

# Acquisition by Veolia Environnement S.A. of Suez S.A.

Provisional findings report

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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### *Appendices*

A: Terms of reference and conduct of inquiry

B: Regulatory Environment

Glossary

## Summary of provisional findings

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).

# Provisional findings

## 1. The reference

- 1.1 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 the acquisition<sup>1</sup> by Veolia Environnement S.A. (Veolia) of Suez S.A. (Suez) (the Merger) 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 has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
- 1.2 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. We are required to publish our final report by 17 July 2022.
- 1.3 Throughout this document, Veolia and Suez are referred to collectively as the **Parties**.
- 1.4 This document, together with its appendices, constitutes the CMA's provisional findings published and notified to Veolia and Suez in line with the CMA's rules of procedure.<sup>2</sup> Further information relevant to this inquiry, including non-confidential versions of submissions, including from the Parties, can be found on the CMA case page.<sup>3</sup>

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<sup>1</sup> The CMA referred two related transactions for a phase 2 investigation: Veolia's completed acquisition of a 29.9% minority shareholding in Suez from an existing Suez shareholder (Engie S.A.) on 6 October 2021 (the **completed acquisition**); and Veolia's anticipated voluntary public offer for the remaining issued share capital of Suez, which was completed on 18 January 2022, after the CMA's reference to phase 2 (the **anticipated acquisition**).

<sup>2</sup> [CMA rules of procedure for merger, market and special reference groups \(CMA 17\), Rule 11](#)

<sup>3</sup> [Veolia / Suez Merger Case Page](#).

## 2. The Parties and the Merger

2.1 In this chapter we provide an overview of the Parties, the Merger and the Parties' rationale for the Merger.

### Veolia

2.2 Veolia is active globally in water, waste, and energy management solutions, and in other related activities.<sup>4,5</sup> Headquartered in Paris, Veolia is listed on the Euronext Stock Exchange in Paris and is part of the CAC 40 index. Veolia is not listed on any UK stock exchange.<sup>6</sup>

2.3 As at 31 December 2020 Veolia's largest shareholder was Caisse des Dépôts et Consignations (an investment arm of the French state), which holds around 6% of Veolia shares. Veolia group employees hold 4% shares.<sup>7</sup>

2.4 In 2020, Veolia generated consolidated global revenues of around £22 billion, of which around £2 billion (or approximately 10%) was generated in the UK.<sup>8</sup>

2.5 Veolia's main activities in the UK are:

- (a) *Waste management services*: in the UK waste sector, Veolia is primarily active in the collection, sorting, treatment, and disposal of non-hazardous waste. It is also active, [redacted], in collecting and treating hazardous, healthcare, and electrical waste.<sup>9,10</sup>
- (b) *Water management services*: Veolia's UK water management services activities mainly relate to the operation and maintenance (**O&M**) of water and wastewater treatment plants, which process water and wastewater, and the maintenance of sewerage systems.<sup>11</sup>
- (c) *Water management technologies*: Veolia is active in water management technology, partly through its Veolia Water Technologies (**VWT**) business.<sup>12</sup> Veolia's UK activities in water management technology

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<sup>4</sup> In particular, its Seureca consulting engineering division, through which Veolia designs expert solutions for industrial, public authority and tertiary sector clients in water, waste and energy management.

<sup>5</sup> Veolia's consolidated response [redacted]

<sup>6</sup> Final Merger Notice (**FMN**) [redacted]

<sup>7</sup> FMN [redacted]

<sup>8</sup> Veolia's consolidated response [redacted]

<sup>9</sup> Veolia's consolidated response [redacted]

<sup>10</sup> We also note that Veolia recently announced plans to launch an electric car battery recycling centre in the West Midlands, which will have the capacity to process 20% of the UK's end-of-life electric vehicle batteries by 2024. See Veolia's website: [A sustainable future for electric vehicle batteries | Veolia UK](#), accessed by the CMA on 3 May 2022

<sup>11</sup> Veolia's consolidated response [redacted]

<sup>12</sup> Veolia's consolidated response [redacted]

services relate primarily to the design and supply of water and wastewater treatment facilities, the supply of technological solutions and equipment for water and wastewater treatment systems, the provision of mobile water (**MWS**) 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.

2.6 In 2020 Veolia's waste business generated a significant majority of its total UK revenue, while its water and VWT businesses generated around [X]%, and its energy business generated around [X]%.<sup>13</sup> We provide further details of Veolia's UK activities in waste management in chapter 5 and water management services in chapters 12 and 13.

2.7 Veolia's activities in waste management services, water management services and energy business in the UK are carried out by its Veolia UK & Ireland business unit (**Veolia UK&I**),<sup>14</sup> while its activities in water management technologies are carried out primarily by VWT.

2.8 Table 2.1 below sets out a summary profit and loss account (**P&L**) for Veolia UK&I, including its revenue, earnings before interest, tax, depreciation and amortisation (**EBITDA**) and earnings before interest and tax (**EBIT**). Total revenue grew by [X]% from around £[X] billion to around £[X] billion from 2019 to 2021.<sup>15</sup>

**Table 2.1: Summary P&L of Veolia UK&I (2019 to 2021)<sup>16</sup>**

	£m		
	31-Dec-19	31-Dec-20	31-Dec-21
Revenue	[X]	[X]	[X]
EBITDA	[X]	[X]	[X]
EBIT	[X]	[X]	[X]

Source: Veolia's consolidated response [X]

Notes:

[X].

2.9 Veolia noted that, following a start to the year marked by the 'exceptional impact of the Covid-19 health crisis', 2020 performance returned to growth in the fourth quarter of the year.<sup>17</sup> Therefore we understand that the decrease in

<sup>13</sup> Veolia's consolidated response [X]

<sup>14</sup> Veolia's consolidated response [X]

<sup>15</sup> VWT UK financial information is not included in the summary P&L of Veolia UK&I at Table 2.1

<sup>16</sup> Revenue, EBITDA and EBIT figures comprise: Treatment, Commercial, Municipal, IWE and UK Corporate departments, net of intercompany revenue. Intercompany revenue comprises transactions with affiliated companies; eliminating the related revenue results in no effect on the company's financial position.

<sup>17</sup> Veolia's website: [Annual Results 2020](#), page 7, accessed by the CMA 6 May 2022.

Veolia UK&I's revenue from 2019 to 2020 can be attributed to the Covid-19 pandemic.

2.10 Veolia UK&I also monitors its financial performance along the following four operational business lines, following its management structure: Treatment, Commercial, Municipal and Industrial Water & Energy (IWE):<sup>18</sup>

(a) Treatment accounted for between [%] and [%] of total Veolia UK&I revenues, while Commercial and Municipal accounted for around [%]-[%] and [%]-[%] respectively between 2019 and 2021;<sup>19</sup>

(b) Treatment accounted for between [%] and [%] of Veolia UK&I's EBITDA and between [%] and [%]<sup>20</sup> of EBIT between 2019 and 2021. Municipal waste had a [%] EBIT in 2019 and 2020.<sup>21</sup>

2.11 Table 2.2 sets out a summary P&L for VWT UK for the period 2019 to 2021.

**Table 2.2: VWT UK Summary P&L (2019 to 2021)<sup>22</sup>**

	£m		
	31-Dec-19	31-Dec-20	31-Dec-21
Revenue	[%]	[%]	[%]
EBITDA	[%]	[%]	[%]
EBIT	[%]	[%]	[%]

Source: Veolia's consolidated response [%].

## Suez

2.12 Prior to the Merger, Suez was listed on the Euronext Stock Exchange in Paris, France, before being delisted on 18 February 2022 when Veolia completed a mandatory 'squeeze-out' procedure to purchase the Suez shares it did not already own.<sup>23</sup> Suez was not listed on any UK stock exchange.<sup>24</sup>

<sup>18</sup> Veolia provided a description of its UK&I four operational business lines as follows: (a) *Treatment*: this covers a number of contracts and site activities including [%]; (b) *Commercial*: this covers a number of [%] contracts and associated activities; (c) *Municipal*: this covers [%]; and (iv) *IWE*: this covers a number of contracts for [%].

Source: Veolia's consolidated response [%].

<sup>19</sup> Source: CMA analysis of Veolia's consolidated response [%]

<sup>20</sup> Commercial accounted for between [%] of EBIT; IWE accounted for between [%] of EBIT and Municipal accounted for between [%] of EBIT between 2019 and 2021; but these were [%].

<sup>21</sup> Source: CMA analysis of Veolia's consolidated response [%]

<sup>22</sup> Revenue, EBITDA and EBIT figures comprise: Treatment, Commercial, Municipal, IWE and UK Corporate departments, net of intercompany revenue. Intercompany revenue comprises transactions with affiliated companies; eliminating the related revenue results in no effect on the company's financial position.

<sup>23</sup> Veolia's website: [Result of Veolia's reopened tender offer for Suez shares and mandatory squeeze-out procedure | Veolia](#), accessed by the CMA on 3 May 2022

<sup>24</sup> FMN [%].

- 2.13 Suez's primary business activities include waste management services, water management, and water equipment and water technology services.<sup>25</sup>
- 2.14 In 2020, Suez generated consolidated global revenues of around £15 billion, including around £1 billion (approximately 7%) in the UK. In the UK Suez's waste business generated around [90-100]% of its total revenues in the UK.<sup>26</sup>
- 2.15 Suez's main activities in the UK are:
- (a) *Waste management services*: in the UK waste sector, Suez is primarily active in the collection, sorting, treatment, and disposal of non-hazardous waste. Suez is active in the hazardous waste sector to only a very limited extent in the disposal of certain hazardous waste in dedicated cells at its non-hazardous landfill sites; 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,<sup>27</sup> 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.
  - (c) Suez is not active in energy management services in the UK.
- 2.16 We provide further details of Suez's UK activities in waste management in chapter 5; and water management services in chapters 12 and 13.
- 2.17 Table 2.3 below sets out a summary P&L for Suez's waste management services in the UK.

**Table 2.3: Suez waste management services in the UK: Summary P&L (2019 to 2021)**

	£m		
	2019	2020	2021
Revenue	[<]	[<]	[<]
EBITDA	[<]	[<]	[<]
EBIT*	[<]	[<]	[<]

Source: Suez's Third Tranche response to [<].

\* 2021 EBIT data was not provided to the CMA prior to publication of provisional findings.

<sup>25</sup> Suez's Second Tranche response [<]

<sup>26</sup> FMN [<]

<sup>27</sup> The holding company for the WTS global business is SUEZ Water Technologies & Solutions SA, which is incorporated in France. Caisse de Depot et Placement de Quebec (**CDPQ**), a global investment company, holds 30% equity in Suez Water Technologies and Solutions SA. Suez's Second Tranche response to s.109, 18 Jan 2022, paragraph 7.2, Table 7.2.



2.18 Table 2.4 below sets out a summary P&L for Suez's water management services in the UK.

**Table 2.4: Suez water management services in the UK: Summary P&L (2019 to 2021)**

	£m		
	2019	2020	2021
Revenue	[§<]	[§<]	[§<]
EBITDA	[§<]	[§<]	[§<]

Source: Suez's Third Tranche response to [§<]

\* [§<].

2.19 Suez submitted that revenue declined from 2019 to 2020 due to COVID-19, as it did not gain any new water management projects and the backlog of projects from 2019 was completed.

## The Merger

2.20 On 5 October 2020, Veolia announced its acquisition of a 29.9% non-controlling minority shareholding in Suez from an existing Suez shareholder, Engie S.A., and announced its intention to launch a voluntary public offer for all of Suez's remaining issued share capital.

2.21 Following the Suez board's initial rejections of Veolia's unsolicited approach, on 14 May 2021, Veolia and Suez announced that they had signed a Combination Agreement including an increased offer price for the remaining issued share capital of Suez.<sup>28</sup>

2.22 On 18 January 2022, Veolia completed the Merger and on 27 January 2022, Veolia proceeded with a mandatory 'squeeze-out' procedure on Suez shares that were not already owned by Veolia.<sup>29</sup>

### *Merger rationale*

2.23 Veolia publicly communicated that the Merger would create 'a world champion of ecological transformation' and would result in the creation of a truly global player in the management of water and waste processing. In its 2020 universal registration document Veolia noted that the merged entity of Veolia and Suez (the **Merged Entity**) would be extremely strong in strategic future growth segments and in know-how, especially in digital.<sup>30</sup>

<sup>28</sup> FMN [§<]

<sup>29</sup> Veolia's website: [Press release, January 27, 2022 – Result of Veolia's reopened tender offer for Suez shares and mandatory squeeze-out procedure](#), accessed by the CMA on 3 May 2022

<sup>30</sup> Veolia's website: [Universal registration document 2020](#), page 22.

- 2.24 In relation to the strategic and economic rationale for the Merger, Veolia told us that in the face of growing international competition, the Merger would help the Parties to [X].<sup>31</sup>
- 2.25 Veolia submitted that it expected the Merger to result in efficiencies and customer benefits due a number of reasons, including [X].<sup>32</sup>

### *Merger reviews in other jurisdictions*

- 2.26 The Merger was investigated in a number of other jurisdictions outside the UK.<sup>33</sup> The Merger was cleared subject to remedies by the European Commission 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.
- 2.27 Given that the remedies required by the ACCC concerned the divestiture of certain of the Parties' Australian assets, we have not identified any implications of the ACCC's remedies on our inquiry.<sup>34</sup>
- 2.28 The European Commission accepted the following commitments from Veolia to divest (the **EC Remedies**):<sup>35,36</sup>
- (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
  - (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.

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<sup>31</sup> FMN [X]

<sup>32</sup> FMN [X]

<sup>33</sup> 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.

<sup>34</sup> The ACCC's 21 December decision can be found [here](#).

<sup>35</sup> The EC's 14 December 2021 decision can be found [here](#).

<sup>36</sup> The EC's case page is [here](#).

- 2.29 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**).<sup>37,38</sup> 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.<sup>39</sup> Suez’s UK waste business and Suez’s global WTS business will continue to operate under the ‘Suez’ brand until such time as the CMA grants the necessary derogations under the IEO.
- 2.30 In relation to Veolia’s commitment under the EC Remedies to divest the Veolia EEA MWS Divestment Business, we note that the divestiture package includes Veolia’s UK mobile water services business and assets, which is engaged in the national supply of mobile water services in the UK. In our assessment of these services in chapter 13, we have considered the impact of the Merger absent the proposed European Commission remedy package. The implications of this element of the EC Remedies are therefore relevant in our inquiry in the consideration of any UK remedies for MWS.

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<sup>37</sup> 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.

<sup>38</sup> The CMA granted the necessary derogations from the Initial Enforcement Order (the **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](#).

<sup>39</sup> 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.

### 3. Jurisdiction

- 3.1 Following the reference to phase 2 of the Merger under section 33 of the Act, the CMA is required to determine on the balance of probabilities whether the Merger, if carried into effect, would result in a relevant merger situation (RMS).<sup>40</sup>
- 3.2 Sections 23 and 24 of the Act sets out two criteria required for the existence of an RMS.
- (a) First, two or more enterprises must cease to be distinct;<sup>41</sup> and
- (b) Second, either:
- (i) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test); or
  - (ii) the merged enterprises both supply or acquire goods or services of a particular description and will after the merger supply or acquire 25% or more of those goods or services in the UK (or a substantial part of the UK) (the share of supply test).<sup>42</sup>
- 3.3 These criteria are assessed in turn below, after we set out the parties' submissions as regards jurisdiction.
- 3.4 By way of background, as described at paragraph 2.20 above, at the time of reference to Phase 2 of the Merger Veolia had already acquired a 29.9% shareholding in Suez from an existing Suez shareholder in October 2020 (ie the completed transaction) and, pursuant to the Combination Agreement, had agreed to acquire all of Suez's remaining issued share capital (ie the 'anticipated' transaction). The 'anticipated' transaction completed during the course of our phase 2 inquiry.
- 3.5 In the Phase 1 Decision and the Reference Decision (the **CMA's Phase 1 Decision**), the CMA used its discretion under sections 27(5) and 29 of the Act to treat the completed transaction and the 'anticipated' transaction as occurring on the date of the last transaction (which as at the date of the Phase 1 Decision and the Reference Decision was yet to occur).<sup>43</sup> As such, the

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<sup>40</sup> Section 36(1)(a) of the Act.

<sup>41</sup> Defined in further detail in section 26 of the Act.

<sup>42</sup> Where an enterprise already supplies or acquires 25% of any particular goods or services, the test is satisfied so long as its share is increased as a result of the merger, regardless of the size of the increment (where there is no increment, the share of supply test is not met).

<sup>43</sup> [CMA's Phase 1 Decision](#)

Merger was referred to Phase 2 as an anticipated merger under section 33 of the Act.

## Parties' submissions

- 3.6 Veolia submitted that the 'anticipated' transaction would constitute an acquisition of control over Suez by Veolia and that the turnover test is met. Veolia submitted that the 'anticipated' transaction therefore is a RMS for the purposes of the Act.<sup>44</sup>
- 3.7 As regards the completed transaction, Veolia submitted that the 29.9% shareholding it held in Suez prior to the 'anticipated' transaction did not bring Veolia and Suez under common ownership or control. In particular, Veolia submitted:
- (a) [REDACTED];
  - (b) [REDACTED];
  - (c) [REDACTED]<sup>45</sup>
- 3.8 Veolia also submitted that [REDACTED].<sup>46</sup> Finally, Veolia submitted that it received various documents and information, as a shareholder of Suez.<sup>47</sup>

## Our assessment

### *Enterprises ceasing to be distinct*

- 3.9 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'.<sup>48</sup> A 'business' is defined as 'including a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods are supplied other than free of charge'.<sup>49</sup>
- 3.10 Veolia and Suez are companies that operate as a going concern, with a range of assets and employees, and which contract with customers to supply goods and services on commercial terms. Both Veolia and Suez, therefore, satisfy the definition of an enterprise for the purpose of the Act.

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<sup>44</sup> FMN, [REDACTED]

<sup>45</sup> FMN, [REDACTED]

<sup>46</sup> FMN, [REDACTED]. Veolia also confirmed separately that [REDACTED] (Veolia's response to [REDACTED]).

<sup>47</sup> FMN, [REDACTED]

<sup>48</sup> Section 129(1) of the Act.

<sup>49</sup> Section 129(1) of the Act.

- 3.11 The concept of ‘ceasing to be distinct’ is described in section 26 of the Act. This provides that any two enterprises cease to be distinct if they are brought under common ownership or common control.<sup>50</sup> This is the case regardless of whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control.<sup>51</sup>
- 3.12 As described at paragraph 2.20, the Merger comprises the staggered acquisition of Suez’s issued share capital by Veolia:
- (a) First, Veolia acquired a 29.9% shareholding in Suez from an existing Suez shareholder in October 2020 (ie the completed transaction); and
  - (b) Second, Veolia was to acquire all of Suez’s remaining issued share capital, pursuant to the Combination Agreement, (ie the ‘anticipated’ transaction). Veolia did in fact acquire Suez’s remaining issued share capital with completion occurring following the reference to phase 2.<sup>52</sup>
- 3.13 Accordingly, the Merger (ie the completed transaction and the anticipated transaction together) has led to Veolia acquiring the entirety of Suez’s share capital.
- 3.14 We consider that the ‘anticipated’ acquisition, at the time of the reference, would have brought Veolia and Suez under common ownership and control (and did in fact subsequently bring Veolia and Suez under common ownership and control).<sup>53</sup> Therefore, as a result of the Merger, Veolia has acquired a controlling interest in Suez and consequently, these enterprises would have and have ceased to be distinct.
- 3.15 In light of this conclusion, there is no need for us to separately consider whether the completed transaction may have conferred material influence if considered in isolation.

