

The acquisition by Veolia Environnement S.A. of Suez S.A.

Summary of provisional findings

Notified: 19 May 2022

1. The Competition and Markets Authority (**CMA**) has provisionally found that the acquisition by Veolia Environnement S.A. (**Veolia**) of Suez S.A. (**Suez**) may be expected to result in a substantial lessening of competition (**SLC**) in the United Kingdom (**UK**) as a result of horizontal unilateral effects in the supply of:
 - (a) non-hazardous municipal waste collection services;
 - (b) operation and maintenance (**O&M**) services for material recovery facilities (**MRF**) to local authorities;
 - (c) O&M services for energy recovery facilities (**ERFs**) to local authorities;
 - (d) the supply of waste disposal services by incineration in the local areas surrounding Suez's Wilton 11 and Teesside ERFs;
 - (e) non-hazardous commercial and industrial (**C&I**) waste collection services;
 - (f) O&M services for water and wastewater treatment facilities to industrial customers; and
 - (g) Mobile water services (**MWS**).
2. We currently consider that the acquisition of Suez by Veolia, compared to the situation without the acquisition, will remove an important competitor from several markets, 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. This could affect potentially millions of UK households and businesses.

Background

3. On 21 December 2021, the CMA in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), referred the acquisition by Veolia of Suez

for further investigation and report by a group of independent panel members (the **Inquiry Group**) on the following questions in accordance with [section 36\(1\)](#) of the Act:

- (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation may be expected to result in a SLC within any market or markets in the UK for goods or services.
4. We are required to publish our final report by 17 July 2022.
 5. In coming to our provisional findings we have contacted over 100 local authorities and received responses from around 40% of them. We contacted approximately 200 commercial customers in waste and water services as well as large and small competitors in waste and water services.

The Parties

6. The Parties are large, multinational waste and water management companies. Veolia is the largest waste the company operating in the UK and Suez is one of the largest. Veolia and Suez are also the two largest water management companies active in the UK.
7. Veolia is active globally in water, waste, and energy management solutions, and in other related activities. Headquartered in Paris, Veolia is listed on the Euronext Stock Exchange in Paris. In 2020, Veolia generated consolidated global revenues of around £22 billion, of which around £2 billion (or approximately 10%) was generated in the UK.
8. Veolia's main activities in the UK are:
 - (a) *Waste management services*: Veolia is active in the collection, sorting, treatment, and disposal of non-hazardous waste for municipal and commercial customers. It is also active in collecting and treating hazardous, healthcare, and electrical waste.
 - (b) *Water management services*: Veolia supplies services for the O&M of water and wastewater treatment plants, which process water and wastewater, and the maintenance of sewerage systems.
 - (c) *Water management technologies*: Veolia is active in water management technology, partly through its Veolia Water Technologies (**VWT**) business. These activities relate primarily to the design and construction of water and wastewater treatment facilities, the supply of technological and engineering solutions for water and wastewater treatment systems, the

provision of mobile water and wastewater treatment services, and the supply of water treatment chemicals; and

(d) *Energy business*: Veolia offers services related to industrial energy, heat networks, and combined heat and power, facilities management, and demolition and decommissioning.

9. Suez is a global provider of waste management, water management, water equipment and water technology services. In 2020, Suez generated consolidated global revenues of around £15 billion, including around £1 billion (approximately 7%) in the UK.

10. Suez's main activities in the UK are:

(a) *Waste management services*: Suez is active in the collection, sorting, treatment, and disposal of non-hazardous waste for municipal and commercial customers. Suez is also active in the hazardous waste sector; and

(b) *Water management services*: Suez's UK water management services relate to the O&M of water and wastewater treatment plants. Suez's water technologies services, conducted principally through its Water Technologies & Solutions (**WTS**) subsidiary, include the design and supply of water and wastewater treatment facilities, the supply of technological solutions and equipment for water and wastewater treatment systems, and the provision of mobile water and wastewater treatment services.

