

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

Notice of possible remedies under Rule 12 of the Competition and Markets Authority Rules of Procedure¹

Introduction

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 (the **Act**), 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**) (the Completed Acquisition and the Anticipated Acquisition together, the **Merger**) for further investigation and report by a group of CMA panel members. Veolia completed the Anticipated Acquisition on 18 January 2022. Veolia and Suez together are referred to as the **Parties** and for statements referring to the future, the **Merged Entity**.
2. In its provisional findings on the reference notified to the Parties on 19 May 2022 (the **Provisional Findings**),² the CMA provisionally concluded that the Merger has resulted in the creation of a relevant merger situation, and that the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in:
 - (a) the following waste management services in the UK (the **Provisional Waste SLCs**):
 - (i) non-hazardous municipal waste collection services;
 - (ii) operation and maintenance (**O&M**) services for material recovery facilities (**MRFs**) to local authorities;
 - (iii) O&M services for energy recovery facilities (**ERFs**) to local authorities;

¹ Published under the CMA Rules of Procedure for Merger, Market and Special Reference Groups (CMA17, 2014).

² The CMA's Provisional Findings can be found on the CMA case page [here](#).

- (iv) the supply of waste disposal services by incineration in the local areas surrounding Suez's Wilton 11 and Teesside ERFs;
 - (v) non-hazardous commercial and industrial (**C&I**) waste collection services; and
- (b) the following water management services in the UK (the **Provisional Water SLCs**):
 - (i) O&M services for water and wastewater treatment facilities to industrial customers; and
 - (ii) mobile water services.
- 3. The CMA has provisionally concluded that the Merger will remove an important competitor and that this could result in higher prices to customers (eg via worse bid terms or higher gate fees) and/or a poorer quality of service compared to a situation absent the Merger.³
- 4. This notice sets out the possible actions the CMA might take for the purpose of remedying the SLCs and/or any resulting adverse effect identified in the Provisional Findings (the **Remedies Notice**).
- 5. The CMA invites comments on possible remedies (see paragraphs 20 to 48), as well as any responses to the questions set out in paragraphs 49 to 62 of this Remedies Notice by **2 June 2022**.

Interim measures

- 6. The CMA's interim measures are designed to ensure that the viability and competitive capability of each of the merging parties are not undermined pending the outcome of the CMA's investigation, as this would risk prejudicing the ability of the CMA to achieve an effective remedy if it were to find that the merger gives rise to a SLC.⁴
- 7. On 1 February 2021, the CMA imposed an initial enforcement order for the purpose of preventing pre-emptive action (ie action that could undermine the CMA's investigation or the CMA's ability to impose effective remedies, if required) in accordance with section 72(2) of the Act, which was subsequently varied on 9 December 2021 (the **Initial IEO**). On 20 December 2021, the CMA revoked the Initial IEO and served a new initial enforcement order under section 72(2) of the Act (the **IEO**). On 14 January 2022, the CMA issued

³ Provisional Findings, Summary.

⁴ For further information, see also the CMA's guidance: [Interim measures in merger investigations: CMA108](#) (December 2021).

written directions under the IEO⁵ for the appointment of a monitoring trustee (**Monitoring Trustee**) in order to monitor and ensure the Parties' compliance with the IEO.

8. In order to preserve the CMA's remedy options in the event the CMA finds SLCs in waste and/or water management services, the IEO has required Suez's entire UK waste management services business (the **Suez UK Waste Business**) and Suez's entire global Water Technologies and Solutions business (the **Suez Global WTS Business**) to be held separate from Veolia and prevented their further integration with Veolia.⁶

CMA criteria for remedies

9. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.⁷
10. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options will be effective in remedying, mitigating or preventing the SLCs and any resulting adverse effects.
11. The effectiveness of a remedy is assessed by reference to its:⁸
 - (a) impact on the SLC and its resulting adverse effects;
 - (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;
 - (c) practicality, in terms of its implementation and any subsequent monitoring; and
 - (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effects.
12. Having identified the effective remedy options, the CMA will select the least costly and intrusive remedy that it considers to be effective and seek to

⁵ These directions were subsequently subject to a minor variation on 28 January 2022.

⁶ On 10 March 2022, the CMA granted a derogation under the IEO permitting Veolia's integration with Suez's businesses outside the UK (except the Suez Global WTS Business) on the basis that Suez's non-UK businesses which were permitted to integrate with Veolia had no material connections to the functions of the Suez UK Waste Business and that the derogation does not undermine the CMA's ability to impose effective remedies. The published version of the 10 March 2022 derogation can be found [here](#).