### ***UK nexus***

- 3.16 The second criterion for the existence of an RMS seeks to establish whether the Merger has sufficient connection with the UK. This criterion can be met on the basis of either (i) the turnover test; or (ii) the share of supply test.

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<sup>50</sup> Section 26(1) of the Act. ‘Control’ is not limited to the acquisition of outright voting control but may include situations falling short of outright voting control. Section 26 of the Act distinguishes three levels of interest (in ascending order): (i) material influence (ii) de facto control, and (iii) a controlling interest (also known as ‘de jure’, or ‘legal’ control).

<sup>51</sup> Section 26(1) of the Act.

<sup>52</sup> See paragraph 2.22 above for details of the completion of the anticipated transaction in [January] 2022.

<sup>53</sup> Pursuant to section 23(98)(b) of the Act, the CMA is required to assess whether a relevant merger situation has been created as at immediately before the time when the reference was been made.

### *The turnover test*

- 3.17 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.
- 3.18 Suez has been taken over as a result of the Merger. The UK turnover of Suez exceeds £70 million,<sup>54</sup> so we are satisfied that the turnover test is met. As we have provisionally concluded the turnover test is met, there is no need to consider the share of supply test.

### ***Statutory four month period for reference***

- 3.19 We also note that for completed mergers, there is a further criterion. Under section 24 of the Act, the completed merger must have taken place not more than four months before the reference to phase 2 is made, unless the merger took place without having been made public and without the CMA being informed of it (in which case the four-month period starts from the earlier of the time that material facts are made public or the time the CMA is told of material facts).
- 3.20 As explained at paragraph 1.5 above, in the Phase 1 Decision and the Reference Decision, the CMA used its discretion under sections 27(5) and 29 of the Act to treat the completed transaction and the anticipated transaction as occurring on the date of the last transaction (which as at the date of the Phase 1 Decision and the Reference Decision was yet to occur).<sup>55</sup> As such, the Merger was referred to Phase 2 as an anticipated merger under section 33 of the Act.
- 3.21 Accordingly, as it is only applicable to references of completed mergers, the four month statutory period for reference under section 24 of the Act was not relevant to the CMA's assessment at phase 1 of whether the Merger would result in an RMS for the purposes of the Act. Consequently, we are not required to consider the four month statutory period for reference in order to find that the Merger constitutes an RMS for the purpose of our Phase 2 inquiry.<sup>56</sup>

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<sup>54</sup> See paragraph 2.14 above for details of Suez's UK turnover in the financial year 2020.

<sup>55</sup> [Phase 1 Decision](#), paragraphs 35, 88 and 91. [Decision to refer](#), paragraph 1.

<sup>56</sup> For completeness, however, we note that the completed transaction completed on 6 October 2020. At that time, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EUMR) still applied in the UK. The European Commission (the EC) had informed the CMA that it considered that the Completed Transaction and the Anticipated Transaction formed a single concentration with an EU dimension for the purposes of the EUMR. Accordingly, the CMA was prevented by the EUMR from applying the provisions of the Act to the Completed Transaction at that point (Article 21(2)-(3) of the EUMR). The Act, however, provided that the four month statutory period for reference which applies in respect of completed

## Provisional finding

- 3.22 In the light of the above assessment, we provisionally conclude that the Merger would result in the creation of an RMS.

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mergers will only begin when the CMA is no longer prevented from making a reference because of the EUMR, or anything done under or in accordance with the EUMR (see Section 122 of the Act as in force until 31 December 2020). Therefore, despite the Completed Transaction completing on 6 October 2020, the four month period did not begin until 31 December 2020 (the first date on which the EUMR did not prevent the CMA from making a reference). See [Guidance on the functions of the CMA after the end of the Transition Period](#), December 2020, (CMA125), paragraphs 1.1 and 3.7- 3.10. Had the Parties completed pre-notification discussions and initiated merger control proceedings under the EUMR prior to the UK's exit from the EU, per Article 92 of the UK – EU Withdrawal Agreement, the EC would have retained jurisdiction to review any concentration which was notified pursuant to the EUMR. See CMA125, paragraphs 3.4-3.6. This was not the case and the CMA had jurisdiction to review the Merger. Due to the Parties failing to respond by the stated deadline to numerous notices issued under section 109 of the Act during the phase 1 inquiry, the CMA extended the four month period pursuant to section 25(2) of the Act several times. The first such notice of extension was issued on 29 January 2021 and the last was terminated on 18 October 2021, with at least one notice under section 25(2) of the Act being in force at all times in between these dates. The four-month deadline for a decision under section 24 of the Act in respect of the completed transaction would therefore, if applicable, have been 17 January 2022, following the numerous extensions under section 25(2) of the Act. The CMA's reference decision in respect of the Merger (including the completed transaction) was made on 21 December 2021, well in advance of this statutory deadline.



## 4. The counterfactual

### Framework for assessing the counterfactual

- 4.1 The counterfactual is an analytical tool used in determining whether a merger gives rise to an SLC. It involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the counterfactual.<sup>57</sup>
- 4.2 The CMA may examine several possible scenarios to determine the appropriate counterfactual, including prevailing or pre-merger conditions of competition, conditions of stronger competition or conditions of weaker competition. The appropriate counterfactual may increase or reduce the prospects of an SLC finding by the CMA.<sup>58</sup>
- 4.3 Only events that would have happened in the absence of the merger under review – and not as a consequence of it – should be incorporated into the counterfactual.<sup>59</sup>

### Submissions on the relevant counterfactual

#### *Summary of the Parties' views*

- 4.4 Veolia submitted that the appropriate counterfactual is the 'current or pre-existing competitive situation' ie pre-Merger conditions of competition.<sup>60</sup>
- 4.5 During the CMA's Phase 1 investigation, Veolia also submitted that the counterfactual should take into account the divestment of parts of Suez's business ([redacted]) to New Suez as a part of its commitments to the European Commission.<sup>61</sup> Veolia also submitted that it has offered to divest its UK MWS business pursuant to its commitments to the European Commission.<sup>62</sup> Veolia noted that the CMA had considered a parallel merger in some depth in its Phase 1 decision in *BT/EE*.<sup>63</sup>

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<sup>57</sup> [2021 Merger Assessment Guidelines \(CMA129\)](#), paragraph 3.1

<sup>58</sup> [CMA129](#), paragraph 3.2.

<sup>59</sup> [CMA129](#), paragraph 3.4.

<sup>60</sup> FMN, [redacted]

<sup>61</sup> Veolia's submission [redacted]

<sup>62</sup> Veolia's submission [redacted]

<sup>63</sup> Veolia's submission [redacted] See also [CMA's decision of 9 June 2015](#) in case ME/6519-15, regarding the anticipated acquisition by BT Group plc of EE Limited.

### ***Our assessment of the counterfactual***

- 4.6 Only events that would have happened in the absence of the merger under review, and are not a consequence of it, should be incorporated into the counterfactual.<sup>64</sup> We note, as the CMA did in its Phase 1 Decision, that in *BT/EE* the CMA considered the impact of a parallel transaction between different parties which was not contingent on or a consequence of the merger in question. *BT/EE* is therefore not analogous to the present situation. The European Commission's investigation and subsequent remedies clearly would not have happened absent the Merger. Accordingly, we do not consider that the counterfactual should take into account divestments that form a part of Veolia's commitments to European Commission.
- 4.7 We did not receive submissions from any other parties on the counterfactual.

### **Provisional conclusion on the counterfactual**

- 4.8 We provisionally find that the appropriate counterfactual against which to assess the Merger is that of the pre-Merger conditions of competition.

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<sup>64</sup> [CMA129](#), paragraph 3.4

## 5. The waste management industry and the nature of competition

- 5.1 Both Parties have significant activities in waste management in the UK and globally. This section sets out the key elements of the waste management industry.

### Description of waste management services

#### *Waste management services*

- 5.2 In the UK, the Parties supply a broad range of waste management services and are active at substantially all stages of the non-hazardous waste management supply chain (the **waste management supply chain**),<sup>65, 66</sup> including:
- (a) **Collection of municipal waste**: this includes the collection of residual waste, recyclables, food and garden waste through collection rounds or at household waste recycling centres (**HWRCs**) which the Parties may also manage on behalf of local authorities;<sup>67</sup>
  - (b) **Collection of C&I waste**: this includes the collection of mixed and specific waste flows from factories and other industrial premises, as well as offices and shops;<sup>68</sup>
  - (c) Waste recycling services, including:
    - (i) **Sorting of dry recyclates** (eg paper, cardboard, glass, metals, plastics) at **material recovery facilities (MRFs)**:<sup>69</sup> MRFs sort different non-hazardous waste streams before the waste is sent away for further processing. MRFs can differ in their capabilities and the types of waste they can sort. For example, some MRFs are automated by employing optical sorting using cameras and/or lasers, while some employ manual sorting using operatives on picking lines. Some MRFs focus specifically on plastics and could be referred to as plastic recovery facilities (**PRFs**);<sup>70,71</sup>

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<sup>65</sup> Veolia's submission [3<]

<sup>66</sup> The provisional decision does not discuss hazardous waste management services and regulated waste management services owing to Suez's limited related activities in the UK. Source: Veolia's submission [3<]

<sup>67</sup> Veolia manages [3<] HWRCs across the UK and Suez manages [3<] HWRCs Source: FMN, [3<]

<sup>68</sup> C&I waste does not include waste resulting from construction and demolition activities Source: FMN, [3<]

<sup>69</sup> FMN, [3<]

<sup>70</sup> FMN, [3<]

<sup>71</sup> For the purpose of the provisional findings, the term MRFs includes PRFs.

Under public-private partnerships (**PPP**), long-term contracts with local authorities, a portion of a MRF's operational capacity will typically be reserved for use by the local authority that commissioned the infrastructure.<sup>72,73</sup> This gives the local authority priority of access to the capacity. The waste management company operating the MRF can sell the remaining capacity (ie that which has not been reserved for the local authority) (referred to as **Controlled Merchant Capacity**) to other customers,<sup>74</sup> usually subject to the local authority's prior authorisation.

(d) Waste recovery and disposal (together, **waste disposal**) services, including:

- (i) **Incineration** of residual waste and MRF residues through **energy recovery facilities (ERFs)**: ERFs are incineration plants producing heat or electricity from burning residual waste, a process referred to as Energy-from-Waste (**EfW**) incineration or incineration with energy recovery. The calorific value (CV) of the waste is an important determinant of how much waste the ERF can incinerate and how efficiently it can convert that waste into energy.<sup>75</sup> To treat waste by EfW incineration, waste management companies require access to capacity at an ERF. As with MRFs, under public-private partnerships long term contracts with local authorities, a portion of some ERF's operational capacity will typically be reserved for use by the local authority that commissioned the infrastructure, with the remaining capacity available to the ERF operator as Controlled Merchant Capacity (though this usually requires prior authorisation from the local authority). Third parties can also seek to incinerate waste at third parties' ERFs under Fuel Supply Agreements. ERF operators earn revenue through gate fees (which is usually a fixed fee per tonne) and sale of energy on to the national grid;<sup>76</sup>

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<sup>72</sup> However not all MRFs will have reserved capacity for use by the local authority.

<sup>73</sup> FMN [38]

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

<sup>75</sup> As the CV decreases, more tonnes of waste can be processed in each EfW facility, since their capacity is limited by their thermal treatment capacity rather than by tonnage. Source: The Scottish Government, [Waste Markets Study: full report](#), 2019.

<sup>76</sup> FMN, [38]

- (ii) **Composting of organic waste at in-vessel composting (IVC) facilities** (for mixed food and garden waste) **and open-windrow composting (OWC) facilities** (for unmixed garden waste);<sup>77</sup>
- (iii) **Processing of wood waste:** wood waste is collected separately from other dry recyclates and sent to specific wood-reprocessing sites rather than to MRFs;<sup>78</sup> and
- (iv) **Disposal** of residual waste and MRF residues **via landfill**, ie in structures specifically designed for its containment, built in or on the ground, and in which the waste is isolated from the surrounding environment (groundwater, air, and rain).<sup>79</sup>

- 5.3 The *Waste (England and Wales) Regulations 2011* (**The Waste Regulations**)<sup>80</sup> require everyone involved in waste management and waste producers to apply the priority order of the waste hierarchy. Priority goes to preventing the creation of waste in the first place, followed by preparing waste for reuse; to recycling, and then recovery. Disposal – in landfill for example – is regarded as the worst option.<sup>81</sup> Incineration with energy recovery falls within the recovery (ie the penultimate) tier within the waste hierarchy.<sup>82</sup>
- 5.4 As part of their waste collection and disposal activities, both Parties also operate [§<] of waste depots and waste transfer stations, which they either own or manage on behalf of local authorities.<sup>83</sup>
- 5.5 In the UK, local authorities are responsible for managing the waste generated by households. This generally includes **collecting** waste from residents, **sorting** different dry recyclates (such as paper, cardboard, glass, metals and plastics), recovery (eg incineration with energy recovery, composting) and **disposing** of waste (eg via landfill). More information on which type of local authority is responsible for which waste management activity can be found at paragraph 5.74. To fulfil these responsibilities, local authorities may procure services from specialist waste management companies, such as Veolia and Suez. More information on local authority contracts can be found from

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<sup>77</sup> FMN, [§<]

<sup>78</sup> FMN, [§<] Suez does not own or operate any waste wood biomass facilities in the UK (FMN, [§<]), whereas Veolia does own or operate [§<] in the UK. (Veolia's submission, [§<]). Biomass facilities are incineration plants producing heat or electricity from waste wood or other biomass wastes (FMN, [§<]). These do not form a part of our competitive assessment.

<sup>79</sup> FMN, [§<]

<sup>80</sup> [Waste Regulation 2011](#) (England and Wales).

<sup>81</sup> DEFRA, [Waste Management Plan for England](#), January 2021

<sup>82</sup> DEFRA, [Guidance on applying the waste hierarchy](#), June 2011.

<sup>83</sup> Veolia response [§<]

paragraph 5.76 below. Businesses must also procure collection and disposal services for the waste they generate.

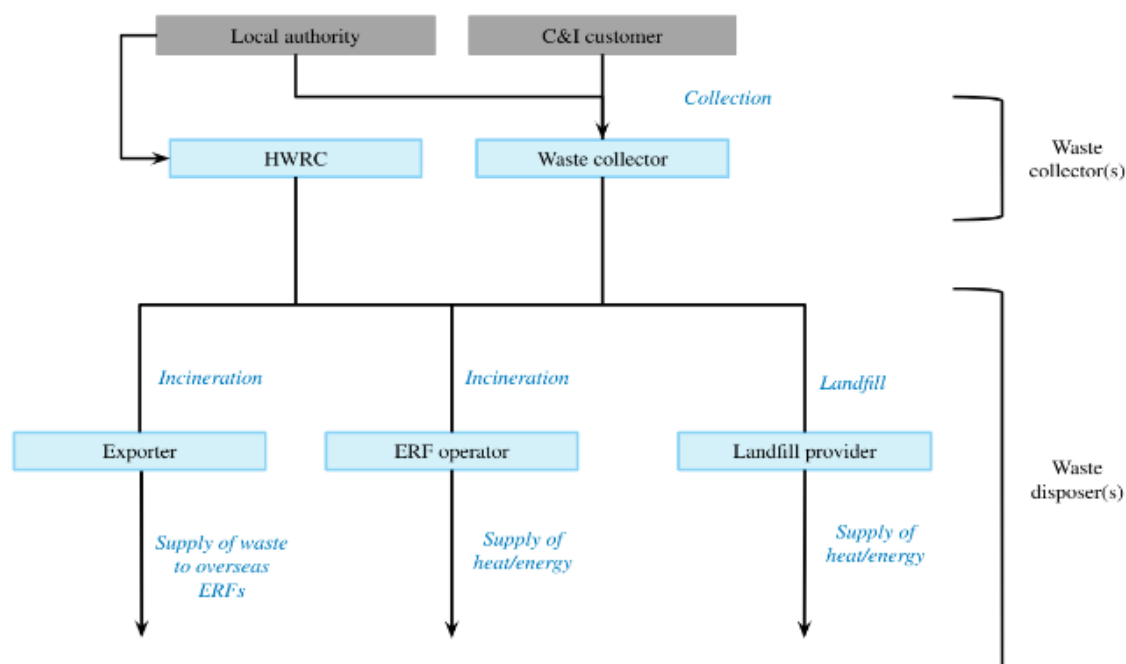
### **Waste management lifecycle**

5.6 The organisation of the Parties' waste management business in the UK is consistent with the waste management lifecycle, which covers:

- (a) Collection (either directly (from households or business) or from HWRCs<sup>84</sup>);
- (b) In some cases: recycling (including sorting through MRFs);
- (c) Recovery through incineration (eg ERFs), composting (organic waste); and disposal via landfill or refuse derived fuel (**RDF**).<sup>85</sup>

5.7 Figure 5.1 below sets out the key stages of the non-hazardous waste management supply chain for residual waste.

**Figure 5.1: Non-hazardous waste supply chain – Residual waste**



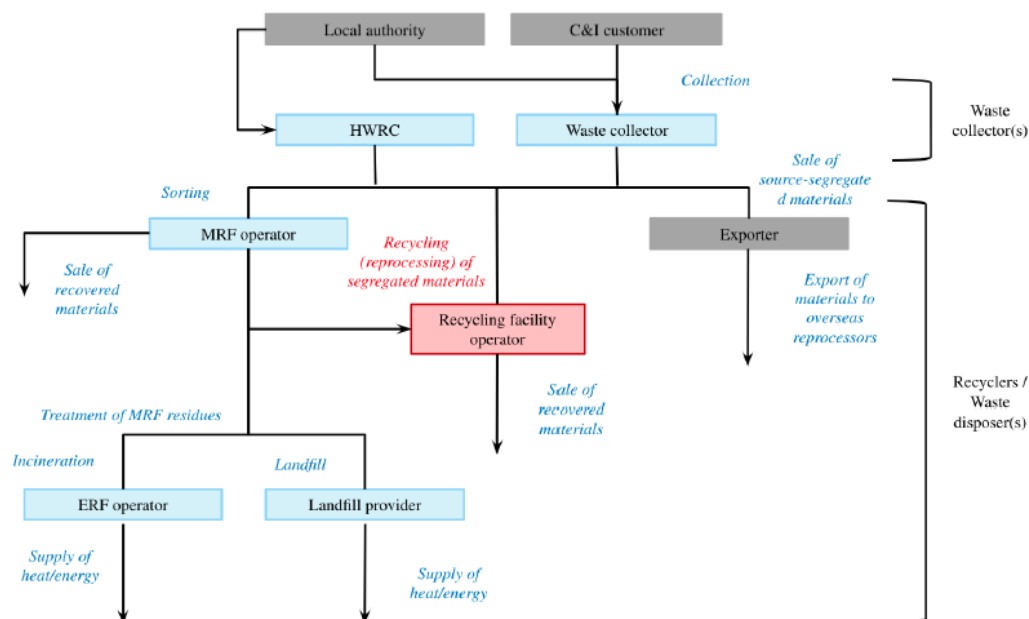
Source: Veolia's [3<]

<sup>84</sup> Collections activities are supported by waste transfer stations, buildings in which waste is tipped and temporarily stored before being taken to sorting, recycling and/or treatment facilities. Source: FMN, [3<]

<sup>85</sup> RDF is essentially shredded residual waste that may be exported in order to be incinerated abroad Source: FMN, [3<].