11. We refer to Veolia and Suez collectively as **the Parties**.

The transaction and jurisdiction

12. On 5 October 2020, Veolia acquired 29.9% of Suez (**the completed transaction**) from Engie S.A. and announced its intention to launch a public offer for all of Suez's remaining issued share capital (**the anticipated transaction**). Initially the bid was hostile but on 14 May 2021 Veolia and Suez announced that they had reached an agreement regarding the anticipated transaction. On 27 January 2022, Veolia completed its acquisition of the remaining issued share capital of Suez.

13. We refer to the completed transaction and the anticipated transaction together as **the Merger**.

14. We have provisionally found that the Merger meets the relevant jurisdictional test under the Act.

The counterfactual

15. In order to assess the effects of a merger on competition, we consider the prospects for competition with the merger against what would be the competitive situation without the merger, which is called the counterfactual.
16. Veolia submitted that the appropriate counterfactual is the 'current or pre-existing competitive situation', ie the pre-Merger conditions of competition. We agree and have adopted a counterfactual based on the pre-Merger conditions of competition.

Non-hazardous waste management in the UK

17. We have assessed the effect of the Merger on competition for various non-hazardous waste management services and two water management services. We start by summarising our provisional findings in waste management services.
18. Managing the UK's non-hazardous waste involves a number of stages.
19. The first stage is collection. For municipal customers (eg local authorities) the waste is generally collected at the kerbside. Depending on the local area this might include separate collections for organic waste (eg food and garden waste), recyclables and the remaining, or residual, waste. Separately, waste is collected from businesses (ie C&I customers).
20. Some waste is not collected at the kerbside but rather is taken to a recycling centre by households. Nevertheless, this waste is also included in the waste management chain.
21. The second stage involves sorting. Recyclable waste is taken to a sorting centre, or MRF, to extract and separate each type of recyclable material (eg plastic, glass, paper) that can be sold to businesses that use these materials as an input into their own operations.
22. At the third stage the remaining waste is disposed of. The disposal method depends on the nature of the waste.
23. Organic waste is composted. In broad terms, composting is undertaken using one of two methods depending on the type of waste included: (i) in-vessel composting facilities process food and garden waste in an enclosed container or vessel; whereas (ii) open-windrow composting (**OWC**) facilities process garden waste only. Our inquiry has focused on OWC.
24. Residual waste is disposed of using one of three methods:

- (a) Waste can be incinerated at an ERF. Incineration is used to create heat or to generate energy, either for a business' own requirements or for the sale of electricity to National Grid;
- (b) Waste can be sent to landfill; or
- (c) Waste can be exported (and it may be converted into energy at the importing country).

How the Merger will affect competition in waste management services

25. We have examined the impact of the Merger on several areas of activity in which the Parties compete at present:
- (a) non-hazardous municipal waste collection services;
 - (b) O&M services for MRFs to local authorities;
 - (c) O&M services for ERFs to local authorities;
 - (d) the supply of waste disposal services by incineration in the local areas surrounding Suez's Wilton 11 and Teesside ERFs;
 - (e) OWC services; and
 - (f) non-hazardous C&I waste collection services;
26. In each of these areas, we have considered whether the Merger is likely to give rise to horizontal unilateral effects. Unilateral effects can arise when one firm merges with a direct 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, service and innovation) on its own.

The Parties compete for large and complex contracts

27. Local authority requirements in respect of waste management vary considerably. Before assessing the effects of the Merger on competition for specific waste management services, we therefore assessed how the variability in local authority requirements might affect conditions of competition in these markets. Some local authority requirements might be complex (ie materially risky and/or difficult to fulfil) and, as a result, these customers might see relatively little competition for their waste management contracts. If this is

the case, then these local authority requirements should receive closer scrutiny as part of our competitive assessments.