⁷ Sections 354) and 36 (3) of the Act.

⁸ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.5.

ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁹

Remedies required in other jurisdictions in relation to the Merger

13. The Merger was investigated in a number of other jurisdictions outside the UK.¹⁰ The Merger was cleared subject to remedies by the European Commission (**EC**) on 14 December 2021, and by the Australian Competition and Consumer Commission (**ACCC**) on 21 December 2021. The Merger was unconditionally cleared in the other jurisdictions.
14. Given that the remedies required by the ACCC concerned the divestiture of certain of the Parties' Australian assets,¹¹ the CMA has not identified any implications of the ACCC's remedies on the CMA's consideration of possible remedies to address the SLCs it has provisionally found.
15. The CMA will consider any implications of the remedies required by the EC on the CMA's possible remedies to address the SLCs it has provisionally found. A brief overview of the remedies required by the EC is provided below.

Remedies required by the EC

16. According to the EC's decision to clear the Merger subject to remedy commitments, the EC accepted the following commitments from Veolia to divest (the **EC Remedies**):^{12,13}
 - (a) almost all of Suez's activities in the non-hazardous and regulated waste management markets and the municipal water market in France (the **New Suez Divestment Business**);
 - (b) almost all of Veolia's activities in the mobile water services market in the European Economic Area (**EEA**) (the **Veolia EEA MWS Divestment Business**);
 - (c) the vast majority of Veolia's activities in the French segment of the industrial water management market; and

⁹ *Merger Remedies*: CMA87 (13 December 2018), paragraph 3.4.

¹⁰ Veolia's acquisition of Suez was investigated in the following jurisdictions (with remedies required by the relevant authorities in Australia and the European Union): Australia, Brazil, Canada, Chile, China, Colombia, COMESA (Common Market for Eastern and Southern Africa), Ecuador, European Union, India, Morocco, Russia, Saudi Arabia, South Korea, Taiwan, Turkey, United Arab Emirates and the United States.

¹¹ The ACCC's 21 December decision can be found [here](#).

¹² The EC's 14 December 2021 decision can be found [here](#).

¹³ The EC's case page is [here](#).

- (d) part of Veolia's and Suez's hazardous waste landfill activities and all of Suez's activities in the incineration and physico-chemical treatment of hazardous waste in France.
17. On 31 January 2022, Veolia completed the sale of the New Suez Divestment Business (which also included the 'Suez' brand) to a consortium of investors (the **New Suez Consortium**).^{14, 15} Under the terms of this transaction, Veolia may use the 'Suez' brand for the Suez business it retains after the sale of the New Suez Divestment Business for a fixed transitional period following transaction completion.¹⁶ The Suez UK Waste Business and the Suez Global WTS Business will continue to operate under the 'Suez' brand until such time the CMA grants the necessary derogations under the IEO.
18. In relation to Veolia's commitment under the EC remedies to divest the Veolia EEA MWS Divestment Business, the CMA notes that the divestiture package includes Veolia's UK mobile water services business and assets, which are engaged in the national supply of mobile water services in the UK, where the CMA has provisionally found an SLC. The implications of this element of the EC remedies on the CMA's consideration of possible remedies are discussed below under the section on possible remedies to remedy the Provisional Water SLCs. Given this overlap, the sale of the Veolia EEA MWS Divestment Business is also subject to prior CMA approval (by way of a derogation under the IEO), which the CMA has not yet granted.
19. At the time of this Remedies Notice, other than the sale of the New Suez Divestment Business, the other divestiture transactions required under the EC Remedies have yet to complete.

The CMA's initial views on possible remedies

20. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the provisional SLCs or any resulting adverse effects.
21. In merger inquiries, the CMA will generally prefer structural remedies, such as divestiture (if the merger is completed) or prohibition, rather than behavioural

¹⁴ The New Suez Consortium comprises Meridiam SAS, Global Infrastructure Partners LLC, Caisse des Dépôts et Consignations and its subsidiary CNP Assurances. The New Suez Divestment Business will be jointly controlled by Meridiam SAS and Global Infrastructure Partners LLC. Caisse des Dépôts et Consignations and its subsidiary CNP Assurances will not exercise any control over the New Suez Divestment Business. Source: paragraphs 5 and 6 of the [EC decision dated 19 January 2022](#) (in French) to approve the purchaser of the New Suez Divestment Business.