5.8 Figure 5.2 below sets out the key stages of the non-hazardous waste management supply chain for dry mixed recyclables.

**Figure 5.2: Key stages of the non-hazardous waste management supply chain**



Source: Veolia's [3]

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

- 5.9 Water and waste management services are becoming increasingly important as the UK Government and devolved nations implement their net zero strategies and move towards a circular economy.<sup>86</sup> The 'circular economy' is a model of consumption and production that involves sharing, reusing, repairing, renewing and recycling existing products for as long as possible. Pursuant to this strategic goal, the UK Government's waste hierarchy prioritises the prevention of waste, waste recycling and other waste recovery, while seeking to reduce waste disposal, including via landfill. In particular, the UK Government expects waste incineration, which can be used to generate energy, to play a significant ongoing role in waste management in the UK.<sup>87</sup>
- 5.10 While historically most of the UK's waste was disposed via landfill this is changing. In January 2021 DEFRA published its 'Waste Management Plan for England (the **Plan**)'. The Plan is a requirement under The Waste Regulations and must set out the measures to be taken so that, by 2035, the preparing for re-use and the recycling of municipal waste is increased to a minimum of 65%

<sup>86</sup> See, for example, [Net Zero Strategy: Build Back Greener](#), October 2021.

<sup>87</sup> UK Government, [Our Waste, Our Resources: A Strategy For England](#), 2018.

by weight and the amount of municipal waste sent to landfill is reduced to 10% or less of the total amount of municipal waste generated (by weight).<sup>88</sup> The UK Government's strategy is to ultimately reduce the use of landfill to zero. Indeed, over the past decade the proportion of waste disposed via landfill has steadily reduced from over 80% in 2010 to less than half in 2019, with waste processed through incineration with energy recovery increasing from around 6.7 million tonnes in 2014 to 14 million tonnes (or 52% of UK residual waste) in 2020. Administrations in the devolved nations have similar strategies.<sup>89</sup>

- 5.11 Suez's long-term strategy appears consistent with the long-term trend towards a circular economy. This can be seen below at Figure 5.3 with waste sent to landfill decreasing from [REDACTED] million tonnes in 2009 to [REDACTED] million tonnes in 2030.

**Figure 5.3: Suez Long term strategy**

[REDACTED]

Source: Suez [REDACTED]

- 5.12 In addition to the waste hierarchy, the industry is also changing how it operates in order to improve its environmental sustainability. For example, we have been told by several waste collection suppliers that they are migrating to electric vehicles for waste collections. In incineration, carbon capture, utilisation and sequestration technology is being improved and Suez told us that these are beginning to emerge as specific requirements for EfW bids.<sup>90</sup> We have seen evidence in our inquiry of suppliers, such as Veolia and Suez, using these types of environmental initiatives as parameters of competition.
- 5.13 Moreover, as economies evolve new opportunities emerge for waste management companies. For example, Veolia is investing in recycling plants for electric car batteries.<sup>91</sup>
- 5.14 The Environment Act 2021 sets out a number of new measures relating to waste and resource efficiency which relate to and may affect the Parties' businesses, including: (i) consistency of waste collection methodology (ii) extended waste producer responsibility (iii) deposit return schemes (iv) electronic waste tracking and (v) drainage and sewage management plans.

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

<sup>89</sup> FMN, [REDACTED]

<sup>90</sup> Suez response [REDACTED]

<sup>91</sup> Veolia's website: [Veolia announces its first electric vehicle battery recycling plant in UK](#), accessed by the CMA on 16 May 2022



- 5.15 Veolia submitted that likely impacts on the competitive landscape following the implementation of the Environment Act 2021 are still unknown at this stage, [redacted].<sup>92</sup> Suez submitted that, in general, given the increased focus on recycling and reuse as a result of the Environment Act 2021, Suez expects to see a reduction in landfill and RDF export volumes, as well an increase followed by a levelling off in incineration volumes.<sup>93</sup> [redacted] on its water management services as a result of the Environment Act 2021.<sup>94, 95</sup>

## Parties and main rivals

### *Veolia and Suez's global activities*

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

#### *Veolia*

- 5.17 Veolia has permanent establishments and approximately 179,000 employees across 55 countries.<sup>96</sup> In its 2020 universal registration document, Veolia states that it is 'a world leader in environmental services and offers a complete range of solutions for managing Water, Waste and Energy on five continents'.<sup>97</sup> Across the UK and Ireland, Veolia employs approximately 14,000 people.<sup>98</sup> In the UK, Veolia is present across the waste management supply chain including collection, sorting, incineration with energy recovery, and also has activities in several water management services.
- 5.18 With regard to waste management, Veolia's 2020 universal registration document sets out that, globally, it is one of the leading players in the management of liquid, solid, non-hazardous and hazardous waste.<sup>99</sup> With respect to water management, the same document states that Veolia is a leading expert in water cycle management, engaged in resource management, production and transport of drinking water and industrial process water, collection, treatment and recovery of wastewater from all sources and treatment of by-products, customer relationship management and design and construction of treatment infrastructure and networks.<sup>100</sup>

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<sup>92</sup> Veolia's response [redacted]

<sup>93</sup> Suez's response [redacted]

<sup>94</sup> Veolia's response [redacted]

<sup>95</sup> Suez's response [redacted]

<sup>96</sup> Veolia's website: [Universal registration document 2020](#), pages 12 and 16.

<sup>97</sup> Veolia's website: [Universal registration document 2020](#), page 16.

<sup>98</sup> See, for instance, Veolia's [LinkedIn](#) company profile.

<sup>99</sup> Veolia's website: [Universal registration document 2020](#), page 25.

<sup>100</sup> Veolia's website: [Universal registration document 2020](#), page 23.

## *Suez*

- 5.19 With approximately 86,000 employees across 70 countries and global revenues of £15 billion,<sup>101</sup> Suez refers to itself as one of the ‘two main players in the global environment market’.<sup>102</sup> In its 2020 universal registration document, Suez notes that it is present throughout the water management and waste recovery value chain, from the construction and the operation of water networks and infrastructure, to collection, sorting and recycling, and the production of renewable energy, new materials and the provision of digital services. It describes itself as being able to offer a complete range of services, to all categories of customers, including public authorities and industrial players.<sup>103</sup> In the UK, Suez employs approximately 5,700 people.<sup>104</sup>

### ***Veolia and Suez’s activities in the UK***

- 5.20 Veolia and Suez are two of the leading providers of waste management services in the UK. They provide services to many local authorities and businesses across the UK to collect, recycle and recover (via incineration or composting) or dispose of their waste. As noted at paragraph 5.2 above, Veolia is active in all stages of the waste management supply chain, and Suez is active at most stages. Both Parties have a national presence with access to capacity at several types of waste management facilities (such as sorting facilities, incineration facilities, landfills, etc.) and benefit from comprehensive research, development and innovation capabilities.
- 5.21 The Parties have some of the most longstanding and largest waste management contracts with local authorities, serving millions of households across the UK. The Parties also both provide a range of water management services to businesses.

### ***Main rivals***

- 5.22 There are several other waste management companies of different sizes and capabilities operating in the UK. The main suppliers are briefly described below.
- (a) **Biffa** is a UK national provider of waste management services, with approximately 9,000 employees. Biffa states that it is active in the waste sector, including in collection, recycling, treatment and disposal, operation

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<sup>101</sup> Converted from EUR to GBP using [HMRC yearly average and spot rates](#) for the year to 31 December 2020 from HRMC.

<sup>102</sup> UNGC website: [Suez’s Universal registration document 2020](#), page 34.

<sup>103</sup> UNGC website: [Suez’s Universal registration document 2020](#), page 34.

<sup>104</sup> UNGC website: [Suez’s Universal registration document 2020](#), page 42.

and management of landfills.<sup>105</sup> Biffa is listed on the London Stock Exchange and its 2020 turnover was approximately £1 billion.<sup>106</sup>

- (b) **Viridor** is a UK national energy and waste management company with 3,000 employees.<sup>107</sup> Viridor is a provider of waste treatment, recycling and disposal services. Its 2020 turnover was approximately £717 million in the UK.<sup>108</sup> Viridor divested its C&I waste collection business and a number of its recycling assets to Biffa on 1 September 2021.<sup>109</sup>
- (c) **FCC Environment (FCC)** is a globally-active Spain-based corporation active across the UK in waste, water and construction services. In waste it submitted that it is active across all aspects of the waste management supply chain including collection, treatment, recycling, EfW and disposal [§<].<sup>110</sup> It has 55,000 employees globally, of which 2,450 are employed in the UK.<sup>111,112</sup> The FCC group's 2020 worldwide turnover was approximately £5.5 billion, of which approximately £595 million was generated in the UK.<sup>113,114</sup>
- (d) **Serco** is a UK-based provider of public services in the defence, justice, transport, citizens and health services sectors. In the waste management sector, Serco is active nationally in collection, recycling and street cleansing.<sup>115</sup> It employs approximately 55,000 people globally and more than 30,000 in the UK across all services.<sup>116</sup> Serco is listed on the London Stock Exchange and its 2020 turnover was approximately £3.9 billion,<sup>117</sup> of which £1.6 billion was generated in UK.<sup>118</sup> Of the revenue generated in the UK, £143 million was generated in waste management services.<sup>119</sup>
- (e) **Urbaser** is a global Spain-based environmental services provider with activities in Europe, Asia, North Africa and South America.<sup>120</sup> In the UK, Urbaser is active nationally in waste treatment and recovery, water treatment and urban services such as waste collections, street cleansing,

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<sup>105</sup> Biffa's website: [About Us](#), accessed by the CMA on 8 May 2022.

<sup>106</sup> Biffa's website: [Annual Report and Accounts Year-in Review FY21](#), accessed by the CMA on 8 May 2022.

<sup>107</sup> Viridor's website: [Modern Slavery Statement 2021](#), accessed by the CMA on 8 May 2022.

<sup>108</sup> Viridor's latest accounts filed at Companies House.

<sup>109</sup> Biffa's website: [Biffa acquires Viridor collections business and certain recycling locations](#), accessed by the CMA on 8 May 2022.

<sup>110</sup> Note of call [§<]

<sup>111</sup> FCC's website: [About us](#), accessed by the CMA on 8 May 2022.

<sup>112</sup> FCC's latest accounts filed on Companies House.

<sup>113</sup> FCC's website: [FCC 2020 Annual Report](#), accessed by the CMA on 8 May 2022.

<sup>114</sup> Converted from EUR to GBP using [HMRC yearly average and spot rates](#) for the year to 31 December 2020 from HRMC

<sup>115</sup> Serco's website: [Waste and recycling](#), accessed by the CMA on 6 May 2022.

<sup>116</sup> Serco's website: <https://www.serco.com/> and [Serco UK](#)

<sup>117</sup> Serco's website: [Annual Report and Accounts 2020](#), accessed by the CMA 6 May 2022.

<sup>118</sup> Serco's latest accounts filed on Companies House, page 66.

<sup>119</sup> Email from Serco to CMA, 4 April 2022.

<sup>120</sup> Urbaser's website: [Company background](#), accessed by the CMA 6 May 2022.

grounds maintenance and beach cleansing. It employs approximately 40,000 employees globally, of which approximately 1,080 are in the UK.<sup>121</sup> Urbaser's 2019 worldwide turnover was approximately £2 billion,<sup>122</sup> with revenues of approximately £56.2 million in the UK. In 2020 Urbaser generated approximately £52.5 million in the UK.<sup>123</sup> In January 2021, Urbaser acquired six waste management contracts from Amey.<sup>124</sup> Several respondents to our inquiry reported that Amey was exiting the market and no longer actively bidding for municipal waste contracts.<sup>125</sup> In October 2021, Platinum Equity acquired Urbaser for €2.97 billion.<sup>126</sup>

- (f) **Beauparc** is an Ireland-based company with national activities in the UK in waste management, recycling and MRF sorting services. Beauparc currently employs over 2,300 employees in Ireland, the UK and the Netherlands and trades under its multiple acquired brands (eg Panda).<sup>127</sup> Macquarie Asset Management acquired the Beauparc group in June 2021 for €1.3 billion.<sup>128</sup>

### ***Company size and financial position***

5.23 This section covers, for the Parties and third parties:

- (a) Global financial position;
- (b) UK financial position; and
- (c) 'Financial standing' requirements for local authority contracts.

5.24 Figure 5.4 below shows the global revenue generated by the Parties and third parties, all of which operate in the UK.

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<sup>121</sup> Urbaser's website: [Urbaser around the world](#), accessed by the CMA on 6 May 2022. See also Urbaser's [Sustainability Report 2020](#), page 111.

<sup>122</sup> Converted from EUR to GBP using [HMRC yearly average and spot rates](#) for the year to 31 December 2020 from HRMC

<sup>123</sup> Of which approximately £48.33 million are revenues for the provision of services and approximately £4 million for construction contracts. See Urbaser's website: [Urbaser in figures](#), accessed by the CMA on 6 May 2022 and Urbaser's latest accounts filed on Companies House, page 16 and 33.

<sup>124</sup> Letsrecycle.com website, [Urbaser acquires six Amey waste contracts](#), 14 January 2021, accessed by the CMA on 6 June 2022.

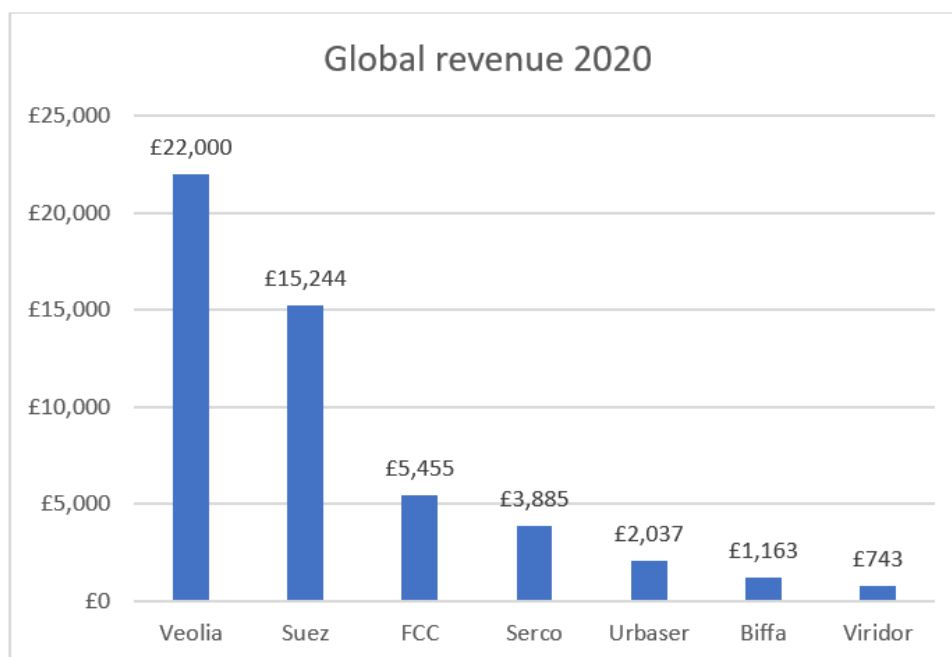
<sup>125</sup> [X] and [X] responses to the CMA's disposal competitors questionnaire and [X] and [X] response to the CMA's collection competitors questionnaire. See also note of call [X]

<sup>126</sup> Platinum Equity's website: [Platinum Equity Acquires Global Environmental Services Business Urbaser from China Tianying for \\$4.2 Billion](#), dated 22 October 2021, accessed by the CMA 6 May 2022.

<sup>127</sup> Beauparc's website: [About us](#), accessed by the CMA 6 May 2022.

<sup>128</sup> Macquarie's website: [Macquarie Asset Management agrees to acquire Beauparc Utilities](#), dated 1 June 2021, accessed by the CMA 6 May 2022.

**Figure 5.4: Global revenue 2020 by party (£m)**



Source: Veolia – CMA analysis of publicly available information.

5.25 Veolia and Suez were the largest and second largest industry players (active in the UK) in terms of global revenues in 2020. Their combined revenues in 2020, of nearly £40 billion, were approximately seven times the next largest, FCC, at £5.5 billion.

5.26 Figure 5.5 below shows the total revenue generated in the UK in 2020 by Veolia, Suez and third parties.<sup>129</sup> Of UK revenue in 2020, the amount generated by the waste management business of the Parties was approximately:<sup>130, 131</sup>

(a) £[1.5-2] billion for Veolia; and

(b) £[800-900] million for Suez.

**Figure 5.5: UK revenue 2020 by party (£m)**

[REDACTED]

Source: CMA analysis [REDACTED]

5.27 Figure 5.5 shows that in terms of revenue in the UK, Veolia was the largest industry player and Suez was the third largest industry player with £[800-900]

<sup>129</sup> With the exception of Serco which comprises revenue from waste management only.

<sup>130</sup> CMA analysis of Veolia response [REDACTED], Suez response [REDACTED], email from [REDACTED], Biffa 2020 Annual Report page 4, Viridor 2020 Financial Statements available at Companies House, page 50.

<sup>131</sup> Veolia revenue excludes revenue generated in its IWE business line.

million, while Biffa was third largest with UK revenue of just over £1.1 billion. Together the Parties represented roughly £[>] billion of UK revenue, nearly [>] times that of Biffa.

- 5.28 A summary of the impact of the Covid-19 pandemic on the Parties' and third parties' revenue, as set out in their public financial statements or annual reports, is set out below:
- (a) Veolia noted in its 2020 Annual Results announcement, Veolia noted that, following a start to the year marked by the 'exceptional impact of the Covid-19 health crisis', the Group's 2020 performance confirmed its 'capacity for resilience' and returned to growth in the fourth quarter of the year.<sup>132</sup>
  - (b) Suez noted in its 2020 financial statements that the Covid-19 pandemic had a significant impact on the economies of the countries where Suez operated during that year. Specifically, it noted that the Suez Group experienced a significant decline in business, and that it saw the following decrease in revenues compared to 2019:<sup>133</sup>
    - (i) Water: -2.9%
    - (ii) Recycling & Recovery: -2.7%
    - (iii) Environmental Technology & Solutions (**ETS**): -2.8%.

Suez's UK revenue decreased from £[900 million-1 billion] to £[800-900] million from 2019 to 2020.
  - (c) Biffa: In its 2020 Annual Report Biffa noted that volumes were beginning to recover from the impact of Covid-19. We noted that its revenue increased slightly from £1.1 billion to £1.2 billion from 2019 to 2020, then decreased to £1.0 billion in 2021.
  - (d) Viridor: In its 2020 Financial Statements, Viridor stated that it was 'well positioned to manage the impact of Covid-19' and that the strong local authority contracted position provided resilience to the underlying business, with strong ERF performance mitigating the volume impact from Commercial & Industrial customers in Collections, Landfill and

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<sup>132</sup> Veolia's website: [Annual Results 2020](#), page 7, accessed by the CMA 6 May 2022.