28. We have found widespread agreement that some customer requirements are complex. Evidence provided to us from local authorities, competitors and the Parties provide some indication of the type of factors that they consider make the requirements for some local authority contracts to be more complex and more difficult to fulfil relative to other local authority waste management contracts. These complex requirements typically have one or more of the following characteristics. Such contracts:
- (a) are integrated (ie bundle several waste management services);
 - (b) are of a large size;
 - (c) involve the provision or maintenance of waste management infrastructure;
 - (d) have a long duration making it difficult to assess risk;
 - (e) are operationally complex to fulfil;
 - (f) are relatively difficult to execute and involve a variety of risks;
 - (g) are awarded by local authority partnerships;
 - (h) involve handling multiple waste flows (eg residual waste, recyclates, organic waste); and/or
 - (i) have a procurement process which is more involved and costly.
29. Local authorities and suppliers have told us that Veolia and Suez are two of the main suppliers able to meet customers' complex requirements. The other large suppliers in this regard are Biffa, Viridor and FCC (and sometimes Urbaser).
30. This evidence, in conjunction with other evidence, indicates that the Parties compete closely for local authority contracts which are more complex than other local authority contracts:
- (a) 10 local authorities said that their specific requirements meant that the Merger would reduce the set of potential suppliers for their contracts. In particular, these local authorities were concerned about competition for large, sometimes integrated, waste management contracts.
 - (b) Some local authorities told us that the Parties' position in various services across the waste management chain made them particularly well positioned to compete for integrated contracts involving multiple services.

Some rival suppliers, such as Biffa, Serco and Viridor, are not present across the waste management chain to the same extent as the Parties which sometimes limits their competitive constraint on the Parties (eg Biffa and Serco do not have a presence in incineration of waste whereas Viridor does not collect waste). The extent to which these suppliers are able to compete against Veolia and Suez is therefore dependent on the services included in the contract.

- (c) While competitors indicated to us that several suppliers can compete for integrated local authority contracts (in particular, Veolia, Suez, FCC, Biffa, Viridor and, to a lesser extent, Urbaser) they also indicated that Veolia and Suez are the two strongest suppliers for these contracts.
 - (d) Further, while the Parties can and do bid for contracts involving services relating to the collection of waste, the sorting of waste and the disposal of waste, some competitors do not bid, or bid infrequently, in tenders for contracts involving services for which they either do not have a presence or do not have a strong presence. Therefore, the Parties are closer competitors to each other than any of these suppliers.
31. We looked at how successful the Parties have been in winning contracts worth at least £10 million a year. Large value contracts are more likely to be related to complex customer requirements and contracts of this value account for the top quarter of all municipal non-hazardous waste management contracts. We have found that over the past five years the Parties have won over half of these contracts (and 60-70% of the value of these contracts).
32. For 13 contracts that were awarded to either Veolia and Suez and which are considered to be complex, local authorities told us that the suppliers who could credibly fulfil these contracts today are Veolia, Suez, FCC, Biffa and, to a lesser extent, Viridor. Veolia and Suez were identified by local authorities most frequently and were rated as the two strongest possible bidders.
33. Accordingly, we consider that a range of evidence shows that the complexity of contracts is an important factor that affects different suppliers' willingness and ability to compete. The evidence indicates that the Parties are likely to be close competitors for complex contracts and that some of the remaining constraints on the Parties may be weak when competing for complex contracts. The evidence suggests that a limited number of suppliers is capable of bidding for and winning these contracts, with the Parties being seen by customers as two of the most credible and highly rated providers. The Merger will reduce the number of bidders for these contracts.

34. We take this into account when assessing the effect of the Merger on competition for the individual waste management services (alongside the market-specific evidence set out in those chapters). In particular, where the contracts for specific waste management services involve complex requirements (whether for some customers or all customers), we consider that the Parties are likely to be closer competitors (because of their willingness and ability to compete for customers that have complex requirements) and that suppliers without the same capabilities to compete for complex requirements are likely to be weaker constraints

The supply of non-hazardous municipal waste collection services

35. Veolia and Suez compete to win municipal contracts for kerbside collection services from local authorities. Competition for these contracts takes place via bidding in formal tenders (within the applicable public procurement rules).
36. We have made our assessment on the basis of the supply of non-hazardous municipal waste collection services excluding self-supply in the UK. Although some local authorities self-supply either through their own in-house teams or through wholly-owned specialist companies (which are obliged to focus on that local authority not the requirements of other local authorities), other local authorities do not self-supply for various reasons and rely on the competition between private suppliers to get a good deal for their waste collection services.
37. On the basis of the number of households served by suppliers of non-hazardous municipal waste collection, the Parties together serve 30-40% of households. This is considerably more than any other supplier – FCC serves 20-30% of households while Biffa and Serco each serve 10-20% of households.
38. We examined 11 local authority contracts that we consider to be for complex requirements. These contracts ranged in value from £68 million to £1.2 billion.
39. Across this set of 11 contracts, we have found that, on average, there were fewer than three bidders identified by local authorities in the final round. No local authority identified any more than four bidders for any of the contracts. Veolia and Suez, together with Serco and Biffa, were identified as bidders more frequently than any other supplier.
40. The local authorities who hold these 11 contracts said that they expect Veolia, Suez, Biffa and Serco (and, to a lesser extent, FCC) would be the most credible suppliers if they were to re-tender the services covered by that contract.

