO and engineering accreditations.⁷⁰³
 - (c) All competitors can provide 24/7 services with local resources or resources acquired through TUPE. Veolia also submitted that all competitors provide emergency call out services directly, or through specialist suppliers, which are only required in the event of major breakdowns.⁷⁰⁴
609. Veolia further submitted that water technology suppliers or D&C companies such as [REDACTED], [REDACTED], [REDACTED] and [REDACTED] could easily expand into the O&M of water and wastewater treatment facilities given their pre-existing expertise. Veolia submitted that D&C suppliers are able to operate and maintain the equipment for water and wastewater treatment facilities and are particularly well-placed to offer O&M services on the facilities they have constructed.⁷⁰⁵
610. Veolia also submitted that non-UK based O&M suppliers, and in particular established O&M businesses outside the UK, are also credible competitors for UK contracts for O&M of water and wastewater treatment facilities, since these often involve taking over the existing O&M staff on-site with local expertise on the design and running of the facility.⁷⁰⁶ Veolia submitted that non-UK suppliers can establish a UK presence by initially establishing a joint venture or partnership arrangement.⁷⁰⁷ Veolia also submitted that it is also common for a non-UK supplier to partner with a UK construction company. While the D&C of the facility is undertaken, the non-UK supplier

701 [REDACTED]; [REDACTED].

702 [REDACTED].

703 [REDACTED].

704 [REDACTED].

705 [REDACTED].

706 [REDACTED].

707 [REDACTED].

will hire local UK teams to undertake the O&M once the facility is running.⁷⁰⁸

611. Veolia submitted that it faces strong competition from self-supply of O&M services for industrial customers.⁷⁰⁹ It submitted that:

- (a) Customers are often able to self-supply O&M services, whether or not they have done so in the past. This is because (i) customers have sufficient engineering and technical expertise to operate and maintain water or wastewater treatment facilities once the assets have been operating efficiently and are stable for a steady period; (ii) staff providing O&M services will typically transfer under TUPE to the in-house provider at the end of the third party contract; (iii) permits and licences required are held by the customer and managed in conjunction with all other environmental and statutory requirements of industrial sites; and (iv) an increasing degree of automation in treatment facilities strengthens the ability of customers to self-supply O&M services and self-supply is supported by external consultants, who provide oversight of O&M activities and staff for their clients.⁷¹⁰
- (b) Customers switch back and forth between insourcing and outsourcing, as this helps them to test the market or benchmark the whole life cost of a process. Further, O&M services from an external provider often include training, so in-house providers can upskill during the supplier's tenure. Veolia submitted that [REDACTED], it is possible that [REDACTED]. The formalised process of tendering contracts allows customers to compare competitors' prices and encourage competition, and also evaluate whether any part of the contracts should be taken in house.⁷¹¹ Customers can leverage existing relationships to extract lower prices without always engaging in tender processes.⁷¹²
- (c) In-house supply is not only a competitive constraint at the initial tender stage, but Veolia, and all external O&M suppliers, continue to compete against the possibility of a customer taking the contract in-house mid-term.⁷¹³
- (d) Potential O&M customers may want to self-supply as their (i) in-house technical and engineering teams often have budgetary and capex restraints, (ii) it entails short-term cost savings, and (iii) does not require

⁷⁰⁸ [REDACTED].

⁷⁰⁹ [REDACTED]; [REDACTED].

⁷¹⁰ [REDACTED].

⁷¹¹ [REDACTED].

⁷¹² [REDACTED].

⁷¹³ [REDACTED].

contractual commitment or risk transfer to a third party. It also avoids the risk of disputes when manufacturing changes impact the O&M of the facility.⁷¹⁴

612. Suez initially submitted that it is difficult for new suppliers to enter the market, given the presence of barriers to entry due to the capital requirements and investment costs (for maintenance of equipment and in R&D), the need for highly technical expertise, and the prevalence of long-term contracts with customers and suppliers.⁷¹⁵ Suez later revised its position, stating that in fact, there are low capital requirements for the purchase and maintenance of equipment for O&M activities: chemicals and any replacement parts are paid for by the customer, and any specialist equipment may be hired. Suez submitted that its earlier submission spoke to the wider water and wastewater industries.⁷¹⁶
613. In relation to the O&M of water and wastewater treatment facilities in particular, Suez submitted that it is common for customers to contract with suppliers on a long-term basis, and the tender process favours existing competitors with a large market presence and prior experience.⁷¹⁷

Evidence from third parties

614. The CMA considered within its assessment constraints from:

- (a) UK suppliers;
 - (b) Non-UK suppliers;
 - (c) New entrants; and
 - (d) In-house supply.
- *UK-based suppliers of O&M of water and wastewater treatment facilities (including D&C suppliers)*

615. Consistent with the Parties' shares of supply and tender data discussed above, the third party evidence received by the CMA indicates that other suppliers of O&M services are not strong competitors to the Parties. One third party submitted that this is the case because the O&M of water and

⁷¹⁴ [REDACTED].

⁷¹⁵ [REDACTED].

⁷¹⁶ [REDACTED].

⁷¹⁷ [REDACTED].

wastewater treatment facilities requires the supplier to have a higher level of expertise, and more resources and general wherewithal.⁷¹⁸

616. While third parties identified a few other active UK suppliers in response to a question in the CMA's questionnaires, with some of these rated as highly as the Parties, descriptions of these alternative suppliers often contained caveats on their competitive strength. For instance:

- (a) While one competitor referred to Alpheus as a close competitor of the Parties, only one customer identified Alpheus as one of its current suppliers, stating that Alpheus provides water treatment services for its small scale water treatment plants.⁷¹⁹ The same customer, however, also submitted that it did not consider other suppliers to be close competitors to the Parties because they cannot provide the scale of services required.⁷²⁰ The CMA notes Veolia's submission that Alpheus services Glenmorangie Distillery Company Ltd in Tain, and considers that this would be reflected in the shares of supply.⁷²¹
- (b) Aquabio was identified as a close competitor to the Parties by one competitor which submitted that Aquabio provides O&M services only for those plants that are built by them, rather than competing for operational support contracts for existing plants.⁷²² The CMA notes Veolia's submission that Aquabio's website specifies that they are able to provide O&M services either as part of an install and build project, 'or on existing client assets', and that Aquabio provides O&M services for Muller and Unilever.⁷²³ However, no customer identified Aquabio as a competitor to the Parties.
- (c) Some third parties identified Nalco as a supplier, with one customer noting that Veolia, Suez and Nalco all sell innovative solutions.⁷²⁴ However this customer recently shifted from Nalco to Suez for O&M services on one of its sites. This customer stated that Nalco was a less attractive supplier for wastewater (effluent) treatment as it does not have the proven experience or the requisite support teams to undertake such an exercise. The CMA understands that Nalco is not currently an effective competitor in the UK in the O&M of water and wastewater treatment facilities, with Veolia itself referring to [REDACTED].⁷²⁵ Nalco itself stated that [REDACTED]

⁷¹⁸ Note of call with [REDACTED], dated 15 April 2021. [REDACTED]'s response to the CMA's O&M competitor questionnaire.

⁷¹⁹ Note of call with [REDACTED], dated 24 May 2021.

⁷²⁰ Note of call with [REDACTED], dated 24 May 2021.

⁷²¹ [REDACTED].

⁷²² [REDACTED]' response to the CMA's O&M competitor questionnaire and note of call with [REDACTED], dated 15 April 2021.

⁷²³ [REDACTED].

⁷²⁴ Notes of calls with [REDACTED], dated 3 June 2021 and [REDACTED], dated 15 April 2021.

⁷²⁵ [REDACTED].

participating in the market for operation services is quite challenging because there are barriers to entry and often the risks exceed the rewards.⁷²⁶

- (d) One customer mentioned Acwa as a participant in its last O&M tender, noting that Acwa was a strong competitor that offered some innovative designs. However, the customer submitted that Veolia won the tender because of the value add of their proposal and their general expertise.⁷²⁷
- (e) Solenis has been identified as a supplier by some third parties.⁷²⁸ One customer said Solenis is one of the main suppliers of O&M services, rating it as highly as Veolia,⁷²⁹ and another saying that provides water treatment services for its small scale water treatment plants.⁷³⁰
- (f) Smaller suppliers (eg Anglo Scottish Biosolids Ltd, Sludge TEK Limited, Mobile & Separation Equipment, JLL, Feedwater) were also mentioned as participating in some tenders but as unsuccessful in winning bids.⁷³¹
- (g) One customer also referred to facilities management companies such as Mitie and IWJS as being active in this segment.⁷³²

617. In addition, no third party referred to any of the external consultants mentioned in paragraph 605 as a competitor to the Parties with the exception of Jacobs, who was only identified by one customer and one competitor.⁷³³ The CMA also notes that none of the other suppliers mentioned at paragraph 605 have been identified by any third party as competitors to the Parties for the supply of O&M services in the UK, other than Evoqua which was only mentioned by one customer.⁷³⁴ Furthermore, Severn Trent and Kemira were identified as unsuccessful bidders by one customer.⁷³⁵

618. Some competitors also submitted that it would be difficult for them to start supplying O&M services of water and wastewater treatment facilities to new customers.⁷³⁶ These competitors submitted that a supplier would need to convince the customer of their ability and experience because the supplier was ultimately responsible for ensuring the customer remains within

⁷²⁶ Note of call with [REDACTED], dated 24 May 2021.

⁷²⁷ Note of call with [REDACTED], dated 26 May 2021.

⁷²⁸ Notes of calls with [REDACTED], dated 24 May 2021, [REDACTED], dated 24 May 2021 and [REDACTED], dated 3 June 2021.

⁷²⁹ [REDACTED]'s response to the CMA's O&M customer questionnaire and note of call with [REDACTED], dated 3 June 2021.

⁷³⁰ Note of call with [REDACTED], dated 24 May 2021.

⁷³¹ [REDACTED] and [REDACTED]'s response to the CMA's O&M customer questionnaire.

⁷³² Note of call with [REDACTED], dated 26 May 2021.

⁷³³ Notes of calls with [REDACTED], dated 26 May 2021 and [REDACTED], dated 24 May 2021.

⁷³⁴ Note of call with [REDACTED], dated 3 June 2021.

⁷³⁵ [REDACTED]'s response to the CMA's O&M customer questionnaire.

⁷³⁶ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's O&M competitor questionnaire.

regulatory consent when discharging wastewater to the local environment. Failure to do so could result in economic penalties, loss of reputation and could disrupt core operations for the customer.

619. In addition, half of the customers submitted that they would not consider choosing a supplier that is only experienced in D&C of water and wastewater management facilities and does not have experience in the O&M of water and wastewater treatment facilities.⁷³⁷ For example, one customer stated that it did not consider companies with experience in D&C of wastewater plants as competitors to O&M companies, because they would not have the requisite expertise and operational knowledge with regard to the O&M of water and wastewater treatment facilities.⁷³⁸ In identifying the risk of switching to a supplier with experience in D&C, the customer noted the need to ensure compliance, and identified as a risk that an inexperienced supplier may discharge water in a manner that would be harmful to the environment.

- *Constraint from non-UK suppliers*

620. While one customer submitted that based on the scope of the O&M project it would consider suppliers without physical presence in the UK, almost all other customers said that they would not consider using a non-UK supplier without a local presence. One customer stated that it would not consider a supplier without any physical presence in the UK due to its current ways of working and requirement to have local hands-on support for projects.⁷³⁹ Another customer stated that it was unlikely to consider a supplier without a UK base as contracts require constant on-site presence.⁷⁴⁰ The customer submitted that it would not be sufficient for suppliers to travel in from Europe periodically, noting that this would not be cost effective and would also not provide cover in case of an emergency. Another customer described having an on-site presence as a 'must-have'.⁷⁴¹

- *Constraints from new entrants*

621. The available evidence also suggests that barriers to entry are high and that most customers would not switch to a new entrant. While one customer stated that there was a high likelihood of it switching to a new

⁷³⁷ [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's O&M customer questionnaire.

⁷³⁸ [redacted]'s response to the CMA's O&M customer questionnaire.

⁷³⁹ [redacted]'s response to the CMA's O&M customer questionnaire.

⁷⁴⁰ [redacted]'s response to the CMA's O&M customer questionnaire.

⁷⁴¹ [redacted]'s response to the CMA's O&M customer questionnaire.

entrant⁷⁴² and another gave this factor a medium rating,⁷⁴³ most other customers rated their likelihood of switching to a new entrant as very low, explaining that they required proven experience of reliable service.⁷⁴⁴ Some competitors noted that it would take a significant period of time (in excess of five years) for a new entrant to become competitive, especially in high-risk industries such as power generation.⁷⁴⁵

622. The CMA also notes that no third party has identified RWCs such as Anglian Water and Severn Trent as competitors to the Parties or indicated that they may be expanding into the industrial segment, with one customer noting that Severn Trent has been an unsuccessful bidder for one of its projects.⁷⁴⁶

Constraint from in-house supply

623. While one customer submitted that it would be very easy for it to cater to its O&M requirements in-house as that is what it did previously,⁷⁴⁷ most of the other customers that responded to the CMA's merger investigation stated that it would be fairly or very difficult for them to cater for their requirements of O&M of water and wastewater treatment facilities in-house.⁷⁴⁸ One customer stated that the in-house provision of O&M services would be costly, considering such services are far from their core business, the nature of equipment involved, and the need to hire new staff and obtain specialised expertise.⁷⁴⁹ Another customer submitted that it decided to outsource its O&M requirements because this was a cost-efficient option and that in-house procurement required expertise that it did not possess. The same customer noted that it would be difficult to switch from outsourced services to in-house procurement because it would require investment in expertise and specialist facilities unrelated to the customer's core business.⁷⁵⁰ Further, one competitor stated that customers typically face high costs for effluent discharge into the public sewage system and do not have enough expertise to bring O&M services in-house. Fees to discharge wastewater into the public sewage are based on volume and strength of the effluents and therefore, O&M suppliers are contracted to treat and reduce the level of wastewater.⁷⁵¹

⁷⁴² [redacted]'s response to the CMA's O&M customer questionnaire.

⁷⁴³ [redacted]'s response to the CMA's O&M customer questionnaire.

⁷⁴⁴ [redacted], [redacted], [redacted], [redacted], [redacted]'s responses to the CMA's O&M customer questionnaire.

⁷⁴⁵ [redacted] and [redacted]'s responses to the CMA's O&M competitor questionnaire.

⁷⁴⁶ [redacted]'s response to the CMA's O&M customer questionnaire.

⁷⁴⁷ [redacted]'s response to the CMA's O&M customer questionnaire.

⁷⁴⁸ [redacted], [redacted], [redacted], [redacted], [redacted], [redacted]'s responses to the CMA's O&M customer questionnaire.

⁷⁴⁹ Note of call with [redacted], dated 24 May 2021.

⁷⁵⁰ Note of call with [redacted], dated 26 May 2021.

⁷⁵¹ Note of call with [redacted], dated 26 May 2021.

Evidence from internal documents

624. The CMA received a relatively limited number of internal documents that discuss the competitive constraints the Parties face in the O&M of water and wastewater treatment facilities. Those that were provided show that while the Parties may face in-house provision and some other suppliers in tenders, no one supplier is identified with particular frequency, suggesting they do not pose a significant constraint. For example:
- (a) One Veolia internal document identifies [REDACTED].⁷⁵² This document states that [REDACTED]. The CMA notes that [REDACTED] is the only other competitor identified for this contract;
 - (b) Another Veolia internal document identifies [REDACTED]. However, the document states that [REDACTED]. [REDACTED] is again the only other competitor identified.⁷⁵³ Veolia submitted that this contract [REDACTED].⁷⁵⁴
 - (c) One Veolia internal document identifies [REDACTED]. This document states that [REDACTED].⁷⁵⁵ Veolia submitted that this document [REDACTED].⁷⁵⁶
 - (d) One Veolia internal document that discusses [REDACTED], identifies [REDACTED].⁷⁵⁷ This document also notes [REDACTED]. For instance, [REDACTED]; [REDACTED]. Another internal document pertaining to this tender, states [REDACTED].⁷⁵⁸ Veolia appears to have won at least part of this contract, with the document noting [REDACTED].
 - (e) A Suez internal document [REDACTED]. Other competitors [REDACTED],⁷⁵⁹ and
 - (f) Another Suez internal document [REDACTED]. This document [REDACTED].⁷⁶⁰

Conclusion on competitive constraints

625. For the reasons set out above, the CMA believes that other suppliers of O&M of water and wastewater treatment facilities would exert only a limited constraint on the Merged Entity, in particular for larger contracts, and that constraints from non-UK suppliers and D&C suppliers are very weak.
626. While the CMA agrees customers do sometimes switch to self-supply, the CMA considers that there are several challenges in self-supply which limits

⁷⁵² [REDACTED].

⁷⁵³ [REDACTED].

⁷⁵⁴ [REDACTED].

⁷⁵⁵ [REDACTED].

⁷⁵⁶ [REDACTED].

⁷⁵⁷ [REDACTED].

⁷⁵⁸ [REDACTED].

⁷⁵⁹ [REDACTED].

⁷⁶⁰ [REDACTED].

the ability of self-supply to meaningfully constrain the Parties. As such, the CMA believes that in-house supply is also not a strong constraint on the Parties. In particular, the CMA notes that Veolia acknowledged that [X], and considers that these difficulties are more generally reflected in the third party submissions on this point.

627. Accordingly, the CMA believes that the remaining constraints outlined above, individually or in aggregate, would not be sufficient to constrain the Merged Entity.

Barriers to entry and expansion

628. As mentioned in paragraphs 609, 610, 612 and 613 above, the Parties submitted that the barriers to entry for the O&M of water and wastewater facilities are low. However, the third party feedback suggests that barriers to entry are high, with customers being reluctant to switch to new players who do not have prior experience and credibility in providing O&M services. The prevalence of long term contracts and the tender process favouring existing competitors with a large market presence and prior experience adds to the difficulties of entering this market.
629. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC in the market for the O&M of water and wastewater facilities for industrial customers.

Conclusion on horizontal unilateral effects in O&M of water and wastewater treatment facilities services for industrial customers

630. For the reasons set out above, the CMA believes that the Parties are close competitors, especially for large contracts. Further the available evidence also shows that the Parties do not face a strong constraint from other suppliers of O&M services and catering for the O&M requirements in-house is not a feasible option for all customers.
631. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the O&M of water and wastewater treatment facilities for industrial customers in the UK.

Horizontal unilateral effects in the supply of mobile water services (MWS)

632. MWS involves the provision of moveable water treatment units that can be deployed to customers in response to emergency shutdowns, planned outages or to meet medium term needs.⁷⁶¹
633. The Parties overlap in the supply of MWS: each Party provides such services to a range of business across the UK. In assessing this theory of harm, the CMA has considered:
- (a) The frame of reference;
 - (b) Shares of supply;
 - (c) The closeness of competition between the Parties;
 - (d) The competitive constraints from other alternatives; and
 - (e) Barriers to entry and expansion.

Frame of reference

Product scope

- *Parties' submissions*

634. Veolia submitted that in line with the EC's decision-making practice the competitive analysis should be carried out in the supply of MWS with no sub-segmentation and that it was not relevant to distinguish between the technology used within the mobile water unit, as all existing technologies can generally deal with all customer needs.⁷⁶² Suez submitted that it considers that (i) membrane-based MWS; and (ii) resin-based MWS are distinct product markets.⁷⁶³

⁷⁶¹ [REDACTED].

⁷⁶² [REDACTED].

⁷⁶³ [REDACTED].

- *CMA's assessment*

635. The CMA has not previously considered the supply of MWS and as such, in line with EC decisional practice, the CMA considered the following segmentations:⁷⁶⁴

(a) By technology; and

(b) By customer industry and nature of contracts.

- *Segmentation by technology*

636. The CMA considered whether the product frame of reference should be segmented by technology (ie resin-based MWS and membrane-based MWS).

637. Veolia submitted that there are some differences in the technology used in MWS and the technology used depends on the feed quality of the relevant water source, the required responsiveness, cost and the treated water required as the end result. However, Veolia submitted that it was up to the supplier to determine the appropriate technology and that often a combination of technologies was required.⁷⁶⁵ Suez submitted that Suez Water Technologies & Solutions (**Suez WTS**) divides its fleet on the basis of (i) membrane-based MWS and (ii) resin-based MWS and that the technologies are not readily substitutable in every case.⁷⁶⁶

638. A competitor also confirmed that the membrane-based and resin-based technologies are not always substitutable and submitted that to be a credible MWS supplier a company must have the capability to offer both types of solutions.⁷⁶⁷ Evidence from third parties suggests that most significant suppliers can provide both resin-based and membrane-based technologies, and that competitive conditions do not vary significantly based on technology.⁷⁶⁸

⁷⁶⁴ The EC considered segmentation by the technology of the units in its decision of 19 July 2017 in case COMP/M.8452, *Suez / GE Water and Process Technologies*. The CMA notes that ultimately the market definition was left open.

⁷⁶⁵ [REDACTED].

⁷⁶⁶ [REDACTED].

⁷⁶⁷ [REDACTED]'s response to the CMA's MWS questionnaire.

⁷⁶⁸ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's MWS customers questionnaire and [REDACTED]'s response to the CMA's MWS competitors questionnaire.

- *Segmentation by customer industry and size of contracts*

639. The CMA also considered whether the supply of MWS can be segmented on the basis of customer industry and the nature of contracts, including their length, size and complexity.
640. Veolia submitted that MWS processes are generally common across different industries, though some specific properties can apply depending on the industrial application.⁷⁶⁹ Veolia submitted that most suppliers of MWS are able to meet the requirements of the full range of industrial customers across most categories of industry.⁷⁷⁰ Further, Veolia submitted that its MWS assets have a standard design and are commonly interchanged between emergency, planned and multi-year deployments.⁷⁷¹
641. The CMA received mixed evidence from third parties. Some third parties submitted that suppliers do not differ on the basis of the industry served or the nature of contracts.⁷⁷² However, others noted that suppliers with large fleets are more proficient at providing MWS across a range of customer industries and length and size of contracts, meaning there is a narrower field of competitors for larger or complex contracts.⁷⁷³ Further, most customers listed references/experience in the same sector as an important factor in deciding which supplier of MWS to use.⁷⁷⁴

Conclusion on product scope

642. For the reasons set out above, the CMA believes that the appropriate product frame of reference is the supply of MWS. The CMA did not consider that it was necessary to further segment the product frame of reference. Where relevant, the CMA took any of the differences on the basis of technology and/or customer industry and nature of contracts into account within its competitive assessment.

⁷⁶⁹ [REDACTED]. Veolia gave the example of food and beverage manufacturing requiring ultrapure water and certain pharmaceutical applications requiring deionised water.

⁷⁷⁰ [REDACTED].

⁷⁷¹ [REDACTED].

⁷⁷² [REDACTED] and [REDACTED] responses to the CMA's MWS customers questionnaire and [REDACTED]'s response to the CMA's MWS competitors questionnaire.

⁷⁷³ [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's MWS customers questionnaire.

⁷⁷⁴ [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's MWS customers questionnaire.

Geographic scope

- *Parties' submissions*

643. Veolia submitted that suppliers regularly ship mobile water units throughout the EEA as transport costs are low and customers do not require the supplier to be physically present in their territory. Further, Veolia submitted that different MWS suppliers offer similar services, and that the homogeneity of offers and services allowed for very dynamic competition throughout the EEA and the UK.⁷⁷⁵ Suez submitted that it is appropriate to assess market shares on a UK-wide, and likely an EEA and UK-wide, basis.⁷⁷⁶

- *CMA's assessment*

644. The EC previously considered that the relevant geographic frame of reference was EEA wide, while ultimately leaving the definition open. The EC's investigation in that case found that customers contact suppliers irrespective of their location in the EEA, even in the case of emergency services and that a number of suppliers render emergency services throughout the EEA.⁷⁷⁷

645. However, the CMA has received evidence to the contrary from third parties. Most customers stated that they would be unlikely to select a MWS supplier that does not have a UK presence because customers value a quick response time.⁷⁷⁸ Most competitors also submitted that local representation is important in supplying MWS, particularly in emergency situations.⁷⁷⁹ One competitor also referred to the importance of having UK operations post-EU exit.⁷⁸⁰

646. The Parties' internal documents also suggest that the appropriate geographic market is narrower than EEA-wide:

(a) A Suez internal document [REDACTED]. This document [REDACTED];⁷⁸¹

⁷⁷⁵ [REDACTED].

⁷⁷⁶ [REDACTED].

⁷⁷⁷ EC's decision of 19 July 2017 in case COMP/M.8452, *Suez / GE Water and Process Technologies*. The CMA notes that ultimately the market definition was left open.

⁷⁷⁸ [REDACTED], [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's MWS customers questionnaire. Note of call with [REDACTED], dated 8 June 2021.

⁷⁷⁹ [REDACTED] and [REDACTED]'s responses to the CMA's MWS competitors questionnaire.

⁷⁸⁰ [REDACTED]'s response to the CMA's MWS competitors questionnaire.

⁷⁸¹ [REDACTED]. In particular, the document notes [REDACTED].

(b) A Veolia internal document lists [REDACTED] as the first [REDACTED] in relation to MWS;⁷⁸²

(c) A Veolia internal document suggests that [REDACTED];⁷⁸³ and

(d) A Veolia internal document states that [REDACTED].⁷⁸⁴

Conclusion on geographic scope

647. For the reasons set out above, the CMA believes that the appropriate geographic frame of reference is national.

Conclusion on frame of reference

648. For the reasons set out above, the CMA believes that the appropriate frame of reference is for the supply of MWS in the UK.

Shares of supply

Parties' submissions

649. Veolia estimated that the Merged Entity's share of supply would be [20-30]% for MWS in the UK.⁷⁸⁵ By contrast, Suez initially submitted that the Parties would have a combined share of [50-60]% in the UK.⁷⁸⁶

CMA's assessment

650. The CMA has adjusted the Parties' share of supply estimates based on additional evidence gathered in the course of its investigation to more accurately reflect the Parties' shares in the supply of MWS. The CMA was unable to verify total market size and has therefore, on a cautious basis, calculated market shares on the basis of revenue provided by Veolia, Suez and other market participants in the UK. Though this may omit some smaller suppliers, the CMA notes that there is little evidence of such smaller suppliers exercising a meaningful constraint (see the competitive constraints section below).

651. **Table 10** below shows shares of supply for MWS in the UK.

⁷⁸² [REDACTED].

⁷⁸³ [REDACTED].

⁷⁸⁴ [REDACTED].

⁷⁸⁵ [REDACTED].

⁷⁸⁶ [REDACTED].

Table 10: Shares of supply for MWS in 2020, based on revenues

Entity	Share of supply
Veolia	[50-60]%
Suez	[30-40]%
Merged Entity	[80-90]%
Ecolutia	[10-20]%
Nijhuis	[0-5]%
Nalco	[0-5]%
Total	100%

Source: Suez's share of supply estimates, [redacted] and CMA calculations

652. Based on the figures in **Table 10** above, the CMA notes that:

- (a) Post-Merger, the Parties would be the largest supplier of MWS in the UK by far, with a combined share of supply of [80-90]%. The Merger combines the two largest suppliers of MWS in the UK.
- (b) Post-Merger, all other suppliers would lag behind the Merged Entity to a significant extent. Only one supplier (Ecolutia) would have a share of supply exceeding 10%, and even as the second largest supplier post-Merger, Ecolutia would have less than [redacted] of the Merged Entity's share of supply.

653. The CMA's belief that the estimated shares of supply submitted by Veolia are understated is also reflected in other industry descriptions and estimates. For example, one of Veolia's internal documents sets out that [redacted].⁷⁸⁷ Further, even where estimates differ from the CMA's calculations, stakeholders have estimated shares of supply significantly higher than those proposed by Veolia; for example, one competitor submitted that the Merged Entity would have at least a 40% share of supply in MWS.⁷⁸⁸ While the CMA has placed limited weight on this competitor's submission, it notes that this estimate is in line with other evidence received by the CMA and shows that the Parties have significantly higher shares of supply than their competitors.

654. The CMA also collected data on the UK fleet sizes of the Parties and their competitors. While the CMA was not able to reconstruct shares of supply on this basis, it notes that the Parties' combined fleet size ([redacted])⁷⁸⁹ will vastly outnumber that of its next largest competitors, even taking into account any expansion plans. In particular, the next largest competitor, Ecolutia, [redacted]; [redacted] has a fleet size of [redacted] with plans to grow this to [redacted] and Nalco has [redacted].⁷⁹⁰ The CMA considers fleet size to be a relevant indicator

⁷⁸⁷ [redacted].

⁷⁸⁸ [redacted]'s response to the CMA's MWS competitors questionnaire.

⁷⁸⁹ [redacted]; [redacted].

⁷⁹⁰ [redacted], [redacted] and [redacted]'s response to the CMA's MWS competitors questionnaire.

of market power in this market because customers submitted that fleet size is an important consideration when deciding on a MWS supplier (see paragraph 659 below).⁷⁹¹

655. The CMA is of the view that regardless of the estimate used, including fleet sizes set out above, the Merged Entity would by far be the largest supplier of MWS in the UK.

Closeness of competition

656. The CMA examined the closeness of competition between the Parties and has considered within its assessment:

- (a) Submissions from the Parties;
- (b) Evidence from third parties; and
- (c) Evidence from internal documents.

Parties' submissions

657. Veolia submitted that the Parties are not close competitors and that their activities are largely complementary. In particular, Veolia noted that [REDACTED]% of its activities in MWS relate to [REDACTED] and its planned activities tend to be [REDACTED] ([REDACTED]), [REDACTED].⁷⁹² In comparison, Suez is more active in multi-year services.⁷⁹³ Veolia noted that this difference in focus was purely a matter of strategic choice.⁷⁹⁴ Further, Suez offered build-own-operate services, whereas Veolia only offered rental services.⁷⁹⁵

Evidence from third parties

658. Third party evidence shows that the Parties are considered to be each other's closest competitors in relation to MWS in the UK. In particular:
- (a) One customer noted that Veolia and Suez were the two companies that usually participated in its tenders and that there were not many local companies that could offer the services it requires.⁷⁹⁶ This customer also

⁷⁹¹ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's MWS customers questionnaire.

⁷⁹² [REDACTED].

⁷⁹³ [REDACTED].

⁷⁹⁴ [REDACTED].

⁷⁹⁵ [REDACTED].

⁷⁹⁶ The customer also identified Ecolochem, but the CMA understands Ecolochem was acquired by Suez. Note of call with [REDACTED], dated 8 June 2021.

submitted that it prefers to use large suppliers because these have the equipment available in different local areas.

- (b) Most third parties raised concerns about the Merger: explanations included the reduction in choice, deterioration of the competitive landscape, stifling of innovation in the market and impact on overall costs/prices.⁷⁹⁷ While one customer submitted that it does not have concerns about the Merger because it believes Suez is more focused on long term solutions/contracts whereas Veolia focuses on emergency solutions, and that these are different markets that do not conflict with each other, the CMA notes that Veolia and Suez were the only two bidders for this customer's recent tenders for MWS.⁷⁹⁸
- (c) One competitor submitted that it considered Veolia and Suez to be close competitors with a fierce rivalry that offered 'almost a mirror' of each other's products and services, though noting that they have different levels of presence in chemicals.⁷⁹⁹ Other competitors also submitted that they considered Veolia and Suez to be market leaders and very close competitors in the UK.⁸⁰⁰ Further, all competitors that responded to the CMA's merger investigation noted that other competitors trailed behind Veolia and Suez by some margin.⁸⁰¹
- (d) Some competitors identified Veolia and Suez as strong innovators in the supply of MWS.⁸⁰² However, the CMA notes that most customers submitted that innovation is not an important parameter of competition for MWS.⁸⁰³ This is in line with some competitors' submissions; in particular, one competitor stated that customers are conservative in accepting new technology in this market.⁸⁰⁴

659. Some customers also told the CMA they would prefer or even that they require large suppliers.⁸⁰⁵ This is consistent with feedback received from competitors, which submitted that suppliers must have a large fleet size in order to be competitive.⁸⁰⁶ Another competitor noted it would have difficulty supplying a new customer because its fleet size could cause an availability

⁷⁹⁷ [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]'s responses to the CMA's MWS customers questionnaire. Note of call with [redacted], dated 8 June 2021.

⁷⁹⁸ [redacted]'s response to the CMA's MWS customers questionnaire.

⁷⁹⁹ [redacted]'s response to the CMA's MWS competitors questionnaire.

⁸⁰⁰ [redacted] and [redacted]'s responses to the CMA's MWS competitors questionnaire.

⁸⁰¹ [redacted], [redacted] and [redacted]'s responses to the CMA's MWS competitors questionnaire.

⁸⁰² [redacted] and [redacted]'s responses to the CMA's MWS competitors questionnaire.

⁸⁰³ [redacted], [redacted], [redacted] and [redacted]'s response to the CMA's MWS customers questionnaire.

⁸⁰⁴ [redacted] and [redacted]'s responses to the CMA's MWS competitors questionnaire.

⁸⁰⁵ [redacted], [redacted] and [redacted]'s response to the CMA's MWS questionnaire. Note of call with [redacted], dated 8 June 2021.

⁸⁰⁶ [redacted] and [redacted]'s responses to the CMA's MWS competitors questionnaire.

issue, and therefore place it in a less favourable position.⁸⁰⁷ Furthermore, one competitor submitted that substantial investment in a fleet was a risky investment as there was a likelihood that even after these investments, it may not win any contracts.⁸⁰⁸ This competitor noted that to build a reputation with customers, and being to win sufficient business could take ten years.

Evidence from internal documents

660. While few internal documents submitted by the Parties discuss competitive conditions in the MWS market, those that do, show that the Parties view each other as close competitors in the UK. For example:

- (a) One Veolia internal document that assesses [redacted] identifies [redacted] as Veolia's only competitor with revenues in the UK. This document recommends that [redacted], [redacted].⁸⁰⁹ This document therefore suggests that [redacted]. Veolia submitted that this document [redacted].⁸¹⁰
- (b) Another internal document discussing a particular bid for the provision of MWS [redacted] refers to [redacted]. While [redacted] is also mentioned, the document notes that their capability in terms of available assets is 'unknown'.⁸¹¹
- (c) One Suez internal document [redacted]. [redacted]. This document [redacted].⁸¹²
- (d) Another Suez internal document t[redacted]. [redacted].⁸¹³

CMA's assessment

661. Based on the available evidence, the CMA believes that the Parties are close competitors in the supply of MWS. The CMA notes Veolia's submissions that a greater proportion of Veolia's activities relate to emergency situations and a greater proportion of Suez's activities relate to long-term contracts. The different focuses of the businesses do not prevent the businesses from competing closely: both business compete across long and short term contracts; the Parties are very large competitors even in those segments where their businesses are smaller (eg while Veolia told us that only [redacted]% of its business is focused on long-term contracts, [redacted]% of Veolia's business exceeds the size of most of its competitors in the MWS),

⁸⁰⁷ [redacted]'s response to the CMA's MWS competitors questionnaire.

⁸⁰⁸ [redacted]'s response to the CMA's MWS competitors questionnaire. Note of call with [redacted], dated 13 April 2021.

⁸⁰⁹ [redacted].

⁸¹⁰ [redacted].

⁸¹¹ [redacted].

⁸¹² [redacted].

⁸¹³ [redacted].

and feedback from both customers and competitors consistently confirms that the Parties are important competitors across sub-segments.

Competitive constraints

662. In assessing the competitive constraints from other alternatives, the CMA has considered:

- (a) Submissions from the Parties;
- (b) Evidence from third parties; and
- (c) Evidence from internal documents.

Parties' submissions

663. Veolia submitted that it faces strong competition from MWS suppliers with offices and facilities in the UK, including from [REDACTED], [REDACTED] and [REDACTED]. In addition, Veolia stated that it competes with European suppliers such as [REDACTED] and [REDACTED], which can easily compete in the UK as customers contact suppliers regardless of their location in the EEA, and that this was acknowledged by the EC in *Suez / GE Water*.⁸¹⁴
664. Suez submitted that Veolia and Ecolutia are its primary international mobile water competitors in the UK. Further, Suez also stated that it competes with other suppliers that are more narrowly geographically focused such as Siltbuster, Envirogen / Puresep, Nijhuis H20K / Saur and Pall Europe.⁸¹⁵
665. Veolia submitted that its competitors include new entrants that are innovating by using alternative technologies such as activated carbon treatment, giving [REDACTED], [REDACTED] and [REDACTED] as examples.⁸¹⁶ These technologies are challenging mature mobile water technologies such as membrane and resin.⁸¹⁷
666. In addition, Veolia submitted that customers are sophisticated and change suppliers easily and often.⁸¹⁸ In particular, customers are not loyal to a single supplier and above all seek to obtain their services within a limited

⁸¹⁴ [REDACTED]; EC's decision of 19 July 2017 in case COMP/M.8452, *Suez / GE Water and Process Technologies*.

⁸¹⁵ [REDACTED].

⁸¹⁶ [REDACTED].

⁸¹⁷ [REDACTED].

⁸¹⁸ [REDACTED].

time frame and establish a relationship of trust.⁸¹⁹ Veolia stated that the cost to customers of switching is negligible.⁸²⁰

667. Veolia further submitted it faces regular competition from alternatives to MWS including water tankering services. This is a method of providing treated water to sites and/or of removing wastewater for controlled disposal or treatment elsewhere. Veolia submitted that customers purchase tankering services either for emergency or short-term supply or disposal, although longer term agreements may exist for wastewater solutions. Suppliers include Tardis Environmental and Universal Tankers.⁸²¹
668. Veolia also submitted that barriers to entry and expansion are low.⁸²² In particular:
- (a) Legal barriers to entry are low because there is limited regulation and it is easy to comply with regulation that does exist.⁸²³
 - (b) Financial and technical barriers are low because technologies are mature and can be bought from existing suppliers.⁸²⁴
 - (c) Suppliers already active in water management can easily expand into the MWS market as the technology used is similar.⁸²⁵
 - (d) The tender process (especially for medium and long-term solutions) allows entry and expansion because supplier reputation is not as important a factor as deadlines or price, so new players can compete on an equal footing with older players.⁸²⁶
669. The CMA notes that Suez made differing submissions in relation to barriers to entry. In particular:
- (a) Suez submitted that entry requires significant upfront capital expenditure, estimating [REDACTED]. Suez submitted that a supplier would require a variety of trailers to meet different customers' needs and would need a large enough fleet to have the capacity to respond to short notice emergency situations.⁸²⁷

819 [REDACTED].

820 [REDACTED].

821 [REDACTED].

822 [REDACTED].

823 [REDACTED].

824 [REDACTED].

825 [REDACTED].

826 [REDACTED].

827 [REDACTED].

- (b) Suez submitted that the tender process favoured suppliers with a long-standing reputation and experience.⁸²⁸

Evidence from third parties

670. The CMA has considered within its assessment constraints from:

- (a) UK suppliers;
- (b) Non-UK suppliers;
- (c) Other technologies such as activated carbon and water tankering; and
- (d) Other constraints.

- *UK-based MWS suppliers*

671. Generally, competitors stated that there are very few suppliers of MWS in the UK, with the Parties being the two market leaders.⁸²⁹ Third parties provided the following evidence in relation to the competitive strength of other MWS suppliers in the UK:

- (a) **Ecolutia:** Ecolutia is active in MWS in the UK, deploying both membrane-based and resin-based technologies to customers. Ecolutia submitted that in the UK market there are only three main players (Ecolutia, Veolia and Suez) and that Ecolutia is much smaller than the Parties.⁸³⁰ In particular, Ecolutia submitted it would have [REDACTED]. Ecolutia further stated that [REDACTED] due to the limited number of players and the size of the Parties.

While Ecolutia was named as an alternative MWS supplier in the UK by some third parties, they submitted that Ecolutia is not as strong a competitor as the Parties, with the customer noting that Ecolutia does not have the fleet size required to suit its needs.⁸³¹

- (b) **Nalco:** The CMA understands that Nalco provides membrane-based and resin-based technologies to its customers, but MWS are not part of its core business.⁸³² Nalco submitted that it is [REDACTED]. Nalco stated that it has only provided MWS services approximately [REDACTED] noting that these occurrences may also just be customer enquiries.

⁸²⁸ [REDACTED].

⁸²⁹ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's MWS competitors questionnaire.

⁸³⁰ Note of call with [REDACTED], dated 13 April 2021.

⁸³¹ [REDACTED] and [REDACTED]'s responses to the CMA's MWS competitors questionnaire.

⁸³² Note of call with [REDACTED], dated 24 May 2021.

No third parties identified Nalco as a strong competitor to Veolia and Suez in MWS in the UK.⁸³³

(c) **Siltbuster:** Siltbuster was identified as an MWS supplier in the UK by only one competitor.⁸³⁴ Whilst the competitor identified Siltbuster as a moderate constraint on the Parties, it noted that Siltbuster focuses on biological treatments for the wastewater market only, in comparison to the Parties' offerings which uses both membrane and resin technologies and serves both the water and wastewater markets.

(d) **Others:** One customer identified Envirogen and Pall Corporation as bidders in a recent tender, though neither supplier won.⁸³⁵ In addition, one competitor identified Envirogen as a strong innovator in MWS.⁸³⁶ However, none of the third parties that responded to the CMA's questionnaire identified Envirogen, Pall Corporation or Kurita as competitors to the Parties in MWS in the UK.

672. Some customers also submitted that they would find it difficult to switch suppliers.⁸³⁷ These customers explained that the need to build a relationship with the supplier, the lack of suitable alternatives and the need for the supplier to have experience and resources can make switching difficult. However, one customer submitted that switching is easy because the nature of emergency situations mean they will use whichever supplier is able to deliver the services at that time.⁸³⁸ The CMA notes that any such supplier must have the available capacity, in terms of trailers, to do so.

673. In addition, the available evidence suggests that MWS contracts are not always awarded by tenders and that this disadvantages smaller suppliers.⁸³⁹ In particular, one competitor submitted that it is harder for smaller suppliers to win MWS contracts because contracts are not always awarded by open-tenders and that suppliers like Veolia or Suez which have a large portfolio of services are more likely to win contracts because of their existing relationships with customers (either as an incumbent MWS supplier or as a supplier of other services).⁸⁴⁰

⁸³³ [redacted]'s response to the CMA's MWS competitors questionnaire.

⁸³⁴ [redacted]' response to the CMA's MWS competitors questionnaire.

⁸³⁵ [redacted]'s response to the CMA's MWS customers questionnaire.

⁸³⁶ [redacted]'s response to the CMA's MWS competitors questionnaire.

⁸³⁷ [redacted], [redacted] and [redacted]'s responses to the CMA's MWS customers questionnaire.

⁸³⁸ [redacted]'s response to the CMA's MWS customers questionnaire.

⁸³⁹ [redacted]'s response to the CMA's MWS customers questionnaire.

⁸⁴⁰ [redacted]'s response to the CMA's MWS competitors questionnaire.

- *Constraint from non-UK suppliers*

674. As discussed in paragraph 645 above, most customers submitted that they would be unlikely to select a supplier that does not have a physical UK presence for their MWS needs.⁸⁴¹ Further, some competitors noted that MWS suppliers without a UK presence rarely compete for UK customers.⁸⁴² In particular, one competitor submitted that in emergency situations it was possible ‘to count on one hand’ the instances of European competitors participating in UK tenders in the last 30 years because European suppliers’ fleet sizes are too small to be able to serve the UK market.⁸⁴³

- *Other technologies such as activated carbon and water tankering*

675. Most customers submitted that activated carbon is not an adequate substitute for membrane or resin technologies or that they haven’t considered using activated carbon.⁸⁴⁴ One customer noted that bidders have offered activated carbon solutions in parallel to resin and membrane technologies, rather than as a replacement.⁸⁴⁵

676. Most competitors also submitted that activated carbon is not an adequate replacement for resin and membrane technologies.⁸⁴⁶ One competitor acknowledged that activated carbon is an upcoming technology, though stating it is used to remove specific harmful substances.⁸⁴⁷ Similarly, another competitor submitted that activated carbon can be used to remove suspended solids or for carbon absorption, which is a very small component of the treatment process.⁸⁴⁸ This competitor submitted that on its own, activated carbon is ‘woefully unsuitable’ for production of higher quality waters.

677. Most customers that responded to the CMA’s merger investigation stated that water tankering is an unsuitable substitute to MWS or that they had not considered water tankering.⁸⁴⁹ The customers noted that water tankering was not an option because the large volumes of water that needed to be treated meant it was impractical.⁸⁵⁰ One customer noted that while water

⁸⁴¹ [REDACTED], [REDACTED], [REDACTED] and [REDACTED]’s responses to the CMA’s MWS customers questionnaire. Note of call with [REDACTED], dated 8 June 2021.

⁸⁴² [REDACTED] and [REDACTED]’s responses to the CMA’s MWS competitors questionnaire.

⁸⁴³ [REDACTED]’s response to the CMA’s MWS competitors questionnaire.

⁸⁴⁴ [REDACTED], [REDACTED], [REDACTED] and [REDACTED]’s responses to the CMA’s MWS customers questionnaire.

⁸⁴⁵ [REDACTED]’s response to the CMA’s MWS customers questionnaire.

⁸⁴⁶ [REDACTED] and [REDACTED]’s responses to the CMA’s MWS competitors questionnaire.

⁸⁴⁷ [REDACTED]’s response to the CMA’s MWS competitors questionnaire.

⁸⁴⁸ [REDACTED]’s response to the CMA’s MWS competitors questionnaire.

⁸⁴⁹ [REDACTED], [REDACTED] and [REDACTED]’s responses to the CMA’s MWS customers questionnaire.

⁸⁵⁰ [REDACTED] and [REDACTED]’s responses to the CMA’s MWS customers questionnaire.

tankering was an adequate substitute in an emergency, tankering was expensive and it is therefore not a long-term solution.⁸⁵¹

678. Similarly, one competitor submitted that water tankering was unsuitable for projects requiring larger flow rates, longer-term or permanent projects.⁸⁵² This competitor noted that it would require seven tankers every hour to match one of its mobile water units. Further, water tankering was in most cases more expensive to the end user.

- *Other constraints*

679. Third party evidence also suggests that it is difficult for new suppliers to enter the market. In particular:

- (a) Most customers submitted that they are unlikely or very unlikely to choose a new entrant to serve their MWS needs. Further, most customers noted that references / experience in the same sector are an important factor when deciding which supplier to choose and they would prefer or require a large fleet (as noted in paragraph 659 above).
- (b) Some competitors submitted that starting to supply membrane or resin technologies requires a significant investment and the cost of building membrane based solutions is particularly high.⁸⁵³ Further, one competitor noted that it is difficult to obtain sufficient expertise to build, operate and maintain membrane-based systems.⁸⁵⁴
- (c) A competitor submitted that an entrant may take between three and five years to become competitive because the supplier needs a local presence, know-how, capacity, access to customers and a large number of references for all the technologies in combination with the industry it aims to serve.⁸⁵⁵

Evidence from internal documents

680. The CMA received a very limited number of internal documents discussing other competitors in MWS. Those that did suggest that the Parties are not significantly constrained by other competitors in MWS. In particular:

⁸⁵¹ [redacted]'s response to the CMA's MWS customers questionnaire.

⁸⁵² [redacted]'s response to the CMA's MWS competitors questionnaire.

⁸⁵³ [redacted] and [redacted]'s responses to the CMA's MWS competitors questionnaire.

⁸⁵⁴ [redacted]'s response to the CMA's MWS competitors questionnaire.

⁸⁵⁵ [redacted]' response to the CMA's MWS competitors questionnaire.

- (a) One Veolia internal document notes [REDACTED] is active in the emergency mobile space in the UK.⁸⁵⁶ However, the same document states [REDACTED] and another Veolia internal document states that Veolia has [REDACTED].⁸⁵⁷
- (b) One of Veolia’s internal documents notes that [REDACTED]. It also notes that [REDACTED].⁸⁵⁸
- (c) However, another Veolia internal document states that [REDACTED]. This document notes key competitors include [REDACTED]. This document further states that [REDACTED].⁸⁵⁹ However, the context of this document is unclear and the CMA notes that this document was prepared in [REDACTED]. Further, [REDACTED].
- (d) [REDACTED] is also identified as having ‘technician and sales’ in the UK in a Veolia internal document.⁸⁶⁰ However, the CMA notes that Veolia does not identify [REDACTED] as having UK revenues, while noting [REDACTED]’s revenues in other countries.

Conclusion on competitive constraints

681. For the reasons set out above, the CMA believes that the Merged Entity would only face limited competitive constraints from other MWS suppliers and/or alternative technologies.

Barriers to entry and expansion

682. As mentioned in paragraphs 659 and 679(a), a supplier must have a large fleet size to be able to effectively serve customers. Further, the available evidence shows that suppliers need to have requisite experience and resources, which can all make entry into this market difficult. Further, most customers submitted that they are unlikely to consider a non-UK based supplier of MWS.
683. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC in the supply of MWS in the UK as a result of the Merger.

⁸⁵⁶ [REDACTED].

⁸⁵⁷ [REDACTED].

⁸⁵⁸ [REDACTED].

⁸⁵⁹ [REDACTED].

⁸⁶⁰ [REDACTED].

Conclusion on unilateral effects in the supply of MWS

684. For the reasons set out above, the CMA believes that the Parties are close competitors and the two leading suppliers of MWS in the UK. The CMA considers that the Merged Entity would have a very strong position in the supply of MWS in the UK, and face only limited competitive constraints from a very limited number of alternative suppliers, none of whom currently have an offering as strong as that of the Parties. For some customers at least, the Merged Entity would be the only remaining supplier of MWS in the UK given the capacity constraints of the smaller suppliers. Given the importance placed by customers on a local presence in the UK and the requirement for quick turnaround time for MWS, the CMA does not believe that European suppliers would sufficiently constrain the Merged Entity in relation to MWS in the UK.
685. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of supply of MWS in the UK.

Horizontal unilateral effects in the design and construction (D&C) of technological solutions and equipment for water and wastewater treatment systems

686. D&C of technical solutions and equipment for water and wastewater facilities refers to designing and constructing equipment or solutions off-site and subsequently integrating them into water treatment plants, as well as providing 'off-the-shelf' technological and engineering solutions to customers for their existing facilities.⁸⁶¹
687. The Parties overlap in the D&C of technical solutions and equipment for water and wastewater facilities to industrial customers: each Party provides such services to a range of business across the UK.
688. In assessing this theory of harm, the CMA has considered:
- (a) The frame of reference;
 - (b) Shares of supply;
 - (c) The closeness of competition between the Parties; and
 - (d) The competitive constraints from other alternatives.

⁸⁶¹ [REDACTED].

Frame of reference

Product scope

- *Parties' submissions*

689. Veolia submitted that in line with the decisional practice of the EC, the appropriate frame of reference is the D&C of technological solutions and equipment for water and wastewater facilities with a possible segmentation between industrial customers and RWCs.⁸⁶² Suez submitted that it considers that the market for D&C of technological solutions and equipment for water and wastewater treatments is a distinct product market.⁸⁶³

- *CMA's assessment*

690. The CMA has not previously considered the D&C of technical solutions and equipment for water and wastewater facilities. As such, in line with the EC's previous decisions, the CMA considered the following segmentations:⁸⁶⁴

(a) By customer type;

(b) By type of water treated;

(c) By treatment technology; and

(d) By customer industry and size of contract.

691. For each of these segmentations, the CMA received mixed feedback from third parties. The CMA has therefore considered the impact of the Merger within the D&C of technical solutions and equipment for water and wastewater facilities as a whole, taking segmentation into account as appropriate in the competitive assessment. However, it was not necessary for the CMA to reach a conclusion on the exact product frame of reference since no competition concerns arise on any plausible basis.

⁸⁶² [REDACTED].

⁸⁶³ [REDACTED].

⁸⁶⁴ EC's decision of 27 April 2010 in case M.5724, *Suez Environnement/Agbar*; EC's decision of 29 April 1999 in case M.1514, *Vivendi/US Filters*; EC's decision of 28 October 2010 in case M.5934, *Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group*; EC's decision of 19 July 2017 in case M. 8452, *Suez/Ge Water And Process Technologies*. The CMA notes that ultimately the market definition was left open by the EC in these cases.

Geographic scope

- *Parties' submissions*

692. Veolia submitted that the appropriate geographic frame of reference for the D&C of technical solutions and equipment for water and wastewater facilities comprises at least the EEA and the UK, but that the precise definition could be left open as the Merger does not raise competition on any basis. Veolia submitted that transport costs are low and cannot reasonably lend any advantage or disadvantage to geographically distant competitors.⁸⁶⁵ Veolia further submitted that from a supply-side perspective, the manufacturing of technological solutions and equipment for water and wastewater treatment systems tends to be centralised.⁸⁶⁶ Suez submitted that it is appropriate to assess market shares on at least a UK-wide basis, and likely an EEA and UK-wide basis.⁸⁶⁷

- *CMA's assessment*

693. Third party evidence suggests that a local presence may be a relevant factor for D&C of technical solutions and equipment for water and wastewater facilities, and that at a minimum, suppliers should have knowledge of local rules and regulations.⁸⁶⁸ Some customers rated geographical proximity of a supplier as a moderately important, with one stating that the physical location is not of significant importance.⁸⁶⁹ Another customer stated that it would have no issue in considering companies without a physical presence in the UK.⁸⁷⁰

694. For the reasons set out above, on a conservative basis, the CMA considered the impact of the Merger within the UK, taking into account constraints from suppliers outside the UK.

Conclusion on frame of reference

695. For the reasons set out above, the CMA believes that the appropriate frame of reference is for the D&C of technical solutions and equipment for water and wastewater facilities in the UK.

⁸⁶⁵ [redacted].

⁸⁶⁶ [redacted].

⁸⁶⁷ [redacted].

⁸⁶⁸ Notes of calls with [redacted], dated 15 April 2021 and [redacted], dated 24 May 2021.

⁸⁶⁹ [redacted] and [redacted]'s response to the CMA's design and construction of technical solutions and equipment customers (**D&C customers**) questionnaire.

⁸⁷⁰ [redacted]'s response to the CMA's D&C customers questionnaire.

Shares of supply

696. Veolia submitted that the Parties will have very low shares of supply in the market for the D&C of technological solutions and equipment for water and wastewater treatment systems in the UK, and competition concerns are similarly unlikely to arise when considering a market comprising the UK and EEA together.⁸⁷¹ Veolia submitted the following estimated market shares:

Table 13: Shares of supply for D&C of technical solutions and equipment for water and wastewater facilities in the UK and EEA in 2020, based on order intake

Entity	UK share of supply	EEA share of supply
Veolia	[5-10]%	[0-5]%
Suez	[0-5]%	[0-5]%
Merged Entity	[5-10]%	[5-10]%
Others	[90-100]%	[90-100]%
Total	100%	100%

Source: [REDACTED].

697. The CMA was unable to verify Veolia's estimated shares of supply and therefore has placed limited weight on them.

Closeness of competition

698. The CMA examined the closeness of competition between the Parties and considered within its assessment:

- (a) Submissions from the Parties;
- (b) Evidence from the Veolia's tender data;
- (c) Evidence from third parties; and
- (d) Evidence from internal documents.

Parties' submissions

699. Veolia submitted that the Parties are not close competitors. The Parties' activities are broadly complementary as Suez focuses on disinfection treatments, certain biological treatments and technologies such as reverse osmosis or membranes, whereas Veolia Water Technologies (**VWT**)'s focus is more specifically in sludge treatments and dissolved pollution treatments.⁸⁷²

⁸⁷¹ [REDACTED].

⁸⁷² [REDACTED].

*Evidence from the Veolia's tender data*⁸⁷³

700. Veolia provided data on tenders it competed for from 2016 to 2020 that had an estimated value greater than [REDACTED].⁸⁷⁴ This yielded [REDACTED] opportunities, [REDACTED] ([REDACTED]%) of which Veolia won. Veolia submitted it does not systematically collect information on competitors or winners, and that therefore only [REDACTED] of the [REDACTED] tenders included information on the winner (if not Veolia) or other bidders.
701. As with the relevant theories of harm in paragraphs 234, 238, 312, 313, 400 and 587 above, the CMA has conducted both a participation and a loss analysis. The CMA's analysis shows that:
- (a) Veolia identified Avidity most frequently as a competitor (in [REDACTED] tenders), followed by Fresenius and Millipore ([REDACTED] tenders each), Abbott ([REDACTED] tenders) and 15 other competitors that competed in [REDACTED] tender each.
 - (b) When considering the occasions where Veolia was unsuccessful in its tender bid and identified the winner ([REDACTED] tenders), Veolia lost most frequently to Avidity ([REDACTED] tenders), followed by Fresenius ([REDACTED] tenders), Millipore ([REDACTED] tenders) and 11 other competitors that won [REDACTED] each.
 - (c) Suez was not identified as a bidder or winner in any of Veolia's tenders.
702. For the reasons set out above, the CMA believes that Veolia's tender data indicates that Veolia and Suez are not close competitors and Veolia faces constraints from other suppliers. However, given the poor quality of tender data submitted to the CMA, only limited weight has been placed on the tender data.

Evidence from third parties

703. The CMA received mixed evidence from third parties regarding the closeness of competition between Veolia and Suez. In particular:
- (a) Most customers did not express concerns about the Merger.⁸⁷⁵ Only one customer identified both Veolia and Suez as strong competitors in the D&C of technical solutions and equipment for water and wastewater facilities.⁸⁷⁶

⁸⁷³ The CMA notes that it granted Suez an exemption from submitting its tender data for this market.

⁸⁷⁴ [REDACTED].

⁸⁷⁵ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's D&C customers questionnaire.

⁸⁷⁶ [REDACTED]'s response to the CMA's D&C customers questionnaire.

- (b) Some competitors identified Veolia and Suez as close competitors and market leaders.⁸⁷⁷ These competitors submitted that the Parties have strong infrastructure that allow them to compete aggressively in the market and an installed base of customers. Further, some competitors submitted that Veolia and Suez are particularly active in participating in large tenders.⁸⁷⁸
- (c) One competitor submitted that while it competes with Veolia, it does not compete with Suez in the market for D&C of technical solutions and equipment for water and wastewater facilities in the UK.⁸⁷⁹

Evidence from internal documents

704. The CMA received a limited number of documents discussing the competitive conditions for the D&C of technical solutions and equipment for water and wastewater treatment systems. However, the CMA notes the following:

- (a) One Suez internal document [REDACTED]. [REDACTED].⁸⁸⁰ However, [REDACTED]; and
- (b) One Veolia internal document that discusses [REDACTED]. [REDACTED].⁸⁸¹

Conclusion on the closeness of competition between the Parties

705. For the reasons set out above, the CMA believes that Veolia and Suez are at least moderately close competitors, especially in large contracts in the D&C of technical solutions and equipment for water and wastewater treatment systems.

Competitive constraints

706. In assessing the competitive constraints from other alternative suppliers, the CMA has considered:

- (a) Submissions from the Parties;
- (b) Evidence from third parties; and
- (c) Evidence from internal documents.

⁸⁷⁷ [REDACTED] and [REDACTED]'s responses to the CMA's D&C of technical solutions and equipment competitors (**D&C competitors**) questionnaire.

⁸⁷⁸ Note of calls with [REDACTED], dated 24 May 2021 and [REDACTED], dated 15 April 2021.

⁸⁷⁹ [REDACTED]'s response to the CMA's D&C competitors questionnaire.

⁸⁸⁰ [REDACTED].

⁸⁸¹ [REDACTED].

Parties' submissions

707. Veolia submitted that there will be no material reduction in competition as a result of the Merger, given the large number of players active in the market for the D&C of technological solutions and equipment for water and wastewater treatment systems.⁸⁸² Veolia submitted that its competitors include [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].⁸⁸³ Veolia stated the majority of its competitors offer technological solutions and equipment for both water and wastewater treatment systems.⁸⁸⁴

Evidence from third parties

708. Taken in the round, the evidence the CMA received from third parties shows that the Parties face significant competitive constraints in the market. In particular:

- (a) Third parties identified more than 30 other suppliers of D&C of technical solutions and equipment and submitted that the majority of these identified could meet a customer's needs if they were to issue a tender; and
- (b) One competitor submitted that the UK market is fragmented with several small participants competing across the various verticals.⁸⁸⁵ Similarly, another competitor submitted that the market for the D&C of technical solutions and equipment is wider than the market for O&M of water and wastewater treatment facilities, and that Veolia and Suez have more competitors in this segment.⁸⁸⁶

709. The CMA also received evidence that non-UK suppliers provide some constraint on the Parties. Most customers submitted that they would consider using suppliers of D&C of technical solutions and equipment that do not have a physical presence in the UK.⁸⁸⁷ Examples of such companies included Biogradex, Odis Filters and Dynamik Filtr.⁸⁸⁸ In line with this, one competitor submitted that local presence is of limited importance for D&C of technical solutions and equipment, while noting that know-how on local rules and regulations is important.⁸⁸⁹ Another competitor

⁸⁸² [REDACTED].

⁸⁸³ [REDACTED].

⁸⁸⁴ [REDACTED].

⁸⁸⁵ [REDACTED]'s response to the CMA's D&C competitors questionnaire.

⁸⁸⁶ Note of call with [REDACTED], dated 15 April 2021.

⁸⁸⁷ [REDACTED], [REDACTED] and [REDACTED]'s responses to the CMA's D&C customers questionnaire.

⁸⁸⁸ [REDACTED]'s response to the CMA's D&C customers questionnaire.

⁸⁸⁹ Note of call with [REDACTED], dated 15 April 2021.

submitted that, for equipment customers, the availability of parts for potential repairs is more important than local presence.⁸⁹⁰

Evidence from internal documents

710. The CMA received a limited number of documents discussing the competitive conditions for the D&C of technical solutions and equipment for water and wastewater treatment systems. However, the CMA notes the following:

- (a) One Suez internal document [REDACTED].⁸⁹¹ This document [REDACTED]. Further, this document [REDACTED]; and
- (b) One Veolia internal document discusses solutions to [REDACTED]. [REDACTED].⁸⁹²

Conclusion on competitive constraints

711. For the reasons set out above, the CMA believes that the Parties face significant competitive constraints from other players in the market.

Conclusion on unilateral effects in the supply of design and construction of technological solutions and equipment for water and wastewater treatment systems

712. For the reasons set out above, the CMA believes that the Parties are not very close competitors and the Merged Entity would face sufficient constraint from other players in the market.

713. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the D&C of technological solutions and equipment for water and wastewater treatment systems in the UK.

Barriers to entry and expansion

714. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁸⁹³

⁸⁹⁰ Note of call with [REDACTED], dated 24 May 2021.

⁸⁹¹ [REDACTED].

⁸⁹² [REDACTED].

⁸⁹³ [CMA129](#), from paragraph 8.40.

715. The CMA has assessed whether entry or expansion might prevent an SLC in respect of each SLC it has identified above in the specific sub-section dealing with that SLC. As set out above, for each SLC, the evidence received by the CMA does not indicate that entry or expansion will be timely, likely or sufficient to mitigate any of the SLCs arising due to the Merger.

Third party views

716. The CMA contacted customers and competitors of the Parties, consultants, academics and regulatory bodies.

717. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

718. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to:

- (a) The supply of complex waste management contracts procured by local authorities in the UK;
- (b) The supply of non-hazardous C&I waste collection services in the UK;
- (c) The supply of non-hazardous municipal waste collection services in the UK;
- (d) The supply of services for the O&M of local authority-owned ERFs in the UK;
- (e) The supply of non-hazardous waste incineration services at local level in the Teesside, Wilton 11, Marchwood, and Kemsley local areas;
- (f) The supply of organic waste composting services at OWC facilities at local level in the Coven and Packington local areas;
- (g) The O&M of water and wastewater treatment facilities for industrial customers in the UK; and
- (h) The supply of mobile water services in the UK.

Decision

719. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the UK.
720. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.⁸⁹⁴ The Parties have until 14 December 2021⁸⁹⁵ to offer an undertaking to the CMA.⁸⁹⁶ The CMA will refer the Merger for a phase 2 investigation⁸⁹⁷ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides⁸⁹⁸ by 21 December 2021 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Andrea Coscelli
Chief Executive
Competition and Markets Authority
7 December 2021

⁸⁹⁴ Section 33(3)(b) of the Act.

⁸⁹⁵ Section 73A(1) of the Act.

⁸⁹⁶ Section 73(2) of the Act.

⁸⁹⁷ Sections 33(1) and 34ZA(2) of the Act.

⁸⁹⁸ Section 73A(2) of the Act.

ANNEX 1 – LOCAL AREA ANALYSIS METHODOLOGY

Horizontal unilateral effects in the supply of non-hazardous waste incineration services

721. In assessing the Parties' shares of supply, the CMA considered all of the ERFs where Veolia and Suez' own Controlled Merchant Capacity. As there are a large number of such ERFs ([REDACTED]), the CMA adopted a filtering approach. Filtering generally involves identifying some areas as requiring no further consideration based on systematic information that is relatively easy to gather.⁸⁹⁹
722. The filtering methodology that the CMA adopted is described below:
- (a) The CMA used the Parties' calculations of the 80% catchment area around each of the Parties' ERFs based upon 2020 customer volumes treated using Controlled Merchant Capacity;⁹⁰⁰
 - (b) The CMA then calculated the weighted average catchment area across all of Veolia and Suez's sites, where the volume treated using merchant capacity was used as the weight. Weighted averages were calculated for both driving time and driving distance. Applying this methodology resulted in a weighted average catchment area of [REDACTED] km when considering driving distance and of [REDACTED] minutes when considering driving time;
 - (c) The CMA then calculated shares of supply based on Controlled Merchant Capacity for the greater of the individual catchment area and the weighted average catchment area. The larger catchment area was chosen for the analysis on a cautious basis to ensure that catchment areas were reflective of the area over which competitors to the Parties could be located. The CMA notes that some individual catchment areas were very small and may not be reflective of the area within which competitors are able to compete; and
 - (d) To reflect that sites located further away from one another will typically compete less closely, the CMA weighted these shares of supply by the distance (or driving time) of each competitor's site from the centroid

⁸⁹⁹ CMA129, paragraph 4.32.

⁹⁰⁰ Consistent with CMA precedents, the CMA has used an 80% catchment area as this captures the area within which vast majority of each facility's customers are located, and omits outliers.

Veolia or Suez site (with the sites furthest away being assigned the lowest weight).⁹⁰¹ The increment is therefore also a weighted share of supply.

723. The CMA considers in the case of incineration services that competition concerns may arise in areas where the Parties' combined share of supply exceeds 30% with a significant increment.⁹⁰² This contrasts with the theory of harm in relation to composting services below where a threshold of 35% was used, reflecting past CMA precedents. In considering the appropriate threshold for identifying areas of concern, the CMA takes account of the dynamics of the specific market under consideration. The market for Controlled Merchant Capacity is one in which shares, and the position of competitors, can vary from year to year: Controlled Merchant Capacity is residual total capacity or usage once capacity locked for local authority use has been taken into account; the residual volume can fluctuate over time. Given this uncertainty, the CMA opted for a lower threshold of 30%. The CMA also considered that a threshold of 25% might be appropriate in this segment, but given this lower threshold would not result in any additional overlapping areas, the CMA has not concluded as to whether it would be a relevant threshold.⁹⁰³

724. Veolia queried why the CMA had used a share-based filter when it had attributed little weight to shares in considering some other theories of harm.⁹⁰⁴ The CMA believes that filtering needs to be based on a quantitative measure of local competition and the Parties' significance in the local market; that the Parties did not propose any quantitative measures other than shares and a simple count of competitors; and that shares of Controlled Merchant Capacity are a better measure of competitive significance than a simple competitor count. The CMA also notes that incineration services are relatively undifferentiated between suppliers (apart from in regard to location), and that this means like-for-like comparisons can easily be made between different providers and local areas, which may not be the case in other markets.

725. Veolia submitted that transport costs were a small proportion of disposal costs; that customers only cared about facility location to the extent that

⁹⁰¹ Each site's merchant capacity is weighted based upon its distance (or driving time) from the centroid, such that the centroid site's capacity would have a weight of one and a site located on the perimeter a weight of zero.

⁹⁰² Typically, the CMA regards 5% as a significant increment, but a lower increment may be significant where the Parties' combined shares of supply is high.

⁹⁰³ A 25% threshold additionally causes the catchment area by distance around Veolia's Newhaven facility to fail the filter but this does not result in additional overlapping areas over and above those identified from the Marchwood and Kemsley catchments which are discussed below (because Veolia's Newhaven facility lies within both the Marchwood and Kemsley catchments). Apart from this, a 25% threshold also causes the catchment area around Kemsley to fail the filter on the basis of both driving distance and time calculated for both Veolia and Suez customers, but this also does not result in additional overlapping areas.

⁹⁰⁴ [REDACTED].

more distant locations increased transport costs; and that weighting shares by distance from centroid facility was unlikely to be appropriate.⁹⁰⁵ However, location was cited as an important competitive parameter by third parties; and the CMA believes that transport costs are a significant factor affecting competition. Illustrative transport cost data provided by Veolia shows the additional cost of transporting a waste load [redacted] km rather than [redacted] km would be £[redacted]. Assuming a 23-tonne load, this would be £[redacted] per tonne, around [redacted]% of the median gate fee for ERFs.⁹⁰⁶ Veolia also submitted that gate fees varied widely and hence that it was economical to transport waste very long distances to reach a cheaper facility;⁹⁰⁷ the CMA has taken this into account by using the individual catchment area of the facility concerned where it is greater than the weighted average catchment area across all facilities.

726. Veolia also submitted that the CMA's approach was very sensitive to the size of the catchment area; and that the CMA should have placed more weight on the general pattern of shares using a large number of different approaches.⁹⁰⁸ As noted above, the purpose of filtering is to narrow down the areas for further consideration and the CMA believes that weighted shares of supply based on Controlled Merchant Capacity are the most appropriate way of doing so.
727. Where a filter has been applied and local areas remain for further consideration, there may be limited time available (or it may not be compatible with the efficient conduct of the CMA's investigation) to conduct a detailed competitive assessment of a large number of local areas.⁹⁰⁹ In this case, the CMA does not believe it was practicable to carry out an assessment of the general pattern of shares using a large number of different approaches as proposed by Veolia as it was unclear how all the different approaches could be taken into account in a systematic way and, also, undertaking such wide ranging analysis is not compatible with the efficient conduct of the CMA's phase 1 investigation.
728. Veolia also submitted that the CMA's approach was novel and unlikely to be appropriate for commercial, as opposed to consumer, markets.⁹¹⁰

⁹⁰⁵ [redacted]. Veolia also submitted that weighted shares are a useful proxy only when customers are densely located close to the centroid. The CMA believes that its approach (weighting shares by distance from the centroid facility) is useful as a measure of local competitive significance given that it is generally not practicable to calculate weighted shares separately for each customer according to the distance of each facility from the customer's own location.

⁹⁰⁶ [redacted]. The figures would be greater for MRFs and composting, about [redacted]% for MRFs and [redacted]% for IVCs.

⁹⁰⁷ [redacted].

⁹⁰⁸ [redacted].

⁹⁰⁹ [CMA129](#), paragraph 4.33.

⁹¹⁰ [redacted].

However, the CMA's use of 80% catchment areas and shares of supply weighted by distance/driving time is similar to the approach it has used in other recent phase 1 merger investigations in commercial markets.⁹¹¹

Horizontal unilateral effects in the supply of organic waste composting services at OWC facilities

731. The CMA adopted the same local area analysis methodology used for incineration services as described above. However, there are a few differences between the two sets of analysis. Specifically:
- (a) The local area analysis for composting used 2019 customer volumes rather than 2020 customer volumes when calculating 80% catchment areas;
 - (b) The local area analysis for composting considered operational capacity of the OWC facilities rather than Controlled Merchant Capacity;
 - (c) The average weighted catchment area for the Parties' OWC facilities were [X] km when considering driving distance and [X] minutes when considering driving time; and
 - (d) The catchment areas were calculated using WDI data compiled by the Environment Agency rather than the Tolvik dataset.⁹¹²
732. The CMA adopted a similar approach to filtering as for incineration services, but the uncertainty around Controlled Merchant Capacity is not relevant to OWC catchment areas. This is because the catchment areas for OWC facilities have been calculated on the basis of operational capacity rather than Controlled Merchant Capacity. Therefore, the CMA believes that competition concerns are only likely to arise if weighted shares of supply are greater than 35%. The CMA notes that, in any case, no additional areas would fail the filter using a 30% threshold.

ⁱ The last sentence of paragraph 48(a) should read as follows: Alpheus has approximately 200 employees in the UK and generated profits of approximately £585,000 in 2020.

⁹¹¹ For instance, see CMA's decision of 26 August 2020 in case ME/6862-19, completed acquisition by Breedon Group plc of certain assets of Cemex Investments Limited.

⁹¹² The CMA was unable to adjust OWC volumes for any capacity locked to local authorities as data on locked capacity was not available from the WDI data.

ii The last sentence of paragraph 48(b) should read as follows: The CMA understands that Aquabio has approximately 50 employees in the UK and generated profits of approximately £547,000 in the UK in 2020.

iii The last sentence of paragraph 49(a) should read as follows: Ecolutia's balance sheet for 2020 records approximately £1.2 million under the 'Profit and Loss account' item in the UK.