<sup>133</sup> Suez's website: 2020 consolidated financial statements [available here](#), page 25, accessed by the CMA on 6 May 2022.

Recycling.<sup>134</sup> However, Viridor's UK revenue decreased from £802 million in 2019 to £695 million in 2021.

- (e) Urbaser: In its 2020 Financial Statements Urbaser stated that, as most of the services it provided were considered essential during the Covid-19 pandemic, it had been able to continue operating throughout the lockdown period. Urbaser revenue in the UK decreased from £56.2 million to £55.3 million from 2019 to 2020.

5.29 Notwithstanding the impact of Covid-19, Veolia and Suez were, and remain, the first and third largest providers in the UK market, by UK waste management revenue.

### *Financial standing*

5.30 This section considers the impact of the Parties' and third parties' financial position on their ability to bid for local authority contracts.

5.31 When a local authority is procuring a contract subject to the Public Contracts Regulations (2015) (**Regulations**), it may impose requirements for participation ensuring that bidders have the necessary economic and financial capacity to perform the contract. Early on in the procurement process, local authorities may use a selection questionnaire to assess prospective bidders' credentials, before considering tenders. The selection questionnaire helps local authorities decide if a supplier has the capability and capacity to carry out a contract. The questions are typically designed to give information about a supplier's financial strength, as well as its experience in delivering the required services (eg its technical and professional capabilities and its past performance) along with other issues relevant to the contract. Bidders can also be asked for further information relating to their financial standing during the remainder of their participation in the procurement process.

5.32 The Parties and third parties confirmed that there were often financial standing and stability requirements when bidding for local authority contracts.

5.33 Veolia submitted that local authorities used a number of financial ratios and/or indicators to assess the financial standing of bidders. It also submitted that many local authority procurements involved a preliminary financial evaluation, with a pass/fail outcome. If the bidder failed this evaluation it would not be able to participate further in the procurement process.<sup>135</sup>

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<sup>134</sup> Viridor's 2020 financial statements, available on Companies House, page 7.

<sup>135</sup> Veolia response [3<]

- 5.34 Veolia told us that for bidders who passed the preliminary financial evaluation, a more detailed financial evaluation would be undertaken, including further evaluation of the bidders' financial standing where bidders were typically assessed on their recent financial statements and financial and commercial aspects of their tender submissions. It added that this further financial evaluation considered factors such as: turnover, profitability, post-balance sheet events, interim accounting statements and off-balance-sheet financing. It submitted that local authorities may also take into account recent announcements and credit reports from appropriate credit referencing agencies to understand and further explore the financial viability of the bidding organisation.<sup>136, 137</sup>
- 5.35 Veolia submitted that it was its experience that the financial indicators used by local authorities were rarely determinative of who won a contract and that the thresholds were routinely met by all reasonably large operators.<sup>138</sup>
- 5.36 Similarly, Suez submitted that the financial ratios and indicators used by local authorities varied significantly. It also told us that some local authority contracts also required parent company guarantees.
- 5.37 [One party] provided a list of [redacted] recent instances where it participated in the pre-qualification process for local authority contracts and the financial requirements specified by the local authority as part of that process. These included a number of indicators, such as:<sup>139</sup>
- (a) financial assessment based on profitability, gearing and liquidity;
  - (b) a credit rating report;
  - (c) a minimum level of economic and financial standing;
  - (d) a demonstration of net assets over a specific value; and
  - (e) a minimum level of insurance.
- 5.38 In order to assess the impact in practice of these financial requirements, we reviewed the list provided by [one party] and considered the instances which related to municipal collection services, which account for [redacted] out of the total

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<sup>136</sup> These included the following ratios: gearing, liquidity, cash interest cover, profit margins and new assets, cash resources, shareholder funds and the annual contract value compared to turnover.

<sup>137</sup> Veolia response [redacted]

<sup>138</sup> Veolia response [redacted]

<sup>139</sup> Suez response [redacted]



of [X].<sup>140</sup> In [X] of those examples, [X] submitted that there was a turnover threshold which ranged from £2 million to £54 million. Therefore, we compared the 2020 UK revenue of each of the parties and third parties to the highest turnover threshold of £54 million, as can be seen at Figure 5.6 below.

**Figure 5.6: CMA analysis of UK revenue compared to financial standing threshold (£m)**

[X]

Source: CMA analysis [X]

5.39 Based on Figure 5.6 above, the Parties and third parties all met the highest turnover threshold requirement for municipal collection contracts of the examples provided to the CMA by [one party], based on their 2020 UK turnover.

5.40 Regarding a demonstration of net assets over a specific value:

(a) [X] provided examples for which the minimum value of net assets ranged from £1.7 to £29.1 million; and

(b) [X] provided an example where the minimum value of net assets was £20 million.

5.41 Therefore, we consider that it seems likely that all large operators comfortably meet requirements from local authorities.

### *Costs of bidding*

5.42 Related to financial standing is the costs of bidding. Even if firms have the financial capacity to meet local authority requirements to be considered in a tender, they might choose not to participate because of the costs of doing so. Third parties told us that bidding costs could be substantial, both in absolute terms and relative to the contract that is being tendered. For example:

(a) Suez told us that, for one bidding process it was currently going through, there was around £[X].<sup>141</sup>

(b) [One provider] told us that bidding for local authority contracts had become more expensive. It told us that it has a permanently employed bid team and that it costs around £800,000 per year.<sup>142</sup>

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<sup>140</sup> Of the remaining four instances: one had no turnover threshold; one placed more importance on parental company guarantee; one required an external credit check by provided Equifax and for one Suez did not pass the pre-qualification stage and was therefore unable to provide us with more information.

<sup>141</sup> Suez, transcript of Main Party Hearing, [X]

<sup>142</sup> Note of call with [X]

- 5.43 Because bidding costs can sometime be substantial, some suppliers have told us that they do not bid for some contracts or select the tenders carefully. [One supplier] told us that it is not active in municipal waste collection because the cost of bidding precluded it from entering the market. It also submitted that the fact that preparation of bids for contracts was typically outsourced to consultancy firms significantly increased bidding costs.<sup>143</sup> [Another supplier] said that in one tender it had risked ‘the best part of £3 million going through the finance stage down to two’ and ... ‘you need to be selective because you cannot really go to everything that comes up because of this [cost]’.<sup>144</sup> [A third supplier] put it succinctly: ‘You pick your targets carefully ... It is very expensive when one comes second’.<sup>145</sup>
- 5.44 Based on our analysis we consider that in order to bid effectively, the Parties and third parties need to be able to demonstrate financial resources and balance sheet resilience to take on the liability of large, municipal contracts and the presence of substantial bid costs means that suppliers also consider carefully which opportunities they will choose to pursue.

### ***R&D and Innovation***

- 5.45 For the purpose of the provisional findings we have used the terms research and development (**R&D**) and research and innovation (**R&I**) interchangeably.

### ***Veolia***

- 5.46 Veolia publicly stated that innovation is inherent to its business strategy.<sup>146</sup> In 2020, Veolia’s total budget for R&I was €[<] million (£[<] million<sup>147</sup>) across water and waste management activities, around [<]% of global turnover.<sup>148</sup> R&I is coordinated by Veolia Recherche et Innovation (**VERI**) at group level; VERI conducts research programmes on behalf of and in cooperation with all the group’s activities.<sup>149</sup>

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<sup>143</sup> Note of call with [<]

<sup>144</sup> Note of call with [<]

<sup>145</sup> Note of call with [<]

<sup>146</sup> Veolia’s website: [Universal registration document 2020](#), page 37.

<sup>147</sup> Converted from EUR to GBP using [HMRC yearly average and spot rates](#) for the year to 31 December 2020 from HRMC

<sup>148</sup> Veolia’s website: [Universal registration document 2020](#), page 37.

<sup>149</sup> Veolia’s website: [Universal registration document 2020](#), page 38.

**Table 5.1: Veolia's Annual Global R&I spend: 2016 to 2020 (€m)**

Year	2016	2017	2018	2019	2020	2016-20 Average
R&I investment (€m)	[<]	[<]	[<]	[<]	[<]	[<]
Group turnover (€m)	24,390	25,125	25,951	27,189	26,001	25,731
Share of investment in turnover	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%

Source: FMN [<]

5.47 As can be seen at Table 5.1, Veolia's global R&I spend decreased from €[<] million to €[<] million in the period 2016 to 2020. It also decreased as a percentage of global turnover, from [<]% to [<]%.

5.48 Table 5.2 below sets out Veolia's estimate of its annual R&I spend in the UK, based on applying the share of investment in turnover at Table 5 to Veolia's total UK revenue.

**Table 5.2: Veolia's Estimated Annual R&I spend in the UK: 2016 to 2020 (€m)**

Year	2016	2017	2018	2019	2020	2016-2020 Average
Estimated R&I investment (€m)	[<]	[<]	[<]	[<]	[<]	[<]
Total UK revenue (€m)	[<]	[<]	[<]	[<]	[<]	[<]
Investment as a share of total revenue	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%

Source: FMN [<]

5.49 Therefore, Veolia's estimate of its UK R&I spend also decreased between 2016 and 2020, from €[<] million to €[<] million.

## Suez

5.50 Similar to Veolia, Suez views innovation as a high priority, describing it as a 'core component of its strategy'.<sup>150</sup> In 2020, Suez invested €103.3 million in R&I globally.<sup>151</sup> Suez also develops innovations in partnerships with academics and European bodies such as Water Europe and KIC Climate.

5.51 Table 5.3 below sets out Suez's global annual R&I spend in euros and as a percentage of its total revenue. It is split between investment in water and waste R&I.

<sup>150</sup> UNGC website: [Suez's Universal registration document 2020](#), page 57.

<sup>151</sup> UNGC website: [Suez's Universal registration document 2020](#), page 58.

**Table 5.3: Suez Group global on spend R&I: 2016 to 2020 (€m)**

Year		2016	2017	2018	2019	2020
Total revenues	€m	15,332	15,783	17,331	18,015	17,209
	€m	[<]	[<]	[<]	[<]	[<]
	% of total revenues	[<]%	[<]%	[<]%	[<]%	[<]%
Total R&I	€m	[<]	[<]	[<]	[<]	[<]
	% of total revenues	[<]%	[<]%	[<]%	[<]%	[<]%
Water R&I	€m	[<]	[<]	[<]	[<]	[<]
	% of total revenues	[<]%	[<]%	[<]%	[<]%	[<]%
Waste R&I	€m	[<]	[<]	[<]	[<]	[<]
	% of total revenues	[<]%	[<]%	[<]%	[<]%	[<]%

Source: FMN [<]

5.52 Suez's global R&I spend increased from €[<] million to €[<] million in the period 2016 to 2020. Global R&I spend also increased as a percentage of global turnover, from [<]% to [<]%. Water R&I accounted for a greater proportion of overall R&I spend in each year from 2016 to 2020.

5.53 Suez told us that R&I costs in the UK were embedded in the Suez UK waste business, which did not maintain a separate accounting line item for R&I spend. However, Suez provided us with an estimate of the costs incurred by each of the R&I projects undertaken over the last five years. This did not include 'in-kind' costs which were represented in overheads of the relevant business unit. Suez also noted that some projects may include in-kind costs that could be claimed back under government funding arrangements, or were paid for by partners Suez worked with on joint projects.

5.54 Suez estimated that the Suez UK waste estimated spend on R&I projects over the last five years total [above] £[10] million.<sup>152</sup>

### Third parties

5.55 We received limited information from third parties on their annual R&D spend. Of the main other large waste management companies:

(a) FCC reported in its 2020 annual report that the FCC group spent €2.3 million on R&D projects and €3 million on R&D in environmental protection.<sup>153</sup> FCC also told us that [<].<sup>154</sup>

(b) Urbaser told us that [<].<sup>155</sup>

<sup>152</sup> Suez response [<]

<sup>153</sup> Including group activities on construction and water. FCC website: [2020 annual report](#), accessed by the CMA on 6 May 2022.

<sup>154</sup> Email from [<].

<sup>155</sup> Urbaser response [<]

(c) Viridor told us [REDACTED].<sup>156</sup>

5.56 The R&D spend of other third parties can be found at Table 5.4 below:<sup>157</sup>

**Table 5.4: Summary of third party spend on R&D**

Party	Implied annual spend (£m)	Implied spend as % of revenue
Biffa	[REDACTED]	[REDACTED]
Beauparc	[REDACTED]	[REDACTED]
FCC	[REDACTED]	[REDACTED]

Source: Biffa response [REDACTED]; email from Beauparc to CMA, [REDACTED]; FCC [2020 Annual Report](#).

5.57 Within waste, over the period 2016 to 2020, the Parties' R&D spend as a % of turnover ranged from [REDACTED] to [REDACTED]% (globally for both and in the UK for Veolia). Suez's global R&D spend was approximately [REDACTED] times the size of Veolia's spend, as a percentage of revenue, however we note that between 2016 and 2020 the majority of the Suez Group's total global R&I spend related to Water R&I.

5.58 Based on the information available on third party spend on R&D, in absolute terms both Veolia and Suez spend more in the UK than competitor Biffa. However, when considering R&D spend as a percentage of revenue, Beauparc, Biffa and FCC spent a similar amount at [REDACTED]%, [REDACTED]% and [REDACTED]%.

### **Access to assets and infrastructure network**

5.59 This section covers the assets which the Parties operate, own or have access to, in the following categories:

- (a) MRFs;
- (b) ERFs;
- (c) Landfill;
- (d) Composting; and
- (e) Waste depots and waste transfer stations.

### **MRFs**

5.60 Table 5.5 below sets out the number of MRFs operator by major waste management companies in 2019.

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<sup>156</sup> Viridor response [REDACTED]

<sup>157</sup> R&D spend by the third parties listed relates to waste management only and does not include any R&D on water or wastewater management.

**Table 5.5: MRFs operated by major waste management companies in 2019**

<i>Operator</i>	<i>Number of MRFs operated</i>	<i>Total operational capacity (kt)</i>
Biffa	[X]	[X]
Suez	[X]	[X]
Viridor	[X]	[X]
Veolia	[X]	[X]
Beauparc	[X]	[X]
FCC	[X]	[X]
Other	[X]	[X]

Source: [X]

5.61 It can be seen at Table 5.5 that only four providers have more than ten operational sites in the UK (with all other suppliers having a far lower number of sites). Suez had the second largest ‘estate’ with [X] MRFs, while Veolia had fourth largest with [X].

5.62 The Merged Entity would have the largest share of MRFs and eight more than Biffa, which operated the most in 2019.

### *ERFs*

5.63 Table 5.6 below sets out the number of operational ERFs operated by major waste management companies in 2019.

**Table 5.6: ERFs operated by major waste management companies in 2019**

<i>Operator</i>	<i>Number of ERFs operated</i>	<i>Assumed operational capacity (ktpa)</i>
Veolia	[X]	[X]
Viridor	[X]	[X]
Suez	[X]	[X]
FCC	[X]	[X]

Source: [X]

5.64 In 2019 there were 54 operational ERFs in the UK. Table 5.6 shows that Veolia and Suez operated [X] and seven respectively. Of the [X] ERFs Veolia operated, it owned [X] and owned [X]. Of the seven Suez operated: [X] was owned by a local authority; [X] were 100% owned by Suez and four were owned in part by Suez, with interests owned ranging between [X].

5.65 The remaining ERFs were operated by other, smaller, third parties.

### *Landfill*

5.66 Table 5.7 below sets out a breakdown of the number of landfill sites in the UK owned by the Parties and third parties in 2019.

**Table 5.7: Landfill sites owned by the Parties and third parties in 2019**

<i>Operator</i>	<i>Number of sites owned</i>
Biffa	[10-20]
Suez	[10-20]
FCC	[10-20]
Viridor	[10-20]
Veolia	[0-10]
Other third parties	[300-350]
Total	[350-400]

Source: FMN, [3<]

5.67 As can be seen at Table 5.7 above, in 2019 there were [350-400] landfill sites in the UK. Biffa owned the most landfill sites at [10-20], while Suez, FCC and Viridor each owned [10-20], and Veolia owned [10-20].

### *Composting*

5.68 Table 5.8 below sets out a breakdown of the number of composting sites in the UK operated by the Parties and third parties in 2019.

**Table 5.8: Composting sites operated by the Parties and third parties in 2019**

<i>Operator</i>	<i>Number of sites owned</i>	<i>Capacity (tpa)</i>
Veolia	[10-20]	[450,000-500,000]
Biffa (including Viridor assets)	[0-10]	[350,000-400,000]
Suez	[0-10]	[150,000-200,000]
Third Parties	[200-250]	[4.5-5 million]
Total	[200-250]	[5.5 – 6 million]

Source: FMN, [3<]

5.69 As can be seen at Table 5.8 above, in 2019 there were [200-250] composting sites in the UK, of which Veolia operated [10-20] and Suez operated [0-10].

### *Waste depots and waste transfer stations*

5.70 In 2020 Veolia operated [3<] waste depots and Suez operated [3<] waste depots. In terms of waste transfer stations, Veolia operated [3<] assets across the UK, of which: [3<]. Suez operated a total of [3<]: [3<] with additional capabilities and [3<] normal waste transfer stations.<sup>158</sup>

## **The procurement process**

5.71 Local authorities are responsible for collecting and treating the waste generated by households and ensuring the waste is properly disposed of. To fulfil these responsibilities, local authorities procure services from specialist

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<sup>158</sup> Veolia response [3<] and Suez response [3<].

waste management companies, such as Veolia and Suez. In doing so, the relevant local authority may put their requirements out to tender in order to comply with the Regulations. Further detail on the public procurement framework in the UK, including when it applies and what the process generally involves, is in Appendix B.

- 5.72 Commercial and industrial business are responsible for arranging their own waste collections. They usually do so on relatively short contracts (of 1 to 2 years).
- 5.73 Some of the services that we have examined are procured without a tendering process (eg some services are sold on a spot market). We have identified in our analysis how the services are procured.

### ***Local authority types***

- 5.74 There are three different types of local authority in England, which may procure waste management services in different ways. In particular:
- (a) Waste Collection Authorities are responsible for waste collection and recycling services described at paragraphs 5.2(a) and 5.2(c) (eg the district, borough and city councils in England such as St Albans City Council);
  - (b) Waste Disposal Authorities are not responsible for waste collection and recycling services but instead for the waste disposal services described at paragraph 5.2(d) above (eg the county councils in England such as Surrey County Council (Surrey)); and
  - (c) Some Unitary Authorities (**UAs**) are responsible for all of waste collection, recycling and waste disposal services (eg UAs in the shire areas, London boroughs, and metropolitan boroughs in England such as South Gloucestershire Council).<sup>159</sup>
- 5.75 Scotland, Wales and Northern Ireland are not subject to the same two-tier local government system applicable in England and responsibilities relating to waste management are therefore not split between different types of local authority.<sup>160</sup>

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<sup>159</sup> UK Government's website: [Understand how your council works](#), accessed by the CMA on 6 May 2022 Some Unitary Authorities are responsible only for waste collection and recycling only as there is a separate statutory body responsible for waste disposal (eg the West London Waste Authority which is responsible for waste disposal services for the London boroughs of Brent, Ealing, Harrow, Hillingdon, Hounslow and Richmond Upon Thames).

<sup>160</sup> See webpages of the devolved governments for [Scotland](#), [Wales](#) and [Northern Ireland](#).