41. Some local authorities (including around half of those with complex contracts) expressed concern about the Merger in relation to non-hazardous municipal waste collection services. They told us that there would be fewer bidders available for their tenders and prices might increase as a result.
42. Having considered all of the evidence available to us, we provisionally find that:
 - (a) The Merger will create the largest supplier of non-hazardous municipal waste collection services.
 - (b) The Parties regularly face competition from each other for collection contracts. Although Biffa, Serco, FCC and Urbaser will exert some competitive constraint on the Merged Entity, at least in some tenders, for the most complex contracts there is a smaller number of strong options for local authorities (Veolia, Suez, Serco and Biffa).
 - (c) The complex nature of these contracts (which for over half of them included other complex services such as the sorting of recyclables and/or the incineration of residual waste to generate energy) reduces the choice available to local authorities.
 - (d) Veolia and Suez are two of this small set of credible suppliers and the Merger will significantly reduce competition for these contracts.
43. On this basis, we provisionally find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of non-hazardous municipal waste collection services.

The supply of operation and maintenance services for material recovery facilities to local authorities

44. Our analysis of how the Parties compete for complex contracts identified the supply of O&M services to local authorities for MRFs as an area for further investigation.
45. MRFs sort non-hazardous waste before the recyclable waste is sold to businesses who use it as an input and the remaining, or residual, waste is sent away for further processing. However, there are differing levels of capabilities, sophistication and complexity between MRFs. For example, some MRFs are automated by employing optical sorting software and machinery using cameras and/or lasers that allow the optical sorter to detect different types of waste (eg metal, paper and plastic), while other MRFs use manual sorting using dedicated labour on picking lines.

46. We have undertaken our assessment on the basis of the supply of O&M services to local authorities for MRFs in the UK.
47. Veolia and Suez operate MRFs. Some use optical sorting and some use manual sorting.
48. Veolia and Suez together account for 40-50% of O&M of MRFs by capacity with an increment of 10-20% in share brought about by the Merger. Biffa accounts for around the same proportion of supply of O&M of MRFs by capacity. After the Merger, Biffa and the Parties will have 80-90% of the market. No other provider has a share exceeding 5%. The Merger therefore increases concentration significantly in a market that is already highly concentrated.
49. Having considered the evidence available to us we have found:
 - (a) The Merger would increase concentration by a significant degree in an already highly concentrated market. The competitor set is limited by the fact that some local authorities have a preference for large suppliers (with the ability to better manage the risks associated with the volatile market for various recycled materials and/or to enter into risk/profit sharing arrangements);
 - (b) The Parties are close competitors. Local authorities identified Veolia and Suez as the strongest and second-strongest suppliers in the market and our assessment of complex contracts indicates that the Parties would have been two of the three strong competitors (along with Biffa) for integrated contracts that include services related to MRFs; and
 - (c) The Parties would face limited competition after the Merger. Biffa is likely to be the only other strong competitor for complex contracts that include services related to MRFs (given that Viridor and FCC would be weaker competitors for complex contracts).
50. We provisionally find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of operation and maintenance of MRF services.

The supply of operation and maintenance of energy recovery facilities services

51. ERFs are used to incinerate residual waste in order to generate heating or energy (in the form of electricity) which can be either used onsite or sold to National Grid. Incineration is sold to those looking to dispose of residual waste at private ERFs or at public-private partnership (PPP) ERFs.

