

**DEROGATION LETTER  
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED  
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 20 December 2021.**

**Acquisition by Veolia Environnement S.A. of Suez S.A. (the 'Transaction').**

We refer to your submission of 31 January 2022 requesting that the CMA consents to a derogation to the Initial Enforcement Order of 20 December 2021 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter. Further, in this letter:

'**Comgen**' means Comgen Australia Pty Limited (ACN: 050 242 441) and its subsidiaries which comprise Veolia's Australian waste business;

the '**UK-related assets**' refers to any individuals, business activities, tangible and intangible assets and contracts of the Veolia business (including, but not limited to, those which relate to Veolia's innovation and research and development activities, such as key staff, intellectual property rights, contracts, knowhow and facilities, and the items identified at (but not limited to) paragraphs 2(a) to 2(f) of this consent letter), which:

- a) are related to and/or support the Veolia UK business;
- b) are used by, or shared with, the Veolia UK business; and/or
- c) have any other material links with the Veolia UK business; and

the '**Veolia Non-UK business**' means the Veolia business excluding the Veolia UK business.

Under the Initial Order, save for written consent from the CMA, Veolia Environnement S.A. ('**Veolia**') and Veolia UK Limited ('**Veolia UK**') are required to hold separate the Veolia business from the Suez business and refrain from taking any action which might prejudice a reference under section 33 of the Enterprise Act 2002 or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Veolia and Veolia UK may carry out the following actions, in respect of the specific paragraphs:

**1. Paragraphs 6(b), 6(c), 6(d), 6(e), 6(h), 6(i), 6(k) and 10 of the Initial Order**

Veolia has sought the CMA's consent to limit the scope of paragraphs 6(b), 6(c), 6(d), 6(e), 6(h), 6(i), 6(k) and 10 (the '**Relevant IEO Provisions**') of the Initial Order so that they only apply to the Veolia UK business and the UK-related assets (thereby excluding the Veolia Non-UK business from the abovementioned provisions of the Initial Order). Veolia has also sought the CMA's consent to limit the scope of the Relevant IEO Provisions so that they do not apply to Comgen, which is a subsidiary of Veolia UK which undertakes its business outside the UK.

Veolia submits that the obligations in the Initial Order that restrict changes to the Veolia Non-UK business and Comgen, and which require Veolia to report material developments to the CMA in respect of the Veolia Non-UK business and Comgen, would impose a significant administrative burden on Veolia. Veolia further submits that the exclusion of the Veolia Non-UK business and Comgen from the scope of these provisions of the IEO would not lead to pre-emptive action.

Veolia submits that the Veolia UK business is largely distinct and operated separately from the Veolia Non-UK business by a dedicated management team in the UK which is subject to a high degree of legal and managerial autonomy from the Veolia Non-UK business. Further, the Veolia UK business predominantly involves the provision of services that are inherently carried out by UK teams for UK customers. Similarly, Veolia submits that Comgen is distinct from the rest of the Veolia UK business, with its own dedicated management team based in Australia and is subject to a high degree of legal and managerial autonomy from the rest of the Veolia UK business. Veolia further submits that Comgen is only active in the provision of services in Australia by teams which are based there.

Based on Veolia's representations and related evidence provided to the CMA:

- a) The viability and competitive capability of the Veolia UK business on a standalone basis is not reliant on the Veolia Non-UK business (other than the UK-related assets);
- b) The Veolia UK business is run independently of the Veolia Non-UK business (with the Veolia UK management taking operational decisions independently of the Veolia Non-UK business by virtue of [§<] and does not have material

links with the Veolia Non-UK business other than in respect of the UK-related assets, which include (amongst others):

- a) certain Veolia UK board representatives;
  - b) certain shared Group services;
  - c) financing arrangements and Group guarantees;
  - d) a small number of shared customer relationships/contracts;
  - e) a limited number of shared sales arrangements; and
  - f) certain shared intellectual property and associated licensing agreements; and
- c) Comgen's business relates to non-UK customers, is undertaken by non-UK teams and is run independently of the rest of the Veolia UK business. The viability and competitive capability of the rest of the Veolia UK business on a standalone basis is not reliant on Comgen. Comgen does not own any tangible or intangible assets used by the rest of the Veolia UK business. Comgen and the rest of the Veolia UK business do not share any contracts with customers or suppliers. There are no other material links between Comgen and the rest of the Veolia UK business and, other than a shared Tax Director, staff of the rest of the Veolia UK business do not hold responsibilities in respect of Comgen.

On the basis of Veolia's representations above and in the particular circumstances of this case, the CMA consents to a derogation from the Initial Order to: (i) limit the scope of paragraphs 6(b), 6(c), 6(d), 6(e), 6(h), 6(i) and 6(k) of the Initial Order so that they only apply to the Veolia UK business (with the exception of Comgen) and the UK-related assets; and (ii) limit the scope of paragraph 10 of the Initial Order such that insofar as paragraphs 6(b), 6(c), 6(d), 6(e), 6(h), 6(i) and 6(k) of the Initial Order are disapplied for the Veolia Non-UK business under this derogation, there will be no need to report to the CMA on them. The CMA consents to this derogation strictly subject to the following conditions (which may only be amended with the prior written consent of the CMA, including by email):

- a) Veolia undertakes to adopt a broad interpretation of the definition of UK-related assets in this derogation and understands that the scope of what constitutes a UK-related asset can change over time depending on the particular circumstances of the actions being contemplated by the non-UK business. The CMA reserves the right to amend the definition of UK-related assets if necessary;

- b) Veolia shall not be permitted to dispose of any assets (tangible or intangible) of the Veolia Non-UK business, which could materially negatively impact or degrade the Veolia UK business;
- c) Veolia takes all reasonable steps to put in place an ongoing compliance programme to ensure that the relevant employees connected with the UK-related assets (whose definition may be amended in accordance with condition (a) above) are appropriately trained to comply with this derogation, including:
  - i. ensuring that the relevant employees connected with the UK-related assets recognise and take a cautious approach to what could be UK-related assets (in accordance with condition (a) above);
  - ii. where there are questions in relation to whether an asset is a UK-related asset, putting in place a senior point of query/resolution (as necessary) and putting in place procedures to raise these questions with the CMA and the Monitoring Trustee; and
  - iii. there are clear procedures for detecting and reporting breaches to the CMA and the Monitoring Trustee;
- d) the Monitoring Trustee will review the compliance programme which Veolia is required to put in place in accordance with condition (c);
- e) all Veolia UK board Members who are also employed by (or have management responsibilities in) the Veolia Non-UK business (in particular, [X]) will remain within the scope of the Initial Order;
- f) the Tax Director of Veolia UK will remain within the scope of the Initial Order;
- g) this derogation will not cause disruption to the Veolia UK business (with the exception of Comgen), nor impact its ongoing operation or viability on a standalone basis; and
- h) this derogation will not result in any integration of the Veolia business with the Suez business and will not have an impact on the CMA's ability to impose any remedies (if required).\*

Tim Geer

Director, Mergers

31 March 2022

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\* For the avoidance of doubt, this condition does not affect integration permitted by the CMA under any other derogation including the derogation of 10 March 2022