## **Local authority contracts**

- 5.76 When procuring a waste management services contract, local authorities may seek to procure a contract to supply a single service or several services bundled together. Local authority contracts that bundle together multiple services are described by many industry participants as ‘integrated contracts’. Where they consider it appropriate, local authorities have the option of splitting a contract they are procuring into smaller ‘lots’ which can be bid for separately.
- 5.77 Historically, local authorities have procured many municipal waste management services under single PPP contracts (including some contracted through the Private Finance Initiative (the **PFI**)), bundling a broad range of services under a single waste management contract with a supplier such as Veolia or Suez (who may then in turn have sub-contracted some of the services included in the contract). The use of PPP and PFI contracts arose from the need to fund the construction of major infrastructure facilities however not all local authority waste management contracts have been under the PPP and PFI schemes.
- 5.78 Since 2018, the PFI is no longer used to develop new infrastructure (although the option to procure waste management contracts through PPP contracts remains).<sup>161</sup>

## **The structure of the report**

- 5.79 The rest of the report is structured as follows.
- 5.80 We have divided our analysis into two broad sections. The first considers whether the Merger is likely to give rise in horizontal unilateral effects in various waste markets. The second considers whether the Merger is likely to give rise in horizontal unilateral effects in two water markets – in the operation and maintenance of water and wastewater treatment facilities, and in the provision of mobile water services. A description of the relevant services in respect to the operation and maintenance of water and wastewater treatment facilities, and in the provision of mobile water services is given in those two chapters respectively.
- 5.81 With respect to the various waste-related markets, we first consider whether competitive conditions in complex waste management contracts for municipal customers are such the Parties are likely to be closer competitors for these

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<sup>161</sup> UK government website (HM Treasury and Infrastructure and Projects Agency): [Project Finance Initiative and Private Finance 2 projects: 2018 summary data](#), accessed by the CMA on 8 May 2022,

types of contracts. We discuss in chapter 6 what we mean by complex waste management contracts but we have seen in this chapter that municipal customers have varying requirements, whether in the collection, sorting, or disposal of municipal waste and that some contracts bundle multiple services which may restrict how many suppliers are able to fulfil these contracts.

- 5.82 Our examination of waste markets then assesses in detail individual waste management markets. For municipal customers these are non-hazardous municipal waste collection, sorting of waste, disposal of waste by incineration and disposal of food and garden waste by composting. For C&I customers we examine the collection of waste as a discrete market although we acknowledge that C&I waste is sometimes sorted at the same facilities as municipal waste and disposed of via incineration (as well as the other disposal methods of landfill and RDF export).

### ***The nature of competition and our analysis***

- 5.83 In its merger assessments, the CMA seeks to develop a general understanding of the competitive process, which will, in turn, take into account the specific features of the markets at issue. In this case, we note that certain market dynamics have shaped our approach to the gathering and assessment of the evidence. In particular, some services within the waste management industry are characterised by long-term contracts. Veolia has told us that for some municipal contracts the contracted period can be very long. For example, some existing municipal ERF contracts which originated from Public Private Partnership/Private Finance Initiative (**PPP/PFI**) projects around 25 years ago are nearing the end of the contractual period whereas others have many years left to run.<sup>162</sup> Similarly, municipal collection contracts can be between eight and 10 years.<sup>163</sup>
- 5.84 Where relevant, we have taken the long-term nature of contracts into account in our analysis in the following ways:
- (a) Where we consider that past competitive interactions offer insight into current competitive conditions, we have examined bid data for tendered contracts. We have made clear in our analysis where we have done this. Where we have used bid data we have used it in context with a range of evidence;
  - (b) In circumstances in which there have been few recent tenders from which we can directly observe competitive dynamics, we have put less weight

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<sup>162</sup> [Overview submission by Veolia](#), paragraphs 31 and 32

<sup>163</sup> [Overview submission by Veolia](#), paragraph 53

on the bidding data that are available and instead primarily relied on a range of other evidence to come to our provisional findings. For example, in the O&M of ERFs we have examined the likely customer selection criteria from customers, and considered the evidence on how the Parties compare to their rivals on these, as well as the Parties' own plans, internal documents and shares of supply; and

- (c) We have received evidence from third parties – both customers and competitors – on who they consider to be the most credible current suppliers and how customers see the market developing (eg whether they are likely to use bundled contracts).

5.85 We have also had regard, to the extent relevant, to longer-term public policy objectives in waste management. For example, it is well established public policy to move away from landfill as a disposal option but landfill today accounts for almost half of waste disposal and the Government's target for landfill in England is that by 2035 no more than 10% of municipal is to be sent to landfill (see chapter 9 regarding our assessment of O&M services of ERFs).<sup>164</sup>

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<sup>164</sup> [Waste Management Plan for England](#), January 2021

## **6. Competition for complex waste management contracts procured by local authorities**

### **Introduction**

- 6.1 This chapter examines what role the variation between local authorities in their waste management requirements might play in affecting conditions of competition. Some local authority requirements might be complex (ie materially risky and/or difficult to fulfil) and, as a result, these customers might face relatively little competition. Moreover, Veolia and Suez might be close competitors for these types of contracts and the Merger would remove this competition. If this is the case, then these local authority requirements should form a part of our competitive assessments in chapters 7 to 9.
- 6.2 It may be the case that the Merger will give rise to an SLC solely in respect to the provision of services to customers who have relatively more complex requirements.<sup>165</sup> The aim of this chapter, therefore, is not to decide on a provisional basis whether an SLC is likely to arise in respect of any particular service but rather to assess some aspects of competition for the provision of municipal waste management services that have complex requirements. This chapter does not consider conditions of competition for complex requirements of commercial customers (nor of customers of the water-related services discussed in chapter 12 and 13).
- 6.3 We note that the Parties compete to supply services across substantially all waste management activities to local authorities in the UK (paragraph 5.2). In principle, holding this broader set of capabilities could give the Parties a competitive advantage and make them closer competitors to each other relative to some or all of their rivals, particularly in relation to bidding for integrated contracts.
- 6.4 In this chapter, we examine complex requirement and competition in waste management in the following manner:
- (a) We examine the nature of customer requirements (given those requirements determine how straightforwardly or complex it is to fulfil the contract) and what specific underlying factors could make contracts more

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<sup>165</sup> Unlike the CMA's [Phase 1 Decision](#), we do not examine complexity as a market in its own right but rather as a differentiating factor across customers and suppliers in various services. This means that in practice the CMA Phase 1 Investigation team may have included some services in their complex contracts analysis which were also cleared on their individual analysis (in effect, capturing the non-complex components).

difficult for some suppliers to compete for effectively. We also consider evidence on the extent to which the inclusion of such characteristics whether alone or in combination could affect the conditions of competition for such contracts.

- (b) We consider the evidence on whether complexity of customers' requirements could affect the conditions of competition.
- (c) We then analyse competitive conditions for customers with complex requirements, by (i) assessing shares of supply among a segment of contracts with characteristics that are likely to reflect more complex requirements and (ii) considering competitive conditions for a subset of contracts that the Parties' internal documents classify as 'complex'.

6.5 In conducting our assessment, this chapter and the subsequent chapters analyse a range of evidence, including the Parties' internal documents. We reviewed a targeted subset of the internal documents submitted to us by the Parties during our inquiry, using search terms to identify documents that could be relevant to our analysis. We also reviewed documents submitted by the Parties during the CMA's phase 1 Investigation.

## **Background**

- 6.6 The Parties are multi-service firms within the waste management chain (chapter 5). They both supply a number of overlapping services, including several distinct waste management services that are all sold to the same type of customer, namely local authorities.
- 6.7 In chapters 7 to 10 we assess competitive effects of the Merger in each of those services individually. However, we believe that the evidence available to us shows that the Parties' presence across all of these services may be relevant to the assessment of competitive dynamics when considering these services individually. In particular, the Parties' presence across the full portfolio of services, and possibly their size, itself may give them a competitive advantage, and make them closer competitors to each other compared to some rivals. This might be particularly relevant to bidding for integrated contracts (ie those that involve more than one of those services). Any such dynamics may be important to capture in our competitive assessment.
- 6.8 We have examined the extent to which there are factors that make contracts more difficult to supply or requirements that are more difficult to satisfy, and the potential for those complex requirements to affect competitive conditions. This chapter sets out our assessment of these points relating to complexity across the relevant waste management services.

## Factors underlying complexity

6.9 Evidence we reviewed, discussed below, suggests that although suppliers and customers recognise differing levels of complexity in the nature of local authority requirements, the difference between what is a complex contract and what might be termed a ‘basic’ contract cannot be defined precisely (such that individual customer needs or contracts are not easily classified as ‘complex’ or ‘non-complex’). Moreover, even those local authorities with complex requirements have considerable variation between them in their needs giving rise to varying degrees of complexity. Since contractual complexity is varied it would be misleading to attempt to introduce any threshold. Rather, in this chapter we seek to understand what characteristics, whether alone or in combination with other factors may make customer requirements more complex, using evidence from:

- (a) Parties’ submissions;
- (b) Parties’ internal documents;
- (c) Customer views; and
- (d) Competitor views.

### ***Parties’ submissions***

#### *Factors indicating complexity*

6.10 We asked the Parties to indicate what they understand to be the main characteristics of a complex contract.

6.11 Veolia submitted that there is no recognised definition of a complex contract [REDACTED]. [REDACTED].<sup>166</sup>

6.12 Veolia further submitted that [REDACTED].<sup>167</sup>

6.13 According to Veolia, the main parameter that could contribute to a contract’s complexity is [REDACTED].<sup>168</sup> Veolia identified two additional parameters which could make a contract more complex:

- (a) [REDACTED].

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<sup>166</sup> Veolia’s response [REDACTED]

<sup>167</sup> Veolia’s response [REDACTED]

<sup>168</sup> Veolia’s response [REDACTED]

(b) [REDACTED].<sup>169</sup>

- 6.14 Suez submitted that it does not commonly use the term ‘complex contracts’. However, Suez notes that some contracts may be more difficult to execute and involve a variety of risks as compared to smaller standalone single-service contracts. Suez submitted that there is a spectrum of complexity and different waste service providers are often better placed to service different types of contracts.<sup>170</sup> Suez submitted there was a wide range of varying complexities in contracts which could be based on a number of different factors including: the number of services provided, the duration of the contract, the risk profile, and the capital investment required. Suez competes for contracts along this spectrum of complexity. [REDACTED] also submitted that [REDACTED].<sup>171</sup>
- 6.15 Suez submitted that, while it does not specifically categorise contracts as complex, it does maintain a separate reporting record in its management reporting system for high-value public sector contracts (both PFI and non-PFI contracts). The rationale for this is that these contracts are typically longer term and have a high value, generally involving several services. Further, as is common for PFI contracts, a number of these contracts have Special Purpose Vehicle structures which require individual reporting lines. Suez submitted that these high-value contracts were discussed to a greater degree within its internal documents than lower value contracts.<sup>172</sup>
- 6.16 Suez submitted that among its current contracts it considered [REDACTED]. Suez submitted that contracts of this type covering all or a large part of a local authority’s waste needs are limited in number. Suez submitted that its internal documents refer to [REDACTED] as large contracts.<sup>173</sup>
- 6.17 Suez also submitted that it found the longer-term, larger-value contracts [REDACTED]. This was in part because these types of contract would not come around again in the next few years; unlike, for example, a collection contract. Suez submitted that it considered the larger contracts, (eg those operating many services or involve building infrastructure) to be [REDACTED].<sup>174</sup> Further, Suez submitted that contracts that are longer term (10 to 15 years or longer) are complex and require the service provider to have good standing, experience

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<sup>169</sup> Veolia’s response [REDACTED]

<sup>170</sup> Suez response [REDACTED]

<sup>171</sup> Suez main party hearing transcript [REDACTED]

<sup>172</sup> Suez response [REDACTED]

<sup>173</sup> Suez response [REDACTED]

<sup>174</sup> Suez main party hearing transcript [REDACTED]

and resilience, and a willingness to manage future changes in policy and waste processing techniques in accordance with the contractual terms.

- 6.18 Veolia submitted<sup>175</sup> that contract size was not an indicator of complexity. Veolia submitted that the services provided are the same regardless of size. Large contracts tend to be in areas with higher household density, which makes these areas more efficient to serve. The value of large contracts makes them attractive to all competitors. The high value of the overall contract means that competitors are willing and able to offer services with slim percentage profit margins compared with smaller contracts, and makes it easier to justify investing in providing the service. Large contracts are won by 'small' suppliers. For example, Countrystyle was awarded its first contract in the London Borough of Bexley, which has 99,000 households.<sup>176</sup>

#### *Use of integrated contracts in the future*

- 6.19 Veolia submitted that today's market is characterised by local authorities considering options to unbundle more of their contracts and tendering for individual services or small contract lots.<sup>177</sup>
- 6.20 In respect of the prevalence of bundled integrated contracts, Veolia submitted that:
- (a) public procurement rules and UK Government policy encourage public authorities to tender their waste management services individually or as small packages, to increase competition, encourage smaller operators to compete and drive value for money, and that such guidance encourages all contracting authorities to divide contracts into lots as standard practice, citing Regulation 46(2) of the PCRs;<sup>178</sup>
  - (b) the result of this is an increasing trend of local authorities dividing their waste collection and treatment/disposal contracts into lots rather than contracting one supplier to provide all or the majority of its their collection and treatment/disposal needs; only one "multi-faceted" contract (ie that includes as a minimum the provision of treatment and disposal services for two or more different waste streams over time) has come to market in the last six years (and only in unusual circumstances); and

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<sup>175</sup> Veolia's response [38]

<sup>176</sup> This was a five year contract with an annual value of £1.7 million. Countrystyle's website: [London Borough of Bexley Contract Win \(countrystylerecycling.co.uk\)](https://www.countrystylerecycling.co.uk); accessed by the CMA on 9 May 2022

<sup>177</sup> Veolia response [38]. Veolia also noted that municipal waste collection and street cleansing are often tendered in the same contract as the services are related. It does not consider this to be an "integrated" contract, and understands this is common in the industry.

<sup>178</sup> [Overview Submission by Veolia](#), paragraphs 43-49



- (c) the median number of waste service providers currently used by Unitary Authorities is three, rising to four when looking at more recent contracts (those starting since 2017) which demonstrates that splitting services across providers is not just a theoretical possibility.

6.21 Veolia submitted<sup>179</sup> that the reason there may be a lack of evidence on unbundling despite the Regulation being in place since 2015 is because not many large contracts have come up for tender since. It cited only the example of Surrey as a relevant recent contract which is still in initial stages but Veolia understands the approach is to unbundle services.

### ***Evidence from internal documents***

#### ***Factors indicating complexity***

6.22 Both Parties frequently use the term ‘complex’ or ‘complexity’ to describe certain contracts:

(a) [REDACTED].<sup>180</sup> [REDACTED].<sup>181</sup>

(b) [REDACTED]<sup>182</sup>

(c) [REDACTED]<sup>183</sup>

(d) [REDACTED]<sup>184</sup>

(e) In an internal document, in response to a request for information, Suez discusses how the relative weight given by local authorities to price and quality in a procurement process tends to reflect the ‘complexity’ of the service being procured and the stage of procurement. It also states that quality is likely to be given more weight in the evaluation of tenders that require complex technical solutions or carry reputational risk.<sup>185</sup>

#### ***Integrated contracts***

6.23 A Suez internal document of July 2020 sets out updates on developments in certain public sector contracts. Slide 6 of the document notes that there is a ‘recent trend of larger authorities tendering integrated without lots e.g. [REDACTED]’. The document also sets out the rationale for a [REDACTED] street cleansing contract,

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<sup>179</sup> Veolia, Main Party Hearing Transcript, [REDACTED]

<sup>180</sup> Veolia internal document, [REDACTED].

<sup>181</sup> Veolia internal document, [REDACTED].

<sup>182</sup> Veolia internal document, [REDACTED]

<sup>183</sup> Veolia’s internal document, [REDACTED]

<sup>184</sup> Suez’s internal document, [REDACTED]

<sup>185</sup> Suez’s internal document, [REDACTED]

noting that this contract may assist Suez to 'qualify for future opportunities', giving examples of 'integrated' contract opportunities with '[redacted]' and '[redacted]' which will require bidders to have street cleansing experience (presumably as part of a wider specification).<sup>186</sup>

## ***Evidence from customers***

### ***Factors indicating complexity***

6.24 In their questionnaire responses, local authorities suggested several indicators of complexity, including the size of a contract, whether a contract is integrated, or involves partnership of multiple local authorities. These are references made by customers to 'complexity' in their responses to a question about the factors which affect the number of competitors that are able to bid for their contract (and why) as well as various questions in the questionnaire, without any prompts to discuss complex contracts.

6.25 Examples of these responses include:

(a) Solihull Metropolitan Borough Council (Solihull): *'We have recently procured our waste collection contract – this has been combined with operation of the Household Waste Recycling Centre, Transfer Stations, Street Cleansing, Grounds Maintenance, Forestry and Cemetery services. This is a large, complex integrated contract.'*<sup>187</sup>

(b) Wigan Council (Wigan): *'Generally, partnering with other local authorities would increase the complexity and risk.'*<sup>188</sup>

6.26 During calls with local authorities we were told the following:

(a) GMCA told us that a complex contract is one that covers a full range of facilities over a large geographical area.<sup>189</sup>

(b) The National Association of Waste Disposal Officers (**NAWDO**) sees a complex contract as one that:<sup>190</sup>

(i) handles multiple waste flows (ie residual, recycles, organics);

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<sup>186</sup> Suez's internal document, [redacted]

<sup>187</sup> Solihull's response to the [redacted]. Solihull's collection contract started in April 2022.

<sup>188</sup> Wigan's response to [redacted]

<sup>189</sup> Note of call with [redacted]

<sup>190</sup> Note of call with [redacted].

(ii) Requires interconnectedness between different treatment solutions;  
or

(iii) Involves infrastructure that costs millions and requires long-term contracts.

(c) Westminster City Council (**Westminster**) told us that any supplier needs to 'evidence its track record around delivering contracts that are as complex and large as the City Council's'.<sup>191</sup> Its contract is '*the biggest contract in the UK in terms of scale*'.<sup>192</sup>

6.27 Further, NAWDO stated that changes to the Environment Act may lead to the waste collection process becoming more complicated, eg by having to collect several different types of waste separately.<sup>193</sup>

#### *Use of integrated contracts in the future*

6.28 Within various waste management activities, customer requirements vary according to the size of contracts, the amount of waste needed to be handled and the range of services that they need. Sometimes multiple services will be bundled together in the same contract. For example, we have seen evidence of local authority integrated contracts involving all aspects of waste collection and treatments. We have seen another example of a contract integrating the O&M of ERF and MRFs, the operation of transfer stations and municipal recycling centres.

6.29 Sometimes a local authority will tender for its infrastructure to be operated and managed on its behalf (for example, ERFs or MRFs). In other instances, the local authority will require infrastructure to be designed and built as well as managed or existing infrastructure to be refurbished/reconditioned in order to improve its capacity, efficiency and/or lifespan. In this chapter, we consider whether these different approaches might affect competition for waste management contracts.

6.30 We asked customers whether they bundle several services into one contract (and if so, which services), why they choose to bundle (or not bundle) services into single contracts, and whether they would consider unbundling some or all of the services in their current contract when it expires and if so, their reasons.