52. Providers of privately owned ERFs sell incineration services on fixed contracts or, if capacity allows, on the spot market.
53. PPP ERFs are built and managed on behalf of public authorities. Most of the ERF's operational capacity will typically be reserved for use by the local authority that commissioned the infrastructure via PPP contracts. The remaining capacity is usually controlled by the operator of the ERF and can be sold to other customers, subject in some cases to local authority authorisation (including other local authorities, C&I customers, or other waste management companies) or used to service its own waste treatment contracts. This is called Controlled Merchant Capacity (**CMC**). We refer to incineration capacity purchased both from private asset ERFs and CMC purchased from PPP-backed ERFs as 'merchant capacity'.
54. Many (but not all) public authority ERFs using the PPP model were built over 20 years ago. Very few of these ERFs have seen their O&M contracts come to an end yet but some will over the next few years. Once these contracts do come to an end, local authorities are very likely to put out to tender the O&M of the ERF for a new contract period. It is possible that some of these contracts will involve an element of refurbishment or upgrade to the ERF facilities.
55. We have investigated how the Merger will affect competition for those O&M services. Since there have been few O&M service contracts tendered in recent years, there is little evidence of competition in practice for this kind of contract that we can rely on. Instead, we have made our assessment on the basis of likely customer selection criteria which includes an assessment of the Parties' expertise, experience, and likely incumbency advantage compared to their rivals. We have also considered the Parties' own plans to compete for these contracts in the future. We have considered evidence and views from customers and the Parties' rivals.
56. We have assessed the Merger on the basis of supply of O&M services for ERFs to local authorities in the UK.
57. We asked local authorities what factors they consider to be the most important factors when deciding on their next O&M provider and they told us that that these included management and technical expertise and reliability of service, including access to contingency capacity.
58. We provisionally consider that the Parties have significant management and technical expertise and are the strongest suppliers in this regard. Veolia has the second largest network of ERFs in the UK and Suez has the third largest network of ERFs. Viridor is the largest operator in the UK and FCC the fourth

biggest. However, in terms of the number of accumulated years' experience of operating and maintaining ERFs, Veolia and Suez combined far outstrip any other supplier. The Parties' rivals – Viridor, FCC and Paprec – have also gained extensive management and technical expertise.

59. In regard to reliability and access to contingency capacity, we have considered whether suppliers can use landfill and/or the export of waste as contingency or whether the Parties' ERFs give them an advantage. Representations from local authorities indicate that landfill and export are undesirable contingencies since public policy objectives are to significantly reduce the use of landfill and to move to more sustainable practices (eg incineration for energy generation). However, the nature of contingency capacity is that it is sometimes called into use in short-term, emergency situations. Nevertheless, based on representations of by third parties we consider that suppliers that offer incineration options, instead of landfill and export, will likely be preferred by local authorities. In this regard Veolia and Suez are likely to have a competitive advantage over most other rivals (with the exception of Viridor and FCC).
60. We currently consider that an incumbent operator may have an advantage over other O&M operators when competing for new O&M contracts for ERFs (ie following the end of PPP contracts). Therefore, Veolia and Suez will have a competitive advantage with respect to more ERFs than any of their rivals. We also consider that the Parties' experience and scale advantages make them strong competitors to incumbents, including each other.
61. We asked local authorities to list the suppliers that they would consider credible if they were to retender their existing O&M for ERFs contracts and to indicate the strength of each supplier. Both Veolia and Suez were identified more frequently and rated more highly than any other supplier. After the Parties, FCC and Viridor were identified most frequently and rated more highly than the remaining competitors.
62. In a similar exercise with competitors, Veolia, Suez, Viridor and FCC were identified most frequently, with Veolia, Suez and Viridor receiving the highest average ratings.
63. Having considered all of the evidence available to us, we provisionally find that:
 - (a) Veolia and Suez manage the largest network of ERFs in the UK;
 - (b) Veolia and Suez are in a strong position to bid for and win future O&M services for ERFs contracts based on the criteria that local authorities set out and based on the views of local authorities and competitors;

- (c) O&M services for ERFs are complex services and therefore Veolia and Suez are likely to compete particularly closely (and face more limited competition from suppliers without the same willingness and ability to service complex contracts) including where O&M services for ERFs are bundled with other services for local authorities; and
 - (d) The Parties would face only limited competition after the Merger, with only Viridor and FCC likely to be strong competitors to the Parties.
64. We provisionally find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of operation and maintenance of energy recovery facility services.

The supply of waste disposal services by incineration

65. We have also examined how the Merger will affect competition in the supply of merchant capacity in the supply of waste disposal services by ERF (ie the sale of capacity at ERFs to customers that have to dispose of waste) at the local level.
66. When considering competition between the Parties and their competitors within each local area we considered the local share of supply of each provider, weighted by distance given distance is an important factor in the customer deciding which ERF to use.
67. We identified 11 overlaps between the Parties' facilities. In each of these areas, our analysis of competition has been based primarily on the weighted shares of the Parties and their competitors (because this service is relatively undifferentiated).
68. Of the 11 overlap areas, we found in nine local areas either the Parties have a low combined share or the increment arising from the Merger is low (or both).
69. We found two local areas in which the combined share of supply and the increment brought about by the Merger are significant – the local areas surrounding Suez's Teesside and Wilton 11 ERFs. The Parties' combined shares in the Teesside and Wilton 11 areas are 40-50% and 50-60% respectively, with increments in market share of 10-20% brought about by the Merger. On this basis, we consider that the Parties' shares show, in both cases, that they will hold a strong position in the market post-Merger, that they compete closely at present and that they will face limited constraints after the Merger.

70. We provisionally find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of merchant capacity incineration services in the local areas surrounding the Wilton 11 and Teesside ERFs.

The supply of open windrow composting services

71. OWC processes garden waste into compost via an open environment in which the material breaks down in the presence of oxygen. Unlike the other waste management services that we have investigated, we have not found that OWC services involve complex contracts. The Parties are both active in the composting of garden waste via OWC.
72. We have assessed the Merger on the basis of the supply of OWC at the local level.
73. Veolia is active in nine local areas and Suez in eight, but the Parties only overlap in four local areas. In each of these areas, our analysis of competition has been based primarily on the weighted shares of the Parties and their competitors (because this service is relatively undifferentiated).
74. In two of these areas, the increment in market share is limited, indicating that the Merger brings about little change in the competitive structure of the market in those areas. In the other two areas, the Parties' overall combined share is modest, and they will continue to face a significant number of credible competitors (10 competitors in one area and 12 in the other).
75. We provisionally find that the Merger will not result in an SLC in the provision of OWC services.

The supply of non-hazardous commercial and industrial waste collection services

76. C&I waste collection services involve the collection of mixed and specific waste from C&I customers (including offices and shops). Both Parties supply non-hazardous waste collection services to C&I customers at a national level. We have assessed the effect of the Merger on national customers, that is customers who require collection services in at least two regions in the UK.
77. We have considered whether waste collection brokers and facility management (**FM**) companies compete effectively with the Parties using subcontractors. We have found that subcontracting is a common feature of the market (since no supplier, other than Biffa, has national coverage). We have also found that different customers have different preferences in terms

of the level of subcontracting they are comfortable with and this determines the relative strengths of competitors in the market from their perspective.

78. C&I waste collection contracts are negotiated either through tenders or through bilateral contract negotiations. Whereas municipal waste collection contracts are typically for a long duration, C&I waste collection contracts are for a much shorter duration.
79. We have estimated market shares using data provided by the Parties and their rivals for national customer contracts worth at least £250,000 (as a proxy for larger, national customers). We have estimated that Biffa is, by some distance, the market leader with a share of either 50-60% or 60-70%, depending on the measure adopted. Veolia is the next largest supplier with a share of 20-30%. We estimated that Suez has a share of 5-10%. Suez is a little larger than one other supplier (Mitie) and almost twice the size of the next largest supplier (Reconomy).
80. We therefore currently consider that Biffa and Veolia between them account for 80-90% of non-hazardous waste collection services for C&I customer contracts worth at least £250,000 and that Suez is the largest of the other suppliers.
81. Previous competitive interactions from the tender data that we have seen show that Biffa is a strong competitor to both Veolia and Suez. The tender data shows that Suez imposes a more limited competitive constraint on Veolia, but also that other suppliers in the market, including Reconomy and Mitie, impose only a limited competitive constraint on either of the Parties.
82. We asked customers to list the suppliers that they would consider to be credible if they were to re-tender their current C&I waste collection contracts in the near future. Biffa and Veolia were rated clearly above other suppliers. Suez was mentioned less frequently and was considered to be of similar competitive standing to other smaller waste management companies and brokers.
83. Similarly, views from competitors showed Biffa and Veolia are the two strongest suppliers in the market and Suez as a weaker competitor. One competitor told us that brokers are strong competitors although brokers themselves did not think so.
84. Having considered all of the evidence available to us, we provisionally find that:
 - (a) The market is already highly concentrated, with the Merger making the market structure even more concentrated;

- (b) While Suez is a smaller market player than Veolia (and Biffa), there is a material degree of competitive interaction between the Parties;
- (c) Biffa is a strong competitor to both Veolia and Suez and will remain a strong competitor after the Merger
- (d) Mitie and Reconomy have established a material market presence, but some national customers have a preference for minimising the level of subcontracting, and therefore these broker and FM competitors offer a weaker alternative compared to Suez;
- (e) Although Suez is considerably smaller than either Biffa or Veolia, it is the most important of the other competitors in a market in which Veolia currently faces only one strong competitor (and where one merger firm has a strong position in the market, even small increments in market power may give rise to competition concerns).

85. We provisionally find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of non-hazardous commercial and industrial waste collection services.

How the Merger will affect competition in water management services

The supply of operation and maintenance of water and wastewater facilities for industrial customers

- 86. Businesses that use water as part of their processes and/or which generate wastewater that is discharged under licence into public water courses require water treatment services. 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.
- 87. The O&M of water and wastewater treatment facilities is sometimes provided by the owner of the facility whereas in other instances it is contracted to a third party, such as Veolia or Suez. Amongst other services, O&M services usually include specialist, routine and reactive maintenance of the treatment facility and treatments of the water and wastewater including biosolids treatments and recycling.
- 88. O&M services may involve having dedicated staff at the customer's site to oversee operations of the treatment facility, and off-site technical support. O&M contracts typically transfer much of the risk in operating and maintaining

a facility to the O&M service provider, as the provider is generally responsible for breakdown and maintenance risks associated with the facility, as well as ensuring the facility is compliant with all relevant regulations.

89. We have considered the impact of the Merger on the O&M of water and wastewater treatment facilities for industrial customers in the UK. Although the large majority of O&M services for industrial water and wastewater treatment facilities is provided by the owner of the facility, we have not included self-supply in our assessment. This is because self-supply is not a strong option for some customers. Customers identified risk factors, such as the risk of service interruption, the need to access more sophisticated technical support and/or the opportunity cost and risk involved in diverting their own resources into non-core activities as influencing their decision to outsource. The fact that some customers are able to self-supply will not protect those other customers who cannot from any lessening of competition brought about by the Merger.
90. Customers told us that quality of service and technical expertise / know-how in O&M of water and wastewater facilities were important factors to consider when selecting a supplier. Other factors included reliability of service, financial standing, track record and a supplier's regulatory certifications.
91. We have found that because of the lack of transparency in this market, estimating shares is difficult. Representations by the Parties and some third parties revealed very different market share estimates for the Parties. We have therefore placed limited weight on market shares. However, we note that several third-party competitors and an industry report all estimated that Veolia and Suez would, together, be the largest supplier in the market.
92. Some customers raised strong concerns about the Merger. Three large customers told us that Veolia and Suez were the only two suppliers who bid for their contracts and that they did not see any other credible suppliers for their requirements. One of these customers said that only Veolia and Suez had the experience, capabilities, technical compliance and financial size to meet its requirements. The two other customers also told us that they needed the Parties' technical expertise and it would be too risky to self-supply – one said that its production operations would need to shut down if there was a fault with its wastewater treatment facility, while the other told us that it could not provide the technical experience to analyse the materials.
93. A fourth large customer told us that it views its credible suppliers as being Veolia, Suez and Solenis. It told us that Suez was Veolia's strongest competitor and that the Merger would remove Veolia's only 'legitimate competition in effluent treatment'. This customer also said that smaller suppliers are not able to provide 24/7 services to its sites.

94. We have found that when bidding for contracts, Suez was Veolia's closest competitor. Veolia told us that facility owners can self-supply the O&M services but we consider that not all customers would be willing and able to self-supply O&M of water and wastewater treatment facilities. Suez's data show that Veolia participated by far the most frequently in Suez's tenders. This indicates that that it is a close competitor to Suez although the data also show that Veolia won only one of these contracts.
95. When we asked customers and competitors who they considered to be credible suppliers, customers identified Veolia and Suez most frequently. Four customers responded and all four identified Veolia and Suez as the most credible suppliers. Although collectively customers were able to name 12 other suppliers, each of these suppliers was mentioned once only. This is consistent with the heterogeneous nature of the market. Competitors told us that Veolia and Suez together with Alpheus were the strongest competitors.
96. Having considered all of the evidence available to us, we provisionally find that:
- (a) Veolia and Suez are close competitors. A range of evidence shows that the Parties' competitive strength comes from their experience, capabilities, technical compliance and financial size;
 - (b) Large customers similarly indicate that Veolia and Suez are either the two only bidders for contracts or two of a small set. This is consistent with the Parties' own bidding data, which indicate that they are close competitors;
 - (c) Customers and competitors consistently indicated that Veolia and Suez are the only two suppliers with such a strong market presence, and that the tail of other suppliers, whether individually or collectively, imparts only a weak constraint on the Parties.
97. We provisionally find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of O&M services for water and wastewater treatment facilities to industrial customers.

The supply of mobile water services

98. MWS involves the provision of moveable water treatment units that are trailer-mounted so that they can be transported by truck to customers in response to emergency shutdowns or planned outages of a customer's water or wastewater treatment facility. MWS can allow some customers to meet their medium-term needs by providing a stop-gap solution if their water treatment facility is not yet ready. MWS can be used for industrial water treatment, municipal water treatment or wastewater treatment.

99. Mobile water units can employ two different technologies in order to carry out water treatments: membrane-based technology or resin-based technology. We have carried out our assessment on the basis of MWS including both membrane-based technology and resin-based technology.
100. We have estimated that, together, Veolia and Suez account for 80-90% of MWS in the UK. We consider that only one competitor, Ecolutia, has a share of over 10%. We have estimated that all other competitors have negligible shares. We have also found that the Parties' fleet – the number of mobile water units that it has available in the UK – vastly outnumbers the aggregate fleet size of its rivals. This means that the Parties together have a large share of overall capacity.
101. Customers have told us that Veolia and Suez are close competitors. For some customers, Veolia and Suez were the only two options. Customers have told us that the Parties' fleet size and responsiveness (given the Parties have the capacity to respond) are reasons why other suppliers are weaker alternatives.
102. Competitors agreed that fleet size is an important factor of competition and that there are few strong suppliers other than Veolia and Suez.
103. There is some evidence from customers, competitors and from the Parties that Ecolutia is a credible competitor. However, our market share estimates, as well as evidence from Ecolutia, indicate that it is very much smaller than either of the Parties.
104. We also considered whether other technologies could be used in the event of higher prices or worse non-price parameters of competition following the Merger and have found that they could not.
105. Having considered all of the evidence available to us, we provisionally find that:
 - (a) The market is highly concentrated and Veolia and Suez are by some distance the two largest suppliers;
 - (b) The range of evidence indicates that Veolia and Suez are close competitors; and
 - (c) The Parties would face only limited competition after the Merger.
106. We provisionally find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of MWS in the UK.

Responding to our provisional findings

107. We invite any parties to make representations to us on these provisional findings by no later than 17.00 GMT on 9 June 2022 (the notice of provisional findings provides further details about how to do this).
108. Alongside these provisional findings, we have published a notice of possible remedies, which sets out our initial views on the measures that might be required to remedy the SLCs that we have provisionally found.
109. 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 SLCs we have provisionally found relating to the Parties' waste management activities.
110. In relation to addressing the SLCs we have provisionally found relating to the Parties' water management activities, we have seen some indication that a divestiture package smaller than the global divestiture of the Suez global WTS business may not be feasible. However, as part of our consideration of the appropriate remedy to address the SLCs we have provisionally found in relation to the Parties' water management activities, we will examine whether a smaller divestiture package will be effective and feasible.
111. We invite parties to make representations on these initial views on remedies by 17.00 GMT on 2 June 2022 (the notice of possible remedies provides further details about how to do this).