¹⁵ The CMA granted the necessary derogations from the Initial IEO to permit the divestiture of certain of Suez's UK and UK-related assets that formed part of the New Suez Divestment Business. These derogations are the [18 October derogation](#) and the [14 December derogation](#).

¹⁶ Paragraphs 3, 4 and 16 of the [EC decision dated 19 January 2022](#) (in French) to approve the purchaser of the New Suez Divestment Business.

remedies designed to regulate the ongoing conduct of the merger parties or control market outcomes (eg prices) following the merger,¹⁷ because:¹⁸

- (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring the rivalry that would be lost as a result of the merger;
- (b) behavioural remedies generally give rise to risks around specification, circumvention, market distortion and/or monitoring, and may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and
- (c) structural remedies do not normally require ongoing monitoring and enforcement once implemented.

22. The CMA currently considers that a behavioural remedy is very unlikely to be an effective remedy given the CMA's initial view that there are significant risks in designing effective behavioural remedies that could comprehensively address the SLCs and resulting adverse effects the CMA has provisionally found.¹⁹ This is in particular due to the broad scope of the adverse effects across multiple markets the CMA has provisionally identified in this case and the need for extensive and ongoing monitoring.²⁰ For example, the CMA considers that it would not be possible to specify with sufficient precision, the form of conduct or market outcome required to address effectively the wide-ranging SLCs and resulting adverse effects identified in the Provisional Findings (see paragraph 3 above).
23. The CMA will however consider any behavioural remedies put forward as part of this consultation, including any behavioural remedies that may be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the provisional SLCs or any resulting adverse effects.

¹⁷ [Merger Remedies: CMA87](#) (13 December 2018), section 7 for further guidance on behavioural remedies.

¹⁸ [Merger Remedies: CMA87](#) (13 December 2018), paragraph 3.5.

¹⁹ The design of behavioural remedies should seek to avoid four particular forms of risk to enable these measures to be as effective as possible: (a) *Specification risks*: these risks arise if the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance; (b) *Circumvention risk*: as behavioural remedies generally do not deal with the source of an SLC, it is possible that other adverse forms of behaviour may arise if particular forms of behaviour are restricted; (c) *Distortion risks*: these are risks that behavioural remedies may create market distortions that reduce the effectiveness of these measures and/or increase their effective costs; and (d) *Monitoring and enforcement risks*: even clearly specified remedies may be subject to significant risks of ineffective monitoring and enforcement, eg due to the volume and complexity of information required to monitor compliance; limitations in monitoring resources; asymmetry of information between the monitoring agency and the business concerned; and the long timescale of enforcement relative to a rapidly moving market. See also [Merger Remedies: CMA87](#) (13 December 2018), section 7 for further guidance on behavioural remedies.

²⁰ The circumstances in which behavioural remedies are more likely to be used as the primary source of remedial action are set out in [Merger Remedies: CMA87](#) (December 2018), paragraph 7.2.

24. The CMA first sets out below the considerations for the design of effective divestiture remedies before setting out the possible structural remedies to address the Provisional Waste SLCs and the Provisional Water SLCs.

Considerations for the design of effective divestiture remedies

25. In evaluating possible divestitures as a remedy to the provisional SLCs it has provisionally found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. The CMA's guidance on remedies sets out three categories of risk that can impair the effectiveness of any divestiture remedy:²¹
- (a) composition risk arises if the scope of the divestiture business is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
 - (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available; and
 - (c) asset risk arises if the competitive capability of the divestiture business deteriorates before completion of the divestiture.
26. When considering composition risk, to be effective in remedying the SLCs the CMA has provisionally found and their resulting adverse effects, any divestiture package would need to be appropriately configured to address all of the provisional SLCs; be attractive to potential purchasers; and to enable the purchaser to compete as an effective competitor and restore the competitive constraint imposed by Suez that would be lost under the Merger. In general, the CMA has a preference for avoiding 'mix-and-match' divestitures, eg a combination of Veolia's and Suez's assets, which can create additional composition risks such that a divestiture package will not function effectively.²²
27. In defining the scope of a divestiture package that will address any SLCs, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.²³ The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete

²¹ [Merger Remedies: CMA87](#) (13 December 2018), paragraph 5.3.

²² [Merger Remedies: CMA87](#) (December 2018), paragraph 5.16.

²³ [Merger Remedies: CMA87](#) (December 2018), paragraph 5.7.

business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.²⁴

28. When considering purchaser risk, the CMA will normally wish to be satisfied that a prospective purchaser:²⁵
- (a) is independent of the merger parties;
 - (b) has the necessary capability to compete;
 - (c) is committed to competing in the relevant markets; and
 - (d) will not create further competition concerns.
29. When considering asset risk, the CMA will seek to ensure an effective divestiture process that will protect the competitive potential of any divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale. The process should also allow prospective purchasers to make an appropriately informed acquisition decision.²⁶ As such, the CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with divestiture.

Possible remedies to address the Provisional Waste SLCs

30. In the Provisional Findings, the CMA provisionally found that in the UK supply of waste management services, the UK waste management services business of each of the Parties operates substantially across the entire supply chain (in the collection of municipal and C&I waste, waste recycling and sorting and in the operation of MRFs, ERFs, landfill and composting facilities) (the **UK Waste Business**) and operates in all of the markets where the CMA has provisionally found the Provisional Waste SLCs. The CMA also provisionally found that the Parties derive some competitive strength from operating across the waste management supply chain.²⁷
31. The CMA's initial view is that a full divestiture of the entire UK Waste Business of either Veolia or Suez represents the only effective remedy that could address the Provisional Waste SLCs and their resulting adverse effects,

²⁴ Purchaser risk refers to the risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser; composition risk refers to the risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market; *Merger Remedies: CMA87* (December 2018), paragraph 5.3 and 5.12.

²⁵ *Merger Remedies: CMA87* (December 2018), paragraphs 5.20 and 5.21.

²⁶ *Merger Remedies: CMA87* (December 2018), paragraph 5.33.

²⁷ Provisional Findings, Chapter 5.

and that the risks in terms of its effectiveness (in relation to composition, purchaser and asset risks) are very low.

32. The CMA would expect a divestiture of the UK Waste Business of one of the Parties to restore fully the loss in the competitive constraint arising from the Merger and represent a comprehensive solution to all aspects of the Provisional Waste SLCs and their resulting adverse effects.
33. Other than a full divestiture of the UK Waste Business of one of the Parties, the CMA has not, at this stage, been able to identify another structural remedy, including a smaller or differently configured divestiture package (eg the sale of individual contracts or the sale of separate packages of assets to a single or multiple purchasers), that could form the basis of an effective remedy to address comprehensively the Provisional Waste SLCs. The CMA's initial view is that any partial divestiture package is very unlikely to be effective given the extensive scope of the SLCs which the CMA has provisionally found in multiple markets across the waste management supply chain and the need for the remedy to restore competitive conditions in the bidding for integrated contracts and other large contracts to those that would have prevailed absent the Merger.
34. The CMA's initial view is that anything less than a full divestiture of the UK Waste Business will give rise to significant risks in terms of its effectiveness, in particular in relation to composition risks that could undermine the divested business's ability to compete effectively in the markets where the CMA has found Provisional Waste SLCs. As the UK Waste Business operates as a single, integrated business at present,²⁸ the CMA considers that a partial divestiture package also gives rise to significant risks in terms of its implementation, including the risks inherent in carving-out, replicating, transferring and/or integrating elements that may be necessary to comprise an effective divestiture package.
35. The CMA's initial view is therefore that a divestiture of the UK Waste Division of either Veolia or Suez to a purchaser approved by the CMA represents the only effective remedy to the Provisional Waste SLCs.

Possible remedies to address the Provisional Water SLCs

36. Veolia's and Suez's activities in the UK markets where the CMA has provisionally found the Provisional Water SLCs are undertaken by Veolia UK (for O&M services for water and wastewater treatment facilities to industrial

²⁸ Provisional Findings, Chapter 5.

customers) and Veolia Water Technologies (**VWT**) (for mobile water services) and the Suez Global WTS Business respectively.²⁹

37. As mentioned in paragraphs 16 to 19 above, Veolia's commitments to the EC under the EC Remedy include the sale of the Veolia EEA MWS Divestment Business (currently a part of Veolia's VWT business), which also includes Veolia's UK business and assets used in the national supply of mobile water services (where the CMA has provisionally found an SLC). The CMA is currently considering whether the sale of the Veolia EEA MWS Divestment Business will also address the provisional SLC the CMA has found in relation to mobile water services in the UK. To do this, the CMA will liaise closely with the EC.
38. Provided that the sale of the Veolia EEA MWS Divestment Business also addresses the CMA's provisional SLC in mobile water services, the CMA's initial view is that this will represent an effective remedy. However, at this stage, and mindful of the CMA's statutory duty under the Act to address comprehensively all of the SLCs it finds, in this Remedies Notice, the CMA will first consult on a range of possible remedy options to address the SLCs it has provisionally found, including a potentially broader divestiture package than that required under the EC Remedy if it is necessary to do so to fulfil the CMA's duties.
39. During the CMA's investigation, the CMA has received some evidence that indicates that a carve-out of Suez's UK businesses in the markets where the CMA has provisionally found the Provisional Water SLCs, from the Suez Global WTS Business, might not be feasible and could potentially have a detrimental impact on both the business being carved out and the remaining Suez Global WTS Business. This is in contrast to the evidence which the CMA considered in relation to Suez's UK Waste Business, which indicates that Suez's UK Waste Business has in the past and continues to operate on a largely stand-alone basis, with no material risks arising from its carve-out from the rest of the Suez group businesses.
40. The CMA is therefore considering whether a divestiture package necessary to address the Provisional Water SLCs should be wider than the relevant UK businesses, including potentially a global divestiture of the Suez Global WTS Business (it is unclear at this stage, whether the same is the case for Veolia's global VWT business). However, the CMA will examine whether a smaller divestiture package will be effective and feasible for the purpose of addressing the Provisional Water SLCs.

²⁹ Provisional Findings, Chapter 2.

41. Therefore, at this stage, the CMA has yet to form an initial view on the scope of a divestiture package(s) that would constitute the smallest viable, stand-alone business(es) (see also paragraph 27 above) that can be divested in order for it (them) to compete successfully on an ongoing basis and that includes all the relevant operations to address comprehensively the Provisional Water SLCs, namely:
- (a) the supply of O&M services for water and wastewater treatment facilities to industrial customers in the UK; and
 - (b) the supply of mobile water services in the UK.
42. In determining an appropriate remedy to address the Provisional Water SLCs, the CMA will examine whether it can identify a divestiture package that represents a viable, stand-alone business (rather than a collection of assets) that can compete effectively in the relevant markets on an ongoing basis:
- (a) To address the provisional SLC in the O&M of water and wastewater treatment facilities for industrial customers in the UK, the CMA will explore the following possible divestiture options:
 - (i) a divestiture of the UK operations of either Veolia or Suez, which engage in the supply of O&M of water and wastewater treatment facilities for industrial customers in the UK; or
 - (ii) a divestiture of a broader divestiture package that goes beyond the UK operations of either Suez or Veolia that engage in the supply of O&M of water and wastewater treatment facilities for industrial customers.
 - (b) To address the provisional SLC in the national supply of mobile water services in the UK, the CMA will explore the following possible divestiture options:
 - (i) a divestiture of the Veolia EEA MWS Divestment Business as required by the EC Remedy on the basis that it already includes Veolia's mobile water services business in the UK (under this option, the CMA will expect to carry out its own assessment of the remedy's effectiveness, and to require prior CMA approval of the eventual purchaser of the Veolia EEA MWS Divestment Business);
 - (ii) a divestiture of Suez's mobile water services business in the UK; or
 - (iii) a divestiture of a broader divestiture package that goes beyond the UK operations of either Suez or Veolia (including the Suez Global

WTS Business or Veolia's global VWT business), which engage in the national supply of mobile water services in the UK.

43. In paragraph 55 below, the CMA invites views on which of the above options may be effective in addressing the Provisional Water SLCs, or whether it should consider other alternative divestiture options.
44. Subject to the CMA's assessment of the risks associated with any divestiture package(s) which the CMA considers could address the Provisional Water SLCs, the CMA will consider whether it would also be necessary to:
 - (a) require an upfront buyer(s) (see footnote for details);³⁰ and/or
 - (b) make available an alternative divestment package (sometimes referred to as a 'crown jewel' remedy, as an alternative to the primary divestiture package),³¹ eg if there is doubt as to the marketability of the initially proposed divestiture package or where a business is subject to major asset risks and the speed of divestiture is likely to be a critical requirement.
45. As part of the CMA's consideration of the above divestiture options (set out in paragraph 42 above), the CMA will consider whether these should only be Veolia divestitures (or only Suez divestitures) given the CMA's preference for avoiding 'mix-and-match' divestitures (see also paragraph 26 above), and whether they should be sold to a single purchaser or to separate purchasers. As mentioned in paragraph 25 above, in evaluating possible divestitures as a remedy to the Provisional Water SLCs, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks (in particular, composition, purchaser and asset risks).

Other possible remedies to address the provisional SLCs

46. The CMA will consider any other practicable remedies – whether structural or behavioural in nature – that the Parties, or any interested third parties, may propose that could be effective in comprehensively addressing the Provisional

³⁰ Following publication of the final report, the CMA has the choice of implementing remedies by obtaining Final Undertakings from the relevant parties or making a Final Order. The CMA is subject to a statutory deadline of 12 weeks following its final report to accept Final Undertakings or to make a Final Order. If Veolia is required to procure an upfront buyer for the business it is required by the CMA to divest, Veolia will be required to procure a suitable purchaser prior to the CMA's acceptance of Final Undertakings (or the CMA making a Final Order). Conversely, in the event that Veolia is not required to procure an upfront buyer, Veolia will be provided with a period of time (the CMA normally grants up to six months) following the CMA's acceptance of Final Undertakings or the CMA making a Final Order, to complete the sale. Source: [Merger Remedies: CMA87](#) (13 December 2018), paragraphs 4.67, 4.68, 5.28 to 5.32 and 5.41.

³¹ [Merger Remedies: CMA87](#) (13 December 2018), paragraphs 5.17 to 5.49.

Waste SLCs and/or the Provisional Water SLCs and any resulting adverse effects.

47. Where the Parties propose remedy options for the CMA's consideration, the CMA's engagement on remedies with limited prospect of being effective can reduce the CMA's ability to engage on remedies that have a greater prospect of being effective. Therefore, in keeping with the CMA's guidance on remedies and in view of the statutory deadline for the CMA to publish its final decision on any SLCs and remedies, the CMA will not conduct a detailed consideration of the Parties' proposed remedies unless the Parties can demonstrate that their proposed remedy options will address effectively all of the provisional SLCs and their resulting adverse effects identified in the Provisional Findings (see also paragraph 11 above for the various dimensions of the CMA's assessment of effectiveness).³²
48. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the provisional SLCs or any resulting adverse effects.

Consultation on possible remedies

49. The CMA invites comments on possible remedies and submissions on the CMA's questions below.
50. As mentioned in paragraphs 30 to 45 above, the CMA's current view is that:
- (a) a full divestiture of either Veolia's or Suez's UK Waste Business is likely to represent the only effective and proportionate remedy to the Provisional Waste SLCs (and any resulting adverse effects) and that the risks in terms of its effectiveness (in particular in terms of composition and purchaser risks) are low; and
 - (b) at this stage, the CMA has yet to form an initial view on the appropriate scope of the Water Divestment Businesses, eg the O&M Water Divestment Business or the Mobile Water Divestment Business.
51. For ease of reference and for the purpose of the CMA's consultation on possible remedies and its questions below:

³² [Merger Remedies](#): CMA87 (13 December 2018), paragraph 4.57.

- (a) a possible divestiture package comprising the smallest viable stand-alone business necessary to address the provisional SLC in the supply of O&M of water and wastewater treatment facilities for industrial customers in the UK, is referred to as the **O&M Water Divestment Business**;
 - (b) a possible divestiture package comprising the smallest viable stand-alone business necessary to address the provisional SLC in the national supply of mobile water services in the UK, is referred to as the **Mobile Water Divestment Business**; and
 - (c) the O&M Water Divestment Business and the Mobile Water Divestment Business together, are referred to as the **Water Divestment Businesses**.
 - (d) The CMA notes that for each of the above terms, the scope of the divestiture package could include non-UK assets.
52. The CMA has not, at this stage, formed a view on whether any divested businesses (ie the UK Waste Business and the Water Divestment Businesses) should be sold to a single purchaser or to separate purchasers.
53. In order to address any potential composition, purchaser and asset risks (see paragraphs 25 to 29 above, and ensure the effectiveness of a divestiture remedy, the CMA will have regard to the following critical elements of its design:
- (a) the scope of the divestiture package;
 - (b) identification and availability of a suitable purchaser; and
 - (c) ensuring an effective divestiture process.
54. **Invitation for views on the scope of the divestiture package needed to address the Provisional Waste SLCs:**
- (a) The CMA invites views on whether a full divestiture of either Veolia's or Suez's UK Waste Business would represent an effective remedy to the Provisional Waste SLCs and/or any resulting adverse effects, and the reasons why.
 - (b) Given that Suez's UK Waste Business no longer owns the 'Suez' brand (see paragraph 17 above) and therefore, that brand cannot be divested alongside any divestiture of Suez's UK Waste Business, the CMA invites views on:
 - (i) what impact no longer being permitted to use the 'Suez' brand would have on the ability of Suez's UK Waste Business to compete

effectively in the relevant markets where the CMA has found the Provisional Waste SLCs; and

- (ii) how the risk of this impact may be appropriately mitigated (eg by requiring the divestiture to a purchaser with an equally strong brand in the relevant markets or requiring the divestiture of Veolia's UK Waste Business, together with the 'Veolia' brand).
- (c) The CMA invites views on whether Veolia should be given the choice of whether to divest the UK Waste Business of Veolia or Suez, in the event one of those remedies is required.
- (d) The CMA invites views on whether a broader divestiture package than the UK Waste Business (eg the need to include assets outside the UK) would be necessary to ensure an effective remedy, and if so, what the appropriate scope of the package of assets to be divested should be, and why.
- (e) The CMA invites views on whether a smaller divestiture package (eg a partial divestiture of some, but not all, of the assets of either Party's UK Waste Business) could also be an effective remedy, and if so:
 - (i) what the appropriate scope of the package of assets to be divested should be, and which assets should be excluded from the scope of the divestiture package and why;
 - (ii) whether there are any risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the relevant markets where Provisional Waste SLCs have been found; and
 - (iii) what the possible carve-out and separation risks could be of divesting the smaller divestiture package.
- (f) The CMA invites views on whether it would be necessary for either Party's UK Waste Business, the O&M Water Divestment Business and the Mobile Water Divestment Business to be sold to a single purchaser in order to ensure that the remedy effectively addresses the Provisional Waste SLCs and the Provisional Water SLCs. If so, why would this be necessary to ensure remedy effectiveness?

55. Invitation for views on the scope of the divestiture package needed to address the Provisional Water SLCs:

- (a) The CMA invites views on the scope of the divestiture package that would be necessary to address comprehensively the Provisional Water SLCs, and in particular, the assets and attributes that would be needed in order for the divested business to be fully stand-alone and to restore fully the competition in the relevant markets between Suez and Veolia that could be expected in the absence of the Merger, by:
- (i) the O&M Water Divestment Business; and
 - (ii) the Mobile Water Divestment Business.
- (b) The CMA invites views on whether the CMA should specify which Party's Water Divestment Businesses should be divested (in the event remedies are required) or whether Veolia should be given the choice of divesting either Veolia's or Suez's Water Divestment Businesses.
- (c) The CMA invites views on whether:
- (i) the O&M Divestment Business and the Mobile Water Divestment Business should be sold to a single purchaser or to separate purchasers, in the event a divestiture is required, and why;
 - (ii) (unless covered in your response above), there are any synergies arising from a single purchaser operating both the O&M Divestment Business and the Mobile Water Divestment Business; and
 - (iii) (unless covered in your response above), there are any synergies between each Party's Water Divestment Businesses (eg its O&M Divestment Business and Mobile Water Divestment Business) and its wider, global business (eg Suez Global WTS Business for Suez and the VWT business and Veolia's non-UK operations for Veolia), which should be preserved under a possible divestiture remedy.
- (d) Unless covered in your response above, the CMA invites views on each of the possible divestiture options set out in paragraph 42 above, and which options are likely to be effective in addressing the Provisional Water SLCs and why. The CMA also invites views on the potential carve-out and separation risks associated with the implementation of each of these possible divestiture options.
- (e) Given that Suez no longer owns the 'Suez' brand (see paragraph 17 above) and therefore, that brand cannot be divested alongside any divestiture of Suez's Water Divestment Businesses, the CMA invites views on:

- (i) what impact no longer being permitted to use the 'Suez' brand would have on the ability of Suez's O&M Divestment Business or Suez's Mobile Water Divestment Business to compete effectively in the relevant markets where the CMA has found the Provisional Water SLCs; and
- (ii) how the risk of this impact may be appropriately mitigated (eg by requiring the divestiture to a purchaser with an equally strong brand in the relevant markets or requiring the divestiture of Veolia's Water Divestment Businesses, together with the 'Veolia' brand).

56. Invitation for views on the identification and availability of a suitable purchaser for: (i) the UK Waste Business; and (ii) the Water Divestment Businesses:

- (a) Unless covered in your responses to the questions above, the CMA invites views on whether it is necessary for a purchaser of the UK Waste Business to also be the purchaser of any Water Divestment Businesses.
- (b) The CMA's normal criteria for a suitable purchaser is set out in paragraph 28 above. The CMA invites views on whether in the particular circumstances of this case or the relevant markets, there are any other specific factors or requirements to which the CMA should pay particular regard in assessing purchaser suitability.
- (c) The CMA invites views on whether there are any specific purchasers or types of purchaser which should be ruled out as potentially suitable purchasers, and if so why.
- (d) The CMA invites views on the risks that a suitable purchaser is not available or that the Parties will be incentivised to divest a divestment business to a weak or otherwise inappropriate purchaser.
- (e) The CMA invites views on whether the risks associated with a divestiture of the Water Divestment Businesses will necessitate the requirement for an upfront buyer (see also footnote 30 and paragraph 44 above).

57. Invitation for views on ensuring an effective divestiture process for: (i) the UK Waste Business; and (ii) the Water Divestment Businesses:

- (a) The CMA invites views on the appropriate timescale for achieving a divestiture (the **Initial Divestiture Period**).³³
- (b) The CMA invites views on the risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture, and whether the functions of the Monitoring Trustee (see paragraph 7 above) should be expanded to oversee the divestiture process and to ensure that the operations and assets to be divested are maintained and properly supported during the course of the process.
- (c) Where the CMA has not required an upfront buyer (see footnote 30 above), the CMA has the power to mandate an independent divestiture trustee to dispose of the divestiture package at no minimum price if: (i) parties fail to procure divestiture to a suitable purchaser within the Initial Divestiture Period; or (ii) the CMA has reason to expect that the parties will not procure divestiture to a suitable purchaser within the Initial Divestiture Period.³⁴ In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of this Merger necessitate such an approach.

Cost of remedies and proportionality

- 58. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. In relation to completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the Parties as a result of a divestiture remedy.³⁵
- 59. When considering relevant costs, the CMA's considerations may include (but are not limited to):³⁶
 - (a) distortions in market outcomes;

³³ The initial divestiture period will normally commence once the CMA has accepted final undertakings or made a final order (up to 12 weeks after the final report) in relation to the required remedy in the CMA's final report. The length of this initial divestiture period will depend on the circumstances of the merger, but will normally be a maximum period of six months (see also [Merger Remedies: CMA87](#) (13 December 2018), paragraph 5.41).

³⁴ [Merger Remedies: CMA87](#) (13 December 2018), paragraph 5.28.

³⁵ [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.9.

³⁶ [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.10.

- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
 - (c) the loss of any relevant customer benefits (**RCBs**) that may arise from the Merger which are foregone as a result of the remedy (see paragraphs 60 and 61 below).
60. RCBs are limited by the Act to benefits to relevant customers³⁷ in the form of:³⁸
- (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or
 - (b) greater innovation in relation to such goods or services.'
61. The Act provides that a benefit is only an RCB if:³⁹
- (a) it may be expected to accrue to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
 - (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
62. **Invitation for views on the cost of remedies and RCBs:**
- (a) The CMA invites views on what relevant costs are likely to arise (if any) in implementing the different remedy options the CMA is considering, or any remedies you wish to put forward for the CMA's consideration..
 - (b) The CMA invites views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options the CMA is considering, or any remedies you wish to put forward for the CMA's consideration.

Next steps

63. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by **2 June 2022** (see Note (i)).

³⁷ For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution and are therefore not limited to final consumers. See also section 30(4) of the Act.

³⁸ Section 30(1)(a) of the Act, see also [Merger Remedies: CMA87](#) (December 2018), paragraph 3.17.

³⁹ Section 30(3) of the Act, see also [Merger Remedies: CMA87](#) (December 2018), paragraph 3.19.

64. A copy of this Remedies Notice will be posted on the CMA case page.⁴⁰

Stuart McIntosh
Inquiry Group Chair
19 May 2022

Note

- (i) This notice of possible actions to remedy, mitigate or prevent the provisional SLCs and/or any resulting adverse effects is made having regard to the Provisional Findings announced on **19 May 2022**. The Parties have until **9 June 2022** to respond to the Provisional Findings. The CMA's findings may alter in response to comments it receives on its Provisional Findings, in which case the CMA may consider other possible remedies, if appropriate.

⁴⁰ A copy of this Remedies Notice and the Provisional Findings can be found on the CMA's case page [here](#).