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<sup>191</sup> Westminster's response [3<]

<sup>192</sup> Note of call with [3<]

<sup>193</sup> Note of call with [3<]

6.31 Local authorities' responses suggested that bundling can be beneficial in terms of:

- (a) making it easier and more efficient for a customer to manage a few bundled contracts rather than many services separated into lots.<sup>194</sup>
- (b) minimising 'interface risk'. That is, where a local authority contracts with more than one supplier to provide services at different points in the waste management supply chain, eg one supplier provides collection services and another disposal services. In this case, the local authority has to manage the interface between the two suppliers.<sup>195</sup> For example, one local authority submitted that splitting services according to facility type (eg sorting vs incineration) may not always be possible as this would require splitting environmental permits, with several contractors operating different facilities in one location, which would require separate drainage and spill containment which cannot be retrospectively installed.<sup>196</sup>
- (c) providing better value when services are bundled into a single contract.<sup>197</sup> In particular, it may generate economies of scale or scope for the supplier. For example, one local authority submitted that by bundling services, the supplier 'would be able to introduce synergies, and there would be economy of scale, which should keep costs low'.<sup>198</sup>

6.32 Local authorities<sup>199</sup> also recognised that unbundling could be beneficial to attract more competition, especially from smaller waste management companies whereas bundled contracts attract only the larger providers. Different services use capital over different life cycles and can be difficult to bundle. Unbundling can remove the effect of local asset control distorting competition, for example, by separating the provision of lower cost services (e.g. provision of waste transfer stations) from higher cost services (e.g. treatment of waste).

6.33 Overall, of the 24 local authorities that considered their current contracts to be bundled, five did not express a preference for either unbundling or keeping integrated contracts. Of the remaining 19 local authorities, 11 said that they would not unbundle and instead keep with integrated contracts. The evidence

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<sup>194</sup> [X], [X], [X], [X], [X], and [X] responses to CMA's local authority customer questionnaire.

<sup>195</sup> [X], [X], [X], and [X] responses to CMA's local authority customer questionnaire.

<sup>196</sup> [X] response to the CMA's phase 2 municipal customers questionnaire, [X] and note of phase 1 call [X].

<sup>197</sup> [X], [X], [X], [X], [X], [X], [X], [X], [X], [X], and [X] responses to CMA local authority customer questionnaire.

<sup>198</sup> [X] response to the CMA's phase 2 municipal customers questionnaire.

<sup>199</sup> Examples include [X].

indicates that some local authorities will continue to bundle various services together in a single integrated contract.

## ***Evidence from competitors***

### *Factors indicating complexity*

- 6.34 Beauparc told us complexity arises due to the inclusion of several waste management services in single tenders, the overall value of the contract, the duration of the contract, or specific local authority requirements.<sup>200</sup> It viewed the historical PFI contracts as being most complex where waste companies were bidding to provide all services to a large LA.
- 6.35 Amey told us the long-term nature of some contracts makes it difficult to assess risks over the time period and results in their being complex. Further, bundled contracts that involve construction of infrastructure tend to be more complex, while treatment is more complex than collection.<sup>201</sup>
- 6.36 Biffa told us integrated contracts that can require the acquisition of land, site surveys, planning issues, environmental permits, can be complex.<sup>202</sup>
- 6.37 Urbaser told us waste treatment contracts that involve infrastructure are the most complex. Further, contracts that bundle services are complex and complexity also arises from having to coordinate with suppliers and employee unions.<sup>203</sup>

## ***Our assessment***

### *Factors indicating complexity*

- 6.38 With respect to the Parties' submission that there is no recognised definition of a complex contract in the waste management sector, we acknowledge that the sector has not adopted a single definition of a 'complex contract'. The evidence from the Parties, customers and competitors is that the term is used in various contexts in recognition of characteristics that make an individual contract or types of contract complex. Contributory factors mentioned include scale, operational delivery, bundling of services, and local authority requirements – and may be thought of as lying on a spectrum, ranging from the least to the most complex. It may also affect a supplier's willingness and

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<sup>200</sup> Note of call [3<].

<sup>201</sup> Note of call [3<].

<sup>202</sup> Note of call [3<].

<sup>203</sup> Note of call [3<].

ability to compete for particular customer contracts and it is therefore important for us to take that into account in our assessment of competitive effects.

- 6.39 In any event, it is clear from the Parties' internal documents that they recognise that some contracts are more complex than others. Irrespective of their submissions that it is not commonly used or used consistently, Veolia has found the term/concept useful in characterising and prioritising contract opportunities.
- 6.40 Suez internal documents identify a set of contracts that it considers to be complex based on an internal definition. Suez also noted that factors contributing to the complexity of a contract included size, number of services provided, duration of the contract, risk profile, capital investment required and whether it was building infrastructure.
- 6.41 Overall, the evidence that we have reviewed suggests that the following factors can be indicators of complexity:
- (a) Bundled or integrated contracts (Parties' representations, customers, Parties' internal documents)
  - (b) Contract size (customers, Parties' internal documents)
  - (c) Contracts that involve infrastructure (Parties' internal documents)
  - (d) Contract duration and the difficulty in assessing risk over a long time period (Suez, customers, competitors)
  - (e) Contracts that are operationally complex (eg meeting performance monitoring KPIs or financial penalties linked to KPIs or due to local unionisation) [S&K]
  - (f) Contracts that are more difficult to execute and involve a variety of risks (Suez submission, Veolia internal document)
  - (g) Contracts awarded by local authority partnerships (customers, Veolia internal documents)
  - (h) Contracts that handle multiple waste flows (i.e. residual, recyclates, organics) (NAWDO)
  - (i) Contracts where the procurement process is more involved or the bidding process requires greater resources [S&K].

### *Use of integrated contracts in the future*

- 6.42 The evidence from local authorities is that nearly half (11 out of 19) of local authorities we received representations from expect to continue to tender bundled contracts of some form. This suggests that while there may be some unbundling in future procurements, a significant proportion of local authorities might bundle services. As set out in paragraph 6.31, some local authorities have identified why bundling services is in their best interest.
- 6.43 With respect to Veolia's submission that the PCRs encourage all contracting authorities to divide contracts into lots as standard practice (citing Regulation 46(2)), we note that the PCR do not oblige the local authority to sub-divide contracts into smaller lots. The relevant regulation (46(2)) states only that the authority shall provide an indication of the main reasons not to subdivide a contract into lots if it chooses not to do so. It is clear from the Regulations that local authorities retain discretion over how they design and award tenders, and a decision not to subdivide into lots is at the discretion of the local authority.<sup>204</sup>
- 6.44 This is supported by evidence from one of the local authorities<sup>205</sup> ([redacted]), who told us that it did not think that the current procurement regulations were an obstruction in terms of whether it wants to bundle its services into one contract or not. It stated that the public procurement rules are sufficiently flexible such that it can bundle services into one contract if it chooses to do so.
- 6.45 With respect to Veolia's submission that UK government policy also encourages public authorities to tender their waste management services individually or as small packages, the government guidance provided by the Parties in support of this submission is dated 2007 and (given the developments in waste management policy since 2007) is therefore unlikely to carry much weight as local authorities consider upcoming tenders. Moreover, the guidance cited merely discourages integrated contracts which bundle services together 'unnecessarily', rather than discouraging integration as such.
- 6.46 A competitor ([redacted]), suggested that a local authority's decision whether to unbundle a complex contract or not was a difficult choice; if a local authority split a contract into lots it would attract more bidders, but the downside of this would be that there were a lot of interfaces for the local authority to handle

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<sup>204</sup> Regulation 46(1) states that: '[c]ontracting authorities *may decide to* award a contract in the form of separate lots and may determine the size and subject-matter of such lots' (emphasis added).

<sup>205</sup> Note of call [redacted]

which could be an issue when allocating responsibility across individual lots. The competitor also said that there were examples of local authorities splitting a contract into lots but at the same time saying they would consider a single award for the whole contract. The competitor said that, in response to that situation it might offer a better price for the whole contract than for the individual lots and would try to sell the benefits of an integrated management of the contract to the local authority.<sup>206</sup>

- 6.47 Moreover, although Veolia has submitted that there was a trend towards unbundling, this does not align with the statement in a Suez internal document (described at paragraph 6.23 above) which states that there is a recent trend of larger authorities tendering integrated contracts without lots. We have not seen unbundling of complex contracts identified as a major trend or risk in the Parties' internal documents that consider complex contracts.

## **Competition and complex contracts**

- 6.48 In this subsection, we consider evidence on whether complexity of customers' requirements could affect the conditions of competition. The evidence in this section is based on:

- (a) Parties' submissions;
- (b) Parties' internal documents; and
- (c) Third party views.

### ***Parties' submissions***

- 6.49 Veolia submitted that there is effective competition for all municipal contracts, irrespective of complexity. Veolia also submitted that there were at least three bidders in [redacted] of the complex municipal contracts that Veolia had bid for in the past five years.<sup>207</sup> There were at least four bidders in [redacted] of the complex contracts that Veolia has bid for in the past five years.<sup>208</sup>
- 6.50 Veolia submitted that even in the 'most complex' cases, where a local authority had decided to tender a large multi-faceted contract, there are at least six other significant rivals that can and do compete, as well as multiple

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<sup>206</sup> Note of call [redacted]

<sup>207</sup> Veolia defined complex waste management contracts as being those which include at a minimum the provision of treatment and disposal services for two or more different waste streams.

<sup>208</sup> Veolia's response [redacted]



smaller suppliers. These include Biffa, Viridor, FCC, Serco, Urbaser, and Beuparc:

- (a) Veolia submitted that each of these suppliers as well as new entrants, Countrystyle and Hills Waste, has an extensive track record of bidding for complex waste management contracts.
- (b) All suppliers for complex waste contracts have sound financial standing, including access to significant funding and the ability to provide financial guarantees to local authorities.<sup>209</sup>
- (c) Competitors have the necessary experience and breadth of services.

6.51 Suez also identified competitors for contracts that display one or more of the characteristics we identified as potentially complex. It identified [REDACTED].<sup>210</sup>

6.52 Further, Veolia submitted that several major competitors for complex contracts have extensive networks of processing facilities that they can use when performing complex contracts. Veolia also submitted that suppliers of complex contracts can and do subcontract elements of contracts that they are not able to perform in-house or enter into partnerships to both bid for and deliver such contracts.

- (a) It submitted that subcontracting is common across the waste management sector, even for companies that have large networks of processing facilities.<sup>211</sup>
- (b) Veolia provided examples of (i) its subcontracting arrangements with other suppliers when [REDACTED]; and (ii) competitors' subcontracting arrangements ([REDACTED]). In some instances, instead of subcontracting, suppliers can enter into partnerships to offer an overall package, although we note that Veolia only cited examples of competitors entering into such arrangements, not itself.

6.53 It further submitted that access to contingency capacity/fallback facilities is of marginal importance when bidding for complex contracts.

6.54 Veolia also submitted that the Parties' global R&I activities do not provide them with enhanced capabilities over their competitors and their international footprint is not indicative of enhanced capabilities compared to other competitors in the market.

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<sup>209</sup> Veolia's response [REDACTED]

<sup>210</sup> Suez's response [REDACTED]

<sup>211</sup> Veolia's response [REDACTED]

## ***Evidence from internal documents***

6.55 As demonstrated above, both Veolia and Suez categorise some contracts as complex in their internal documents.

### ***Veolia's internal documents***

6.56 Veolia's internal documents also show that it actively seeks out more complex contracts as part of its internal strategy:

(a) [REDACTED]

(b) [REDACTED]<sup>212</sup>

(c) [REDACTED]<sup>213</sup>

(d) [REDACTED]<sup>214,215</sup>

(e) [REDACTED]<sup>216</sup>

(f) [REDACTED]<sup>217</sup>

6.57 Veolia's internal documents also demonstrate that it actively measures its success ratio in respect of contracts it considers to be complex as compared to 'basic' contracts, where it succeeds more in respect of more complex contracts.

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]<sup>218</sup>

6.58 Veolia's internal documents suggest that the complexity of a contract may have an effect on the relevant competitor landscape:

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<sup>212</sup> Veolia's Internal Document, [REDACTED]

<sup>213</sup> Veolia's Internal Document, [REDACTED]

<sup>214</sup> Prudential borrowing is where a LA accesses loans from the National Loans Fund through the Public Works Loans Board. The LA can then use this loan to pay for capital expenditure that is necessary for the performance of a contract. Veolia submitted that [REDACTED]. [REDACTED].

<sup>215</sup> Veolia internal document, [REDACTED]

<sup>216</sup> Veolia's internal document, [REDACTED]

<sup>217</sup> Veolia's internal document, [REDACTED]

<sup>218</sup> Veolia's Response [REDACTED]

- (a) [REDACTED]<sup>219</sup>
- (b) [REDACTED]<sup>220</sup>
- (c) [REDACTED]<sup>221</sup>
- (d) [REDACTED]<sup>222</sup>
- (e) [REDACTED].<sup>223</sup> [REDACTED].<sup>224</sup>

### *Suez's internal documents*

6.59 Suez's internal documents demonstrate that the Parties hold a number of the types of contract it considers to be "complex":

- (a) In an internal email, Suez sets out an indicative list of contracts it considers to be complex (based on a definition of 'complex' that was being discussed internally by Suez at the time).<sup>225</sup> Out of the [REDACTED] contracts listed by Suez, Suez held [REDACTED]<sup>226</sup> and Veolia held [REDACTED].<sup>227</sup> [REDACTED].
- (b) In the same document, Suez identified [REDACTED] contracts tendered in the last five years that it considered to be 'complex' and identified that [REDACTED] of these contracts were awarded to (or were expected to be awarded to) the Parties.<sup>228</sup>
  - (i) [REDACTED];
  - (ii) [REDACTED];
  - (iii) [REDACTED]; and
  - (iv) [REDACTED].

6.60 Suez's internal documents suggest that the complexity of a contract may have an effect on the relevant competitor landscape:

- (a) A Suez document states that 'complex longer term contractual arrangements tend to have a relatively high bar to entry (challenging pre-

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<sup>219</sup> Veolia's internal Document, [REDACTED]

<sup>220</sup> Veolia's internal document, [REDACTED]

<sup>221</sup> Veolia's internal document, [REDACTED]

<sup>222</sup> Veolia's internal document, [REDACTED]

<sup>223</sup> Veolia's internal document, [REDACTED]

<sup>224</sup> Suez's internal document, [REDACTED]

<sup>225</sup> Suez's internal document, [REDACTED]

<sup>226</sup> [REDACTED].

<sup>227</sup> [REDACTED].

<sup>228</sup> Suez's internal document, [REDACTED]

qualification criteria often based on previous experience and financial standing)'.<sup>229</sup>

- (b) According to another Suez internal document of February 2021, it is advantageous for Suez to be present in all forms of treatment '[X]'.<sup>230</sup>

- 6.61 The evidence from both Parties' internal documents indicates that complexity of customer requirements is a factor that affects competitive conditions. In addition, Veolia's documents indicate that it actively targets complex contracts and achieves a better success rate competing for such contracts than it does when it competes for other, simpler, contracts. Moreover, of contracts that Suez internally considered to be complex, the Parties hold the majority of those contracts between them ([X]%, where Suez holds [X]% and Veolia holds [X]%). The next most frequently identified competitor ([X]) holds only [X]%.  
6.62 In the next subsection, we consider views of third parties that speak to the extent to which competitive conditions are affected (in terms of the number of bidders) either because certain contracts are complex from their point of view, or because certain contracts have features or requirements that make them more difficult to bid for from their point of view (even if the local authorities do not use the term 'complex' to describe them).

### ***Evidence from customers***

#### *Customer views on competition*

- 6.63 Local authorities that responded to our questionnaire suggested, in response to different questions, that few providers are able to bid for bundled contracts. In particular
- (a) [X]: 'As previously indicated in the first CMA questionnaire, we believe that for residual waste disposal contracts, complex waste contracts (e.g. integrated contracts) and those contracts involving large capital expenditure Suez and Veolia are 2 of a very small number of bidders and in our own experience the 2 strongest bidders. Removing one of these would reduce competition'.<sup>231</sup>
- (b) [X]: 'The market for an integrated waste treatment contract is currently very limited. There are currently specialists for delivery of an O&M

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<sup>229</sup> Suez's internal document, [X]

<sup>230</sup> Suez's internal document, [X]

<sup>231</sup> [X]

contract for operation of an EfW/ERF, but the market narrows significantly for operation of further waste treatment facilities whereby operations and management of waste flows can be quite complex as the national strategy pushes local authorities towards waste minimisation and maximising recycling at higher cost'.<sup>232</sup>

(c) [redacted].<sup>233</sup>

6.64 Further, of the 31 local authorities which raised concerns about the Merger, 10 specifically raised concerns because their specific requirements (which we note are broadly consistent with possible indicators of complexity that we identify in paragraph 6.41) reduced the pool of potential suppliers.<sup>234</sup> These concerns included:

(a) Devon County Council submitted that there was already only a handful of contractors that had the capability and capacity to deliver large scale waste contracts and that the merger would make that pool even smaller.<sup>235</sup>

(b) GMCA: 'It [the Merger] will significantly reduce the market for large, integrated waste disposal contracts...In effect there would be only one viable bidder which would be Veolia for large integrated contracts'.<sup>236</sup>

(c) Hampshire County Council (Hampshire): 'The merger will lead to less major players in the market and ultimately lead to a reduction in competition particularly for large integrated waste management contracts'.<sup>237</sup>

(d) [redacted]: 'The market for an integrated waste treatment contract is currently very limited'.<sup>238</sup>

(e) Royal Borough of Kensington & Chelsea (Kensington & Chelsea): 'We are very concerned about this acquisition. The recent tender process

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<sup>232</sup> [redacted]

<sup>233</sup> [redacted]

<sup>234</sup> Local authorities were provided with yes and no boxes along with the question: *Do you have any concerns about the impact on competition of this acquisition? Please explain your answer.* Where we have not received an updated response at Phase 2, we have used the Phase 1 response, where Local authorities were provided with yes/no box with the question: *Please indicate whether you have any concerns about the effects of this merger on competition. Please explain the reason for your answer.*

<sup>235</sup> Devon County Council's response to [redacted]

<sup>236</sup> GMCA's response to [redacted]

<sup>237</sup> Hampshire's response to [redacted]

<sup>238</sup> [redacted]

highlighted the lack of genuine competition in this market, with only SUEZ and Veolia submitting a bid'.<sup>239</sup>

- (f) As noted above, [3<] submitted that for residual waste disposal contracts, complex waste contracts (e.g. integrated contracts) and those contracts involving large capital expenditure, Suez and Veolia were two of a very small number of bidders and in their experience the two strongest bidders. Removing one of these would reduce competition.<sup>240</sup>
- (g) Essex County Council (Essex): 'Should we wish to procure an integrated (bundled) contract in the future the market is already very limited due to the size of our requirement. Removing Suez from the marketplace further restricts the competition and risks a monopoly situation. Veolia and Suez are both active bidders for residual disposal contracts, again due to the size of our requirement this removes a major competitor in the markets and could result in increased costs'.<sup>241</sup>
- (h) West London Waste Authority: 'To our knowledge only Suez and Veolia are providing fully integrated Local Authority services eg collection of food waste, green waste, dry recycling, residual waste, HRRC management, transfer stations and disposal of food waste, green waste, dry recycling and residual waste'.<sup>242</sup>
- (i) Brighton and East Sussex: 'When we retender for services in the future, we may find that there is even less competition in a market where historically there has not been many suppliers, especially for larger contracts where investment in infrastructure is required'.<sup>243</sup>

6.65 In addition, local authorities mentioned in calls that Veolia and Suez are the key suppliers able to offer services across the waste management supply chain and take on large scale contracts. For instance, Essex said 'Certainly when you start looking at the players in the market that are able to handle the full range of waste processes, whether that be collection, operating recycling centres, residual waste treatment, biowaste treatment, Suez and Veolia are probably the key ones that sit within that space. The others operate within parts of the waste management field. When we start talking about the likes of [3<], they are operating in segments of the waste management field rather than the full range of collection, treatment and disposal'.<sup>244</sup>

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<sup>239</sup> Kensington and Chelsea's [3<]

<sup>240</sup> [3<]

<sup>241</sup> Essex's response [3<]

<sup>242</sup> West London Waste Authority's response [3<]

<sup>243</sup> Brighton and East Sussex's response [3<]

<sup>244</sup> Note of call [3<]

- 6.66 Similarly, GMCA mentioned that it was looking for a supplier that has the 'knowledge and experience of operating on that sort of scale' and 'in reality, it only comes down to Veolia and Suez that could do it'. While GMCA received interest in its contract from Biffa and FCC in its most recent (2019) procurement exercise, both subsequently withdrew from the process, 'largely on the grounds of capacity to bid and capacity to take on contracts of that size'.<sup>245</sup>
- 6.67 Further, three local authorities identified their requirements as complex, and indicated that the number of bidders was affected by this complexity:
- (a) Westminster: 'Veolia have a strong record around delivering contracts that are as large and complex as the City Council's'.<sup>246</sup>
  - (b) GMCA; 'They [Veolia and Suez] are the two companies with the experience and competence to deliver complex and necessarily integrated contracts'.<sup>247</sup>
  - (c) Sheffield City Council; Suez have a 'known track record across integrated contract delivery'.<sup>248</sup>

### *Customer views on subcontracting*

- 6.68 We asked local authorities to indicate for which services subcontracting tends to take place and why, as well as to explain to what extent subcontracting can be used by a specialist supplier (ie one which is not active across the waste management supply chain or a regional supplier) to compete for contracts.
- 6.69 Customers confirmed that subcontracting is a common feature of waste management contracts. One local authority ([redacted]) gave an example of how subcontracting works well for identifying disposal sites that would not normally be bidding for our contracts.<sup>249</sup> Subcontracting locally takes place to give flexibility in simple elements of the contract (e.g. container delivery or removal).<sup>250</sup> Services can be subcontracted to companies that have specialised knowledge and or to local businesses to provide opportunity.<sup>251</sup>

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<sup>245</sup> Call with [redacted]

<sup>246</sup> Westminster's response [redacted]

<sup>247</sup> GMCA's response [redacted]

<sup>248</sup> Sheffield's response [redacted]

<sup>249</sup> [redacted] response to the CMA's phase 2 questionnaire, Q7

<sup>250</sup> [redacted] response to the CMA's phase 2 questionnaire, Q7

<sup>251</sup> [redacted] and [redacted] responses to CMA Phase 2 questionnaire, Q7

6.70 Some customers either raised concerns about subcontracting or applied additional criteria when selecting subcontractors. These concerns and criteria include:<sup>252</sup>

- (a) Kensington & Chelsea indicated that it would not want its services to be subcontracted to a number of different suppliers due to synergies and experienced service delivery. Kensington & Chelsea further indicated that it requires a supplier to have experience and a proven track record in waste management.
- (b) West Berkshire Council indicated that subcontracting carries significant risks for the contracting authority. The risks are mostly because the specialist lead contractor may not have enough industry knowledge and would effectively be a managing agent. Contracts involving subcontractors are also likely to deliver lower value for money for the authorities because of the margins introduced by the multiple interfaces and layers.
- (c) Brighton and Hove said that subcontracting was seen as risky as it involved reliance on third parties and, as a result, considerable co-ordination between third parties.
- (d) Surrey indicated that it does not want to pay a sub-contracting margin.
- (e) [redacted] indicated that to meet local authority requirements, subcontractors would have to demonstrate experience due to the technical nature of the service provision.

6.71 Several customers indicated that subcontracted services tend to be for non-core, haulage, or specialist services.<sup>253</sup> GMCA indicated that subcontractors are generally not key to the bid's success and provide ancillary services. They would represent a small part of total contract spend.<sup>254</sup> Another customer, Somerset Waste Partnership, indicated that subcontracting can be used for 'peripheral' services, but the extent to which this is worthwhile varies based on the size of the contract.

### ***Competitor views on credible suppliers for integrated contracts***

6.72 We asked competitors to list the suppliers which they would consider to be their strongest competitors for local authority integrated contracts, across the

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<sup>252</sup> [redacted], [redacted], [redacted], [redacted] and [redacted] responses to CMA Phase 2 questionnaire, Q7

<sup>253</sup> [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted] responses to CMA Phase 2 questionnaire, Q7.

<sup>254</sup> Note of call [redacted]



waste management supply chain.<sup>255</sup> Six competitors responded to this question.<sup>256</sup>

**Table 6.1: Credible suppliers for integrated local authority contracts according to competitors**

Supplier	Number of mentions	Average rating of suppliers
Veolia	6	5.0
Suez	6	4.3
FCC	6	3.3
Biffa	4	2.8
Viridor	3	2.0
Urbaser	2	1.2

Source: CMA analysis of responses to CMA competitor questionnaire

Note: Non-mentions are treated as a score of zero. Self-ratings by competitors are excluded.

- 6.73 The results show that competitors consider Veolia and Suez to be the two strongest competitors for integrated contracts, followed by FCC, Biffa, and Viridor. Seven other competitors received ratings of two or below.<sup>257</sup>
- 6.74 Veolia was seen as strong in the area of integrated contracts due to its large market share, its track record, and the scale and breadth of its services. For example:
- (a) Urbaser said that Veolia 'Has the largest number of local authority waste collection (excluding recycling collection, street cleansing etc.) contracts – circa 32. Has significant presence throughout the UK providing all waste services'<sup>258</sup>
  - (b) Amey said Veolia has a 'Large market share with strong track record and operational knowledge, strong financial covenant',<sup>259</sup>
  - (c) [X] said that Veolia has a 'Significant range of municipal contracts and economies of scale allied to waste treatment infrastructure'.<sup>260</sup>
- 6.75 Suez is similarly seen as strong by competitors, albeit [X], [X], and [X] rated it slightly weaker than Veolia which leads Suez to have a lower rating. Suez was seen as strong for similar reasons to Veolia, that is Suez has a large market share, track record, and has a scale and breadth of capabilities, for example:

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<sup>255</sup> Question wording: 'Using the table below, please list the suppliers you would consider to be your strongest competitors for local authority's integrated contracts (ie contracts that include several services) across the waste management supply chain. In doing so, please: (a) Rank the suppliers in order of overall competitive strength (including yourself); (b) Indicate the strength of each competitor on a scale from one to five (where one is not very strong and five is very strong); and (c) Provide an explanation for your rating and how the competitors differ from each other.'

<sup>256</sup> Amey, Biffa, Beauparc, Serco, Urbaser, Viridor.

<sup>257</sup> These competitors were Amey, Beauparc, Cory, Covanta, Enfinium, Renewi, and Serco.

<sup>258</sup> Urbaser response [X].

<sup>259</sup> Amey's response [X]

<sup>260</sup> [X]

- (a) Amey said that Suez has a 'Large market share with strong track record and operational knowledge, strong financial covenant';<sup>261</sup>
- (b) Biffa said that Suez 'Operates a PFI in Manchester that sees it provide EfWs, HWRCs and MRFs. Scale and breadth of service capabilities to compete for bundled operations';<sup>262</sup>
- (c) Urbaser said that Suez 'Has a large number of contracts across the UK, including local authority waste collection, C&I waste, and waste treatment';<sup>263</sup> and
- (d) [X] said that Suez has a 'Successful commercial and disposal portfolio, as well as established municipal business'.<sup>264</sup>

6.76 FCC was listed by all six respondents, however it is rated as being weaker than Veolia and Suez. The feedback from competitors provides no indication as to why FCC is considered to be weaker than the Parties. However, competitors say FCC is strong in disposal,<sup>265</sup> has a large number of contracts across the UK,<sup>266</sup> has a large market share, and a strong track record<sup>267</sup>.

6.77 Biffa was listed by four of the six respondents, but was rated as being significantly weaker than the Parties. Viridor said Biffa is less focussed on integrated contracts, but has a strong collection business.<sup>268</sup> Biffa confirmed that it had not bid for an integrated contract since 2010.<sup>269</sup> Urbaser said that Biffa has the second largest number of local authority contracts and has a significant presence across the UK.<sup>270</sup> Finally, [X] said that Biffa has a large commercial, disposal, and municipal portfolio.<sup>271</sup>

6.78 Viridor was also listed by three of the six respondents, but was rated as being significantly weaker than the Parties. Viridor told us that it is now focussed on ERF after selling its collection business and MRFs to Biffa.<sup>272</sup> Biffa noted that Viridor has recently lost an integrated contract with the GMCA.<sup>273</sup>

6.79 Urbaser was listed by only two respondents and rated as being significantly weaker than the Parties. Biffa said Urbaser is an operator of an existing PFI

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<sup>261</sup> Amey's response [X]

<sup>262</sup> Biffa response [X]

<sup>263</sup> Urbaser response [X].

<sup>264</sup> [X]

<sup>265</sup> Biffa response [X].

<sup>266</sup> [X].

<sup>267</sup> [X].

<sup>268</sup> Viridor response to [X].

<sup>269</sup> Note of call [X]

<sup>270</sup> Urbaser response [X]

<sup>271</sup> [X]

<sup>272</sup> Viridor response [X]

<sup>273</sup> Biffa response [X]

and has the breadth and scale to offer integrated services.<sup>274</sup> Urbaser said it has a large number of contracts across the UK.<sup>275</sup> Finally, [X] said Urbaser has a growing municipal portfolio and access to disposal infrastructure.<sup>276</sup>

- 6.80 Along with evidence from questionnaires, we also held calls with several competitors. Biffa told us that it sees itself as credible when bidding for PFI contracts alongside Veolia and Suez.<sup>277</sup> However, Biffa also noted its lack of capability in EfW incineration, so it would need to partner with a firm [X] if it bid for a contract with this service. Biffa also believes that FCC would be able to bid for integrated contracts.
- 6.81 FCC also considers that Veolia, Suez, Biffa, and FCC would be capable of bidding for complex contracts.<sup>278</sup> FCC told us that Viridor used to be able to bid for these contracts, but it has subsequently restricted its business to EfW incineration and plastic reprocessing. FCC also said it sometimes sees bids from Renewi and Urbaser.
- 6.82 [X] told us that it has not bid for a major infrastructure project (which it considers complex) since 2011,<sup>279</sup> except for the recent [X] for which it was unsuccessful.
- 6.83 [X] told us that for large integrated contracts, the main players are Veolia and Suez.<sup>280</sup> [X]. It also said that FCC bid for some of these contracts and that Biffa would not necessarily bid for an integrated contract because it does not have the infrastructure, but might be part of the solution.
- 6.84 [X] indicated that it is not likely to tender for a contract where suppliers like Suez and Veolia have local assets.<sup>281</sup>
- 6.85 Overall, the competitor views on suppliers for integrated contracts suggest that Veolia is the strongest supplier of integrated contracts based upon its strength scores, followed by Suez, FCC, Biffa, and Viridor. Among these, [X] will not be bidding for integrated contracts going forward. [X] has not bid for a major infrastructure project (which it considers complex) since 2011, with the exception of the [X], where it was unsuccessful. None of the competitors considered Beuparc to be a strong competitor.

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<sup>274</sup> Biffa response [X]

<sup>275</sup> Urbaser response [X].

<sup>276</sup> [X].

<sup>277</sup> Note of call [X].

<sup>278</sup> Note of call [X]

<sup>279</sup> Note of call [X].

<sup>280</sup> Note of call [X].

<sup>281</sup> Note of call [X]

6.86 We also asked competitors to what extent could subcontracting be used by a specialist supplier (ie one which is not active across the waste management supply chain) to compete for local authority contracts.<sup>282</sup> Overall, the competitor responses were generally consistent with customer responses – subcontracting is common, but for non-core specialist services. More specifically, competitor views were:<sup>283</sup>

- (a) Amey said it would be very difficult for specialist suppliers to compete because they would lack experience and references which creates a barrier to entry.
- (b) Biffa said there is theoretically the option of forming a consortium of providers, including e.g. EfW focussed businesses, to come together and bid to provide bundled services.
- (c) [X] said subcontracting only tends to take place for service elements where the bidder does not have expertise, or it is felt to add value (e.g. use of specialist suppliers). A local company may also have local infrastructure that would be useful as part of the bidder's solution.
- (d) Urbaser believe that mainly specialised services are subcontracted, e.g. weed spraying and high-speed road closures. Some examples also include the need to dispose of recycling and organic material for which companies must either have their own infrastructure or rely on third parties – otherwise they can't compete.
- (e) Viridor said subcontracting is possible for companies such as brokers which do not operate their own disposal/treatment facilities.

### **Our assessment**

6.87 We consider that the Parties' internal documents distinguish between complex customer requirements and more simple requirements. The documents discuss complex requirements as impacting on the conditions of competition and evaluate some of their competitors in those terms. For example, Veolia notes that basic services attract aggressive low cost bidders like Urbaser, FCC and Serco. Both Parties' documents note that barriers to entry are higher for complex requirements.

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<sup>282</sup> Question wording: *Please comment on the possibility of suppliers working with other (e.g. regional) suppliers or through sub-contracts to compete for waste management contracts for local authorities. In doing so, please: (a) Explain for which services sub-contracting tends to take place and why; and (b) Explain to what extent sub-contracting can be used by a specialist supplier (i.e. one which is not active across the waste management supply chain) to compete for such contracts.*

<sup>283</sup> Amey, Biffa, [X], Urbaser and Viridor [X]

- 6.88 Veolia's documents indicates that Veolia targets more complex contracts. One document noted that it is in Veolia's strategic interest to target large, integrated contracts that include a wide range of treatment services.
- 6.89 Local authorities too distinguish between complex and more simple requirements. A number of local authorities have told us that there is only a small number of bidders for their complex requirements. Some have gone on to say the Veolia and Suez are two of this small number. As one local authority put it, the greater the complexity of the contract, the lower the number of bidders there are likely to be.
- 6.90 Local authorities did not just comment in general terms, but also in specific terms about the Merger. Of the 31 local authorities that raised concerns about the Merger, 10 were concerned about competition for their complex requirements. These concerns related to either the scale of their requirements or that their contracts integrate a number of different services (or sometimes both).
- 6.91 We consider that the evidence from local authorities strongly indicates that Veolia and Suez are close competitors for complex local authority contracts and that local authorities are concerned about the impact of the Merger on competition for these contracts.
- 6.92 We have considered the role of subcontracting since this might be a means to get more competition in tenders for complex local authority contracts. A number of local authorities told us that subcontracting introduces additional risks, for example it might indicate a lack of experience. Others said that subcontracting is more expensive. We have also not seen any evidence of large or complex contracts having been won and led by consortium bidders. Instead, the evidence is that existing subcontracting services are non-core activities for complex contracts.
- 6.93 Competitors that responded to our questionnaire have indicated to us that Veolia and Suez are the two strongest suppliers for complex contracts. Other suppliers rated by competitors were FCC, Biffa, Viridor and Urbaser. Competitors noted the Parties' strengths in being able to provide services across different parts of the waste management chain. Most competitors are unable to match the Parties' strength in this regard – for example, competitors noted Viridor's strength in operating ERFs but that it is not present in collection whereas Biffa is present in collection but does not operate ERFs. Urbaser was, on average, rated by competitors as weaker than FCC, Biffa and Viridor and much weaker than either Veolia or Suez.

6.94 In addition, competitors, including some of the six competitors for complex contracts identified by the Parties, have indicated that they are unlikely to bid for some complex or integrated contracts, indicating that there may be reduced number of bidders for such contracts.

### ***Shares of supply***

6.95 In this subsection, we analyse competitive conditions for potentially complex contracts by examining the shares of supply in a segment where customer requirements could be considered more complex. We consider the value of a contract as a factor that could be indicative of complex customer requirements based on the evidence set out in the previous subsection.

### ***Parties' submissions***

6.96 Veolia submitted that shares of supply 'are a static view of competition ('a snapshot 'largely of competition that took place many years ago') and does not reflect 'the dynamic context of vibrant competition at the time of tendering for every contract – including the largest municipal contracts and those that the CMA seeks to characterise as 'complex'.<sup>284</sup>

6.97 Further, Veolia submitted that regardless of the threshold used to identify complex contracts, the evidence shows that Veolia faces strong competition in all tenders and will continue to do so post-transaction.<sup>285</sup>

6.98 Finally, Veolia submitted that the evidence shows that, absent the transaction, the Parties would not compete for the types of contract that the CMA is considering. [redacted].<sup>286</sup>

### ***Our assessment***

6.99 While shares reflect historical competition, we believe that they provide some indication of the suppliers' comparative strength. In addition, local authorities have told us that track record is an important factor when deciding which supplier to use (see, for example, paragraph 6.67). Therefore, historical experience is likely to be relevant when suppliers compete for future tenders.

6.100 While Veolia has calculated its own shares of supply, and believes [redacted] and [redacted] have secured more contracts than Suez since 2017, we do not consider that the data it uses to calculate this is reliable because (unlike the data that

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<sup>284</sup> [Overview submission](#) from Veolia, paragraph 51, 7 March 2022.

<sup>285</sup> Veolia response [redacted]

<sup>286</sup> Veolia response [redacted]

the CMA has collated) it is not gathered directly from, or verified with, third parties.

### *Methodology*

- 6.101 We requested data from the Parties and their competitors on the municipal contracts that they currently hold in the UK, including information on the contract value. We constructed a dataset of 292 contracts, of which 67 had an annual contract value greater than £10 million.

### *Results*

- 6.102 Using the above dataset, we have analysed the share of contracts won by each supplier, in terms of the number of contracts and the value of contracts. To proxy for complex contracts, we considered contracts with an annual value greater than £10 million. As discussed in paragraph 6.41, evidence we have reviewed indicates that large value contracts are more likely to be considered complex. There is unlikely to be a single threshold which neatly divides contracts between being complex and non-complex. However, setting a threshold that allows us to consider a significant proportion of the largest contracts is one way to examine whether different firms perform better or worse when competing for larger contracts (and therefore for contracts that tend to be more complex).
- 6.103 Veolia submitted that the £10 million total contract value threshold is a poor proxy for complexity.<sup>287</sup> [3<]. Veolia was unable to provide shares in terms of contract value. Veolia also submitted that the CMA's estimates exclude both in-house supply and Teckals but that in-house supply and Teckals nevertheless exercise significant constraints on the Parties.
- 6.104 Contracts with a value in excess of £10 million account for around a fifth to one quarter of all contracts, which we consider represents a sufficiently robust basis for assessing shares of supply for this purpose.
- 6.105 In relation to Teckals and in-house supply, as discussed in the next few chapters, we do not think these exercise significant constraint in the waste management services discussed and so we have not included these.
- 6.106 The subset of contracts with a value in excess of £10 million comprises 67 contracts. Within this subset, 20 contracts started since 2017. We considered that more recent subset separately.

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<sup>287</sup> Veolia response [3<]

**Table 6.2: Share of supply for contracts with an annual value greater than £10 million**

<i>Supplier</i>	<i>Number of contracts won</i>	<i>Share of supply (based on number of contracts won)</i>	<i>Annual value of contracts won (£m)</i>	<i>Share of supply (based on annual value of contracts won)</i>
Veolia	[<]	[30-40]%	[<]	[30-40]%
Suez	[<]	[30-40]%	[<]	[40-50]%
<b>Parties combined</b>	[<]	<b>[60-70]%</b>	[<]	<b>[80-90]%</b>
Biffa	[<]	[0-5]%	[<]	[0-5]%
FCC	[<]	[0-5]%	[<]	[0-5]%
Serco	[<]	[5-10]%	[<]	[0-5]%
Viridor	[<]	[10-20]%	[<]	[5-10]%
Total	[<]	100.0%	[<]	100%

Source: CMA analysis of Parties and competitor questionnaire responses.

**Table 6.3: Share of supply for contracts with an annual value greater than £10 million since 2017**

<i>Supplier</i>	<i>Number of contracts won</i>	<i>Share of supply (based on number of contracts won)</i>	<i>Annual value of contracts won (£m)</i>	<i>Share of supply (based on annual value of contracts won)</i>
Veolia	[<]	[40-50]%	[<]	[30-40]%
Suez	[<]	[10-20]%	[<]	[20-30]%
<b>Parties combined</b>	[<]	<b>[50 - 60]%</b>	[<]	<b>[60-70]%</b>
Biffa	[<]	[0-5]%	[<]	[0-5]%
FCC	[<]	[0-5]%	[<]	[0-5]%
Serco	[<]	[5-10]%	[<]	[5-10]%
Viridor	[<]	[30-40]%	[<]	[20-30]%
Total	[<]	100%	[<]	100%

Source: CMA analysis of Parties and competitor questionnaire responses.

6.107 The above shares of supply show that the Parties had a combined share of [80-90%] in terms of annual value of contracts when considering all contracts and [60-70%] in terms of annual value of contracts when considering contracts with a start date since 2017. The Parties' shares of supply are slightly lower if the number of contracts won is considered ([60-70%] and [50-60%] respectively).

6.108 Among competitors:

- (a) After Veolia and similar to Suez, Viridor was the largest competitor and had a share of supply of [20-30%] when considering the annual value of contracts that started since 2017. However, [<].<sup>288</sup>.
- (b) Serco had a [5-10%] share of supply when considering contracts which started since 2017; however Serco focusses on providing collection-only contracts.
- (c) Biffa and FCC have been successful in winning contracts with an annual value greater than £10 million; however they have not won any recent contracts according to our dataset.

<sup>288</sup> Note of call [<]



## **Competitive conditions for a set of contracts the Parties identify as complex**

- 6.109 In this subsection, we qualitatively analyse competitive conditions for contracts held by the Parties' local authority customers that responded to our questionnaire and that were also identified as being complex in the Parties' internal documents.
- 6.110 During our investigation, we requested data from the Parties' local authority customers on all of the non-hazardous waste management contracts that they currently hold.<sup>289</sup> In particular, we requested information on:
- (a) how many bidders the customer identified as having bid for the contract when it was last tendered;
  - (b) how many suppliers (and which suppliers) customers identified as credible in a scenario where the customer would re-tender the services covered by that contract in the near future;
  - (c) the customers' perceptions of the competitive strength of the suppliers they listed as credible; and
  - (d) the extent to which these customers had concerns about the Merger.
- 6.111 As discussed above, industry participants recognise that some waste management contracts are complex. We have analysed certain contracts that the Parties themselves identify as complex. We consider that contracts which one of the Parties considers as complex can be informative of customer requirements that are relatively complex.
- 6.112 We identified 13 such local authority contracts – see table below. While ten of the 13 contracts started before 2017, we consider that they are still informative about the competitive conditions for complex contracts due to previous experience of customers while choosing a supplier. In our assessment, we consider any relevant changes over time in the different players' competitive strengths, as suggested by other pieces of evidence.

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<sup>289</sup> For each contract currently held, local authorities provided the name of the winner and 'other bidders'. It is possible that some LAs may have interpreted 'other bidders' to refer to the set of suppliers who qualified and submitted a bid while others may have included suppliers who were interested but did not ultimately qualify.

**Table 6.4: List of local authority contracts considered in analysis**

Local authority	Contract start date	Total contract value	Services included	Contract duration (years)	Contract winner
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]

Source: Responses to the CMA's phase 2 questionnaire

### **Number of bidders identified**

6.113 Local authorities identified the bidders for a contract when it was last tendered for nine of the 13 contracts analysed. On average, customers identified 3.7 bidders in the last procurement process, with a maximum of 8.

6.114 In terms of interpretation of this evidence, we note that the local authority customers were asked to provide the name of the winner and 'other bidders' for the relevant tender. It is possible that some local authorities may have excluded suppliers that participated in the tender process but were eliminated before the final round – for example, because customers might only have had capacity to review a limited number of bids. In this scenario, the number of bidders identified would understate the number of bidders in practice. However, in this context, we note that:

- (a) A number of customers within this subset of customers are concerned about the impact of the Merger on competition and raised specific and detailed concerns in relation to complex contracts (see paragraph 6.64).
- (b) We know that in practice many of these contracts include services for which some suppliers do not compete. For example, [X] of the [X] municipal contracts held by [X] include collection and [X] includes a disposal service which it subcontracted to another supplier and only [X] of the [X] municipal contracts held by [X] includes EfW incineration;<sup>290</sup>
- (c) Customers did not commonly identify many more credible suppliers (see next subsection).

<sup>290</sup> [X] and [X] responses to the CMA's waste competitor questionnaire.

(d) The evidence summarised in Chapter 5 shows that suppliers do not pursue all possible opportunities. For example, third parties told us that bidding costs could be substantial, both in absolute terms and relative to the contract that is being tendered (see paragraph 5.42 in Chapter 5). Furthermore, while the average number of bidders for these 13 contracts is 3.7, several contracts only had two or three bidders identified. For example, [X] and [X] only identified two bidders for their contracts.

6.115 We therefore consider that, while our consideration of the number of bidders identified by local authority customers in relation to these 13 contracts is subject to some uncertainty, some weight should be attached to this evidence, which suggests that there is typically a small number of bidders for each individual contract, when considered in the broader context of the other evidence available to us (as described above). Given the small number of bidders for each contract, any two bidders would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns.<sup>291</sup> While Veolia and Suez do not bid against each other in all tenders – including for complex contracts – absent the Merger this would be likely to occur in a significant proportion of complex contracts. In particular, the Parties have competed against each other in approximately one-third of the contracts listed above. This includes [X] where the Parties were the only two bidders.

6.116 Amey has confirmed to us that it is not pursuing growth in this market. Countrystyle has since entered the market by winning one collection contract, however, as discussed below it was not listed as credible for the contracts we considered.

### ***Credible suppliers for complex contracts***

6.117 We received ratings from customers of 10 of the 13 contracts, of which six provided ratings for the overall integrated contract (contract scope shown in the table above), and four provided ratings for the individual components of the contract. On average, local authorities listed 4.2 credible bidders for a contract, ranging between a minimum of two and a maximum of six.

6.118 The results of this analysis are presented below in Table 6-5.<sup>292</sup>

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<sup>291</sup> CMA129, paragraph 4.10.

<sup>292</sup> While we analysed thirteen contracts for this analysis, in some cases suppliers have been listed more than thirteen times. This is because, as mentioned, some local authorities rated suppliers for each service within a bundle of services. Therefore, the local authority could list a supplier more than once. When calculating the average ratings for each supplier, non-mentions of a supplier have been treated as zero.

**Table 6.5: Credible suppliers for complex contracts**

<i>Supplier</i>	<i>Number of mentions</i>	<i>Average rating of suppliers</i>
Veolia	20	2.4
Suez	17	1.7
FCC	16	1.4
Biffa	13	1.2
Viridor	7	0.6

Source: CMA analysis of local authority questionnaire responses

Note: Non-mentions are treated as a score of zero.

6.119 The results show Veolia and Suez are listed most often and rated highest in the opinion of local authorities which hold complex contracts. The responses from local authorities indicate that they value both Veolia and Suez's experience in the waste management industry. Biffa, and FCC are also seen as credible suppliers by local authorities, although they are rated lower than the Parties.

6.120 In addition to these suppliers, there was also a tail of 17 competitors with five or fewer mentions (listed in Table 6-6). These suppliers included specialist suppliers such as the following and other smaller suppliers that were only mentioned by a single customer:

- (a) Cory (five mentions) which competed only for contracts in London and the South East of England;
- (b) Amey (three mentions) which is not pursuing growth in this market;
- (c) Envar (two mentions) which competed for composting-only contracts;
- (d) Serco (one mention) which focusses on municipal collection.

**Table 6.6: Tail of competitors which received five or fewer mentions**

<i>Supplier</i>	<i>Number of mentions</i>
Cory	5
Amey	3
Biogen	2
Envar	2
Grundon	2
Agripost	1
Bywaters	1
Enfinium	1
In-house	1
Moody's	1
MVV	1
N+P	1
Potters	1
Serco	1
Smaller suppliers	1
SSE	1
Various SMEs	1

Source: CMA analysis of local authority questionnaire responses.

6.121 We provisionally conclude from this analysis that for complex contracts, both the Parties are seen as among the most credible and most highly rated

suppliers looking forward. There are only three other competitors who are considered credible for these contracts – FCC, Biffa and Viridor.

- 6.122 We note that since the contract data was provided by local authority customers of the Parties, it is likely to reflect a segment that has a relative preference for the Parties. These customers are likely to be most affected by the Merger because they are likely to have a reduced choice of credible supplier their contract requirements. Insofar as other customers had similar characteristics they also would be affected.

### **Services included in complex contracts**

- 6.123 We have found that some customer requirements are more complex than others. We have also found that there is no single characteristic, or set of characteristics, of a local authority requirement that makes a contract complex. What makes serving the requirements of one local authority complex or risky might not be the same for the next local authority who might also have complex requirements. For example, some local authority needs will be complex because they involve the operation and maintenance of significant infrastructure over a long period time and the ability to manage large volumes of waste flows in relation to that infrastructure. Other local authority needs might be complex on account of the number of different services involved in an integrated contract which might require the supplier itself to be active across the waste management chain.
- 6.124 Given that, on average, there are few suppliers able to compete effectively for and win (paragraph 6.116) we consider that we need to take the range of complexity of local authority requirements into account when we assess the competitive effects of the individual services. We note that the variation between local authority requirements, and the fact that over time their requirements might change (eg services that were bundled together in a contract may not be bundled together the next time the local authority puts its requirements out to tender), mean that it is inherently imprecise to list which services underpin complexity.
- 6.125 However, we have considered the evidence on complex local authority needs and individual services. The contracts considered in this chapter include one of more of the following waste management services where the Parties overlap:
- (a) Municipal collection;
  - (b) O&M of MRFs;

- (c) O&M of ERFs; and
- (d) Disposal by incineration.<sup>293</sup>

## Provisional conclusion

6.126 The evidence set out above shows that the term ‘complexity’ of customer requirements and/or contracts is widely recognised by suppliers and customers. Complexity may result from a variety of different characteristics whether alone or in combination with other factors. Evidence shows that contributory factors include scale, operational delivery, bundling of services, the provision of waste management infrastructure, long duration contracts, contracts involving a variety of risks – and may be thought of as lying on a spectrum, ranging from the least to the most complex.

6.127 In this chapter, we considered a range of evidence on the impact of complexity on competitive conditions and on closeness of competition between the Parties. We noted a range of evidence that was consistent with closer competition between the Parties for customers of complex contracts, and weaker constraints from rivals. For example:

- (a) Internal documents from the Parties show that Veolia [X]; that the Parties are more successful when bidding for complex contracts; and that the competitive landscape is different for complex contracts. In relation to the competitive landscape, some documents note in particular that [X]; and that [X] would find it challenging to credibly compete for larger and more complex contracts;
- (b) Customers for complex contracts most frequently considered Veolia to be a credible supplier of those contracts, followed by Suez, FCC and Biffa. More generally, such customers expressed concerns about a reduced set of potential suppliers, as a result of the Merger, for their relatively complex requirements;
- (c) Overall, competitor views suggested that Veolia was the strongest supplier of integrated contracts, followed by Suez, FCC, Biffa, and Viridor. While we acknowledge that bundling of services is only one indicator of potential complexity, we consider it to be a useful indicator. Some competitors, including some of the six competitors for complex contracts identified by the Parties, indicated that they were unlikely to bid for some

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<sup>293</sup> The operation and maintenance of HWRCs might also be considered as complex on some factors. However, we do not examine this service any further in our report. This is because we have not received any concerns relating to this service, and the Parties’ combined share of supply is modest.

complex or integrated contracts, showing that there may be a reduced number of bidders for such contracts. In [X] case, it indicated that it would not in future be bidding for integrated contracts;

- (d) While we recognise that size is only one indicator of potential complexity, we consider it to be a useful indicator. Among a subset of high-value contracts, the Parties had a very large combined share of supply, including when restricting attention to contracts tendered since 2017. [X] and [X] had not recently won a high-value contract according to their own data, which suggests that these two competitors may now provide a limited constraint on the Merged Entity;
- (e) Subcontracting appears to be unlikely to constrain the Parties. In particular, the option of relying on consortium bids or bids made up of sub-contractors does not appear to allay customers' concern regarding the potential impact of the merger.

6.128 As discussed in paragraph 6.2, the purpose of this chapter is not to decide on a provisional basis whether an SLC is likely to arise in respect of any particular service but rather to assess any particular competitive conditions in waste management services supplied to local authority customers that have more complex requirements than other customers. In this chapter, we have considered cross-cutting evidence relevant to all waste management services. This cross-cutting evidence will be complementary to evidence on competitive conditions for each specific service, and this specific evidence is considered separately in the relevant chapters.

6.129 Given this, 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.

6.130 We take the conclusions drawn from the cross-cutting evidence in this chapter into account in other chapters that consider the effect of the Merger on competition for the individual waste management services. 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. In making our assessments, we take this evidence into account alongside the market-specific evidence set out in those chapters.



## **7. The supply of non-hazardous municipal waste collection services**

### **Introduction**

- 7.1 The Parties overlap in the supply of non-hazardous municipal waste collection services. This service includes the collection of recyclable waste, food waste, garden waste and residual waste through kerbside collection rounds.
- 7.2 We have investigated whether the Merger is likely to give rise to horizontal unilateral effects in the supply of this service.

### **Market definition**

#### **Product market**

##### ***Parties' submissions***

- 7.3 Veolia submitted that the appropriate frame of reference is the supply of non-hazardous municipal waste collection services, distinct from the supply of non-hazardous C&I waste collection services.<sup>294</sup>

##### ***Our assessment***

- 7.4 The starting point for our assessment of the relevant product market is the overlap between the Parties in the supply of non-hazardous municipal waste collection services, but we have also considered whether:
- (a) there should be further segmentation on the basis of the types of collection; or
  - (b) whether the market should be broadened to include C&I collection.

##### ***Segmentation by type of collection***

- 7.5 The Office of Fair Trading (**OFT**), one of the CMA's predecessor bodies, previously considered whether the market for municipal waste collection should be segmented by kerbside or depot-based sorting.
- 7.6 The OFT found that while third party customer responses were unclear as to the scope for switching but the majority of competitors who responded to its

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<sup>294</sup> FMN, [3<].

questionnaire noted that they all offer a range of different waste services suggesting that the relevant product scope is likely to be the supply of waste collection.<sup>295</sup>

- 7.7 Although the OFT did not ultimately conclude on the market definition, we have provisionally assessed the impact of the Merger on municipal collection as a whole and considered any sub-segmentations where relevant.

#### *C&I waste collection services*

- 7.8 We considered whether suppliers of C&I collection services represent a supply-side substitute for municipal customers, ie whether firms that supply C&I services routinely use the existing production assets from those activities to supply municipal collection services; and whether the conditions of competition are the same for both C&I waste and municipal collection such that analysing them as one market would not affect the decision on the competitive effects of the merger.
- 7.9 In this respect, we note that third party evidence shows that municipal waste collection service suppliers have to comply with public procurement rules (Appendix B), which suppliers of C&I waste collection services generally do not. For instance, Grundon, a C&I collection provider told us that ‘C&I tenders are typically more straightforward and less burdensome than tenders with LAs and also allow for more innovation’.<sup>296</sup> In addition, we received evidence that the costs of participating in a public procurement process can be high (see paragraph 5.44).
- 7.10 We also note that there are significant differences between the suppliers and their shares of supply for C&I and municipal collection services as seen in the respective chapters of this report. This suggests that competitive conditions are different across the two segments. As such, we consider that municipal collection warrants a separate analysis from C&I waste collection services.
- 7.11 In light of the above, our provisional view is that supply of municipal collection services is the relevant product market. We now assess whether self-supply is included in our definition.

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<sup>295</sup> In its decision of 10 June 2013 in case [ME/6040/13](#), anticipated acquisition by Kier Group plc of May Gurney Integrated Services plc (paragraphs 15 and 16), the OFT considered whether waste collection services should be further segmented by type of service such as kerbside collection and sorting, and kerbside collection and depot based sorting of waste and recycling.

<sup>296</sup> Note of call [3<]. Note that some customers that the Parties class as C&I may be governed by public procurement rules.

## *Self-supply*

7.12 In this subsection, we consider to what extent self-supply is an alternative to outsourcing services for local authorities, by reference to demand-side substitution. As set out in CMA guidance, the framework is to consider evidence on the response of customers to a small but significant increase in price (or equivalent reduction in the value offered to customers in terms of quality, range or service) of the products of the merger firms.<sup>297</sup> We consider qualitative evidence on demand- and supply-side responses from customers.

### *Parties' submissions*

7.13 Veolia submitted that local authorities' self-supply of collection services either through in-house teams or Teckals<sup>298</sup> is a viable alternative for local authorities. Veolia submitted that even if a local authority does not have experience in waste collection, it can engage a Teckal or in-house team and transfer employees through Transfer of Undertakings, Protection of Employment Regulations 2006 ('TUPE').<sup>299</sup>

7.14 Veolia further submitted that the share of supply estimates should include self-supply by local authorities as well as supply through Teckals because:<sup>300</sup>

- (a) it believed that approximately 49% of local authorities in England undertake waste collection in-house and that a further 9% use Teckals, or mixed sourcing;
- (b) self-supply was a viable option for all local authorities, as even local authorities without experience or expertise in in-house supply could engage Teckals to provide municipal waste collection services on their behalf;
- (c) local authorities were increasingly willing to take their waste collection back in-house. Veolia provided [REDACTED] instances in the past five years where the Parties' municipal waste collection contracts had been taken in-house

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<sup>297</sup> [CMA129](#), paragraph 9.7

<sup>298</sup> A Teckal company (or Teckal) is a term for an organisation, such as a local authority trading company, that is wholly owned and controlled by a parent body and does most of its work (more than 80%) for that body. It is named after the 'Teckal exemption' which, in simple terms, covers circumstances where a municipal authority or authorities set up a company, including wholly owned companