

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

Issues statement

28 January 2022

The reference

1. On 21 December 2021, the Competition and Markets Authority (**CMA**), in exercise of its duty under [section 33\(1\)](#) of the Enterprise Act 2002 (**EA02**), referred Veolia Environnement S.A.'s (**Veolia**) acquisition of a 29.9% minority shareholding in Suez S.A (**Suez**) from an existing Suez shareholder dated 6 October 2020 (the **Completed Acquisition**), and the voluntary public offer by Veolia for the remaining issued share capital of Suez, which at that time had not completed (the **Anticipated Acquisition**) (together we refer to the Completed Acquisition and the Anticipated Acquisition as the **Merger**) for further investigation and report by a group of CMA panel members. We refer to Veolia and Suez together as the **Parties** and for statements referring to the future, the **Merged Entity**.
2. In its phase 1 investigation, the CMA decided to use its discretion to treat the Completed Acquisition and the Anticipated Acquisition as having occurred simultaneously on the date of the Anticipated Acquisition.¹
3. In exercise of its duty under [section 35\(1\)](#) of EA02, the CMA must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
4. In answering these two questions, we will apply a 'balance of probabilities' threshold to our analysis. That is, we will decide whether it is more likely than not that the Merger will result in an SLC.²

¹ Pursuant to sections [27\(5\)](#) and [29](#) of EA02.

² [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 2.36.

Purpose of this issues statement

5. In this issues statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (paragraph 3(b) above), having had regard to the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our phase 2 investigation.
6. The CMA's phase 1 decision (the **Phase 1 Decision**)³ contains much of the detailed background to this issues statement. We are publishing this issues statement in order to assist parties submitting evidence to our phase 2 investigation. This statement sets out the issues we currently envisage being relevant to our investigation and we invite interested parties to notify us if there are any additional relevant issues which they believe we should also consider.

Impact of Coronavirus (COVID-19)

7. We are publishing this issues statement during the Coronavirus (COVID-19) pandemic, which is having significant impacts on consumers and business across the world. The CMA has published a [statement](#) on its website on how it has adjusted its working arrangements in response and [guidance](#) on key aspects of its practice during the pandemic.
8. Our approach to evidence-gathering will take into account the difficulties that the pandemic may be causing for market participants in this sector. If appropriate, we will also take into account the impact of the pandemic in our assessment of the competitive effects of the Merger, although we are required to look beyond the short-term and consider what lasting structural impacts the Merger might have on the markets at issue.

Background

The Parties

9. Both Veolia and Suez are active globally in waste, water, and energy management services for local governments and businesses, as well as other related activities.

³ [Phase 1 Decision, 7 December 2021](#).

10. 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.
11. Suez is also headquartered in France and is listed on the Euronext Stock Exchange.⁴ The turnover of Suez in 2020 was approximately £15 billion worldwide and approximately £1 billion in the UK.

The transaction

12. On 5 October 2020, Veolia formally announced that it had entered into the Completed Acquisition, and that it intended to enter into the Anticipated Acquisition. On 6 October 2020, Veolia completed the Completed Acquisition. As regards the Anticipated Acquisition, on 14 May 2021 Veolia and Suez announced that they had signed a combination agreement for the remaining share capital in Suez. On 18 January 2022, the Veolia acquired additional shares giving it 86.22%⁵ of Suez's share capital following the European Commission's approval on 14 December 2021, subject to full compliance with commitments offered by Veolia.⁶

Non-hazardous waste and water management services

13. 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.
14. 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. Businesses may also require **mobile water services** in response to emergency shutdowns, planned outages or to meet medium term needs.

⁴ At the time of publishing the Issues Statement, Veolia owned 86.22% of Suez. Veolia's stated intention was to give the remaining shareholders more time to accept its public offer for the shares and to 'squeeze out' any remaining shareholders. It would subsequently delist Suez shares from the stock exchange ([Veolia press release, 10 January 2022](#)).

⁵ See footnote 4 above.

⁶ [Commission approves the acquisition of Suez by Veolia, subject to conditions, 14 January 2022](#).

Both Veolia and Suez provide these water and wastewater management services.

Our inquiry

15. In order to assist parties that wish to make representations to us, we set out below some specific areas that we intend to assess. We will seek to review these in the context of how these industries operate and how they are likely to evolve.
16. At phase 2, we intend to use as a starting point and initial focus the areas in which the CMA found in the Phase 1 Decision that the Merger gives rise to a realistic prospect of an SLC – that is, in the following non-hazardous waste and water management services:
 - (a) the supply of complex waste management contracts procured by local authorities in the UK;
 - (b) the supply of non-hazardous commercial and industrial 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 operation and maintenance (**O&M**) of local authority-owned energy recovery facilities (**ERFs**) in the UK;
 - (e) the supply of non-hazardous waste incineration services at the local level in the Teesside, Wilton 11, Marchwood, and Kemsley local areas;
 - (f) the supply of organic waste composting services at open-windrow composting facilities at the local level in certain parts of the Midlands;
 - (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.
17. We intend to use evidence obtained during the phase 1 investigation. However, we will also be gathering and considering further evidence on the areas outlined in paragraph 16 above and any other issues which may be identified during the course of the investigation.

Market definition

18. Market definition provides a framework for assessing the competitive effects of a merger.⁷ An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.⁸
19. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of a merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in our competitive assessment.⁹ Furthermore, we may not find it necessary to conclude on the precise boundaries of some relevant markets if they do not significantly impact the CMA's competitive assessment.
20. In practice, the analysis of market definition and the competitive effects will often overlap, with many factors affecting market definition being relevant to the assessment of competitive effects and vice versa.¹⁰
21. We will consider the evidence gathered at phase 1 and any new evidence we receive which is relevant to the appropriate market definition for our assessment of the Merger. Our view of market definition will largely be drawn from the findings in our competitive assessment, taking into account long-term industry trends as appropriate. Irrespective of the market definition, where appropriate, we will consider the degree and/or any differences in the constraints on the Merged Entity.
22. While we will conduct some of our analysis on individual areas of overlap, in the context of the Parties being two large players active across most stages of the waste management lifecycle, we may also consider any broader pattern of competition between the Parties across these areas which may be relevant to the assessment of any likely future competition within or beyond their current areas of overlap.
23. As described below, we note that there is a subset of waste management contracts that appear to have characteristics that make them particularly complex (these contracts were referred to as complex waste management contracts in the Phase 1 Decision). We will consider the extent the conditions of competition for such contracts may vary to those for other contracts. We

⁷ Merger Assessment Guidelines (CMA129) (March 2021), chapter 9.

⁸ Merger Assessment Guidelines (CMA129) (March 2021), paragraph 9.1.

⁹ Merger Assessment Guidelines (CMA129) (March 2021), paragraph 9.4.

¹⁰ Merger Assessment Guidelines (CMA129) (March 2021), paragraph 9.2.

will also consider whether any differences might give rise to a separate relevant market, whether such differences should be considered within the competitive assessment of a broader market or markets that encompasses complex and non-complex contracts, or whether any differences in competitive conditions for complex contracts should be assessed within a competitive assessment that spans multiple narrower markets.

Assessment of the competitive effects of the Merger

Theories of harm

24. The term ‘theory of harm’ describes the possible ways in which an SLC could arise as a result of a merger. The theories of harm provide the framework for our analysis of the competitive effects of a merger.¹¹ Identifying a theory of harm in this issues statement does not preclude an SLC from being identified on another basis following receipt of additional evidence or further analysis in the course of our phase 2 inquiry. We welcome views, in particular on the theories of harm described below.
25. Unilateral effects can arise in a merger where one firm merges with a direct competitor that previously provided a competitive constraint. Through the merger, removing one party as a competitor might allow the parties profitably to increase prices, lower the quality of their products or customer service, reduce the range of their products/services, and/or reduce innovation.¹²
26. Subject to the evidence we obtain and the analysis we undertake regarding the market definition (described above), we intend to assess whether the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the non-hazardous waste and water management services listed at paragraph 16 above.
27. We note that different activities within the waste management and water management supply chain can be linked and procured together by customers. The Parties are active and overlap with each other in a wide range of non-hazardous waste management services across the entire supply chain in the UK. Similarly, they both supply a broad range of water management services. For several waste management activities, the Parties are currently among the largest suppliers in the UK. Few other suppliers are as sizeable as the Parties or involved to the same extent in a range of related activities. In the course of the phase 2 investigation, we will consider these factors, amongst others, and

¹¹ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 2.11.

¹² [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 4.1.

the effect they have on the Parties' ability to compete with each other, absent the Merger, and with other rivals.

28. We also note that both Parties are large companies that operate in many countries. As a result of their size, international and multi-service presence, they can draw on funding and financial support, innovation, research and development and internal knowhow sharing in their activities. As part of the phase 2 investigation, we will consider whether these factors (or any others) help make the Parties stronger competitors to each other and others in the UK waste and water management activities that are under consideration.
29. In addition, 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 (eg landfill targets). During our phase 2 investigation, we will consider whether and how these changes impact the competitive landscape in the activities where the Parties overlap.
30. We consider below the competition issues that may potentially arise in the areas identified for further scrutiny during our phase 2 investigation (see paragraph 16 above), as suggested by the evidence gathered in the course of the initial phase 1 inquiry.
31. In the **supply of complex waste management contracts** procured by local authorities, the evidence available to us so far suggests that:
 - (a) There is a subset of waste management contracts procured by local authorities that tend to have a small number of credible bidders. Those contracts appear to have characteristics that make them particularly complex and the competitive constraints imposed on the Parties when competing for such contracts appear to be limited.¹³ In phase 1, the available evidence suggested that complexity can arise from a range of factors such as the inclusion of several waste management services in single tenders, the overall value and/or duration of the contract (eg a long-term contract servicing hundreds of thousands or even millions of households in the UK), or specific local authority requirements. These factors significantly increase the risk involved in fulfilling the contracts;¹⁴
 - (b) The Parties have several attributes that make them strong suppliers in competing for such complex contracts including:¹⁵

¹³ Phase 1 Decision, paragraph 127 and 139.

¹⁴ Phase 1 Decision, paragraph 11.

¹⁵ Phase 1 Decision, paragraphs 147-191.

- (i) Decades-long experience in managing complex waste management contracts that cover a range of services and/or are of particularly high-value and/or cover millions of UK households;
 - (ii) A presence across most stages of the waste management lifecycle, including collection, sorting of dry recyclates, incineration, disposal via landfill and composting, as well as the operation and maintenance of the infrastructure necessary for waste management purposes;
 - (iii) A nationwide footprint with access to additional capacity in the event of a plant shutdown;
 - (iv) Access to comprehensive global research, development and innovation capabilities, as well as knowhow sharing;
 - (v) As a result of their size, international and multi-service presence, a strong financial standing.
- (c) The Parties are two of a limited number of waste management companies that can service complex waste management contracts. In this context, the available evidence suggests that partnerships and sub-contracting do not exercise a meaningful competitive constraint.¹⁶
32. In the supply of **non-hazardous commercial and industrial waste collection services**, the evidence available to us so far suggests that:
- (a) Some customers that operate across all or large parts of the UK appear to have a preference to use only one supplier to collect their waste;¹⁷
 - (b) The Parties compete closely for national customers, with only Biffa remaining as a strong competitor to the Merged Entity.¹⁸
33. In the supply of **non-hazardous municipal waste collection services**, the evidence available to us so far suggests that:
- (a) The Merged Entity would be the largest supplier of municipal waste collection services in the UK;¹⁹
 - (b) Post-Merger, only two strong suppliers of municipal waste collection services would remain with others not sufficiently strong to meaningfully constrain the Merged Entity individually or in aggregate.²⁰

¹⁶ Phase 1 Decision, paragraphs 168-191.

¹⁷ Phase 1 Decision, paragraphs 210-213.

¹⁸ Phase 1 Decision, paragraphs 273-275.

¹⁹ Phase 1 Decision, paragraph 335.

²⁰ Phase 1 Decision, paragraph 336.

34. In the **supply of services for the O&M of local authority-owned ERFs**, the evidence available to us so far suggests that:
- (a) The Parties are currently 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;²¹
 - (b) While there are other operators of local authority-owned and merchant ERFs, the Merged Entity would face competitive constraints principally from Viridor and FCC, with other competitors potentially being disadvantaged by lack of experience in providing O&M to local authorities and lack of access to contingent capacity.²²
35. In the **supply of non-hazardous waste incineration services** in the Teesside, Wilton 11, Marchwood, and Kemsley local areas, the evidence available to us so far suggests that:
- (a) The Parties have a large presence in the UK with an especially strong presence in the North East of England, where they compete closely against each other. While Viridor and FCC will provide some competitive constraint on the Merged Entity, other suppliers in the market are likely to be weak competitors;²³
 - (b) In the Teesside and Wilton 11 local areas, the Merged Entity would be the largest or second largest supplier (depending on the metric used), facing only limited competitive constraints from rival suppliers, with WTI being the largest remaining supplier;²⁴
 - (c) Similarly, the Merged Entity would be the second largest supplier in the Marchwood and Kemsley local areas and face limited competitive constraints from rival suppliers; principally Viridor at Marchwood and WTI at Kemsley.²⁵
36. In the **supply of organic waste composting services** at open-windrow composting facilities in certain parts of the Midlands, the evidence available to us so far suggests that:
- (a) The Parties compete closely in the supply of composting services. There are a small number of suppliers that appear to compete across the UK

²¹ Phase 1 Decision, paragraph 380.

²² Phase 1 Decision, paragraph 381.

²³ Phase 1 Decision, paragraphs 407 and 414.

²⁴ Phase 1 Decision, paragraph 435.

²⁵ Phase 1 Decision, paragraph 436.

with several additional competitors operating on a regional or local basis;²⁶

- (b) In the Coven and Packington local areas, the Merged Entity would become the largest supplier of organic waste composting services at open-window composting facilities, with the Merger reducing the number of competitors with a share of supply exceeding 10% from four to three.²⁷

37. In the **O&M of water and wastewater treatment facilities for industrial customers**, the evidence available to us so far suggests that:

- (a) The Merged Entity would become the largest provider of O&M of water and wastewater treatment facilities for industrial customers in the UK;²⁸
- (b) The Parties are close competitors, in particular for large customers. The Merged Entity would not be strongly constrained by other suppliers of O&M services, suppliers active outside of the UK or regulated water companies. Moving O&M requirements in-house would appear not to be a feasible option for most customers.²⁹

38. In the supply of **mobile water services**, the evidence available to us so far suggests that:

- (a) The Merged Entity would be the largest UK supplier of mobile water services by a very large margin with a combined share of supply exceeding 80%;³⁰
- (b) The Parties are close competitors and would face only limited competitive constraints from a very limited number of alternative suppliers, none of which currently has an offering as strong as that of either of the Parties.³¹

39. In order to investigate these theories of harm, we expect to consider among other matters:

- (a) the market structures and the market positions of the Parties and competitors;
- (b) the criteria and processes customers (both local authorities and businesses) use to choose a supplier of waste and water management services;

²⁶ Phase 1 Decision, paragraphs 491 and 498.

²⁷ Phase 1 Decision, paragraph 512.

²⁸ Phase 1 Decision, paragraph 579.

²⁹ Phase 1 Decision, paragraphs 601-603, 620-622 and 625-627.

³⁰ Phase 1 Decision, paragraph 652.

³¹ Phase 1 Decision, paragraphs 661 and 681.

- (c) where relevant, the impact of the public procurement rules on competitive dynamics and whether local authorities are likely to aggregate or disaggregate waste management services;
 - (d) the ease or difficulty customers face in switching suppliers and how this impacts competitive dynamics;
 - (e) the strength of the Parties and competitors (including, where relevant, regional and local competitors) and their respective abilities to win contracts for different waste and water management services;
 - (f) the relevance and importance of vertical integration and whether being able to offer multiple waste or water management services confers a competitive advantage or influences customer buyer behaviour;
 - (g) evidence on the current and likely future closeness of competition between the Parties including bid data, internal documents and third-party evidence; and
 - (h) evidence on the current and future remaining competitive constraints on the Merged Entity, including from in-house supply, broker models, partnerships and sub-contracting, as relevant.
40. In addition, with respect to the local theories of harm, we expect to consider among other matters:
- (a) the specific areas over which the Parties and their competitors compete;
 - (b) local shares of supply; and
 - (c) whether there are any factors, such as capacity constraints, that may affect the competitive dynamics.

Countervailing factors

41. We will consider evidence put to us on whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.
42. We will consider evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger.³²

³² [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 8.31.

Possible remedies and relevant customer benefits

43. Should we conclude that the Merger has resulted or may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate. Where appropriate, we will also take into account the commitments accepted by the European Commission.³³
44. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits (**RCBs**) that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.³⁴

Responses to this issues statement

45. Any party wishing to respond to this issues statement should do so in writing, by **no later than 5pm on Friday 11 February 2022** by emailing Veolia.Suez@cma.gov.uk.

³³ [Mergers: Guidance on the CMA's jurisdiction and procedure \(December 2020\)](#), paragraph 18.2.

³⁴ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15–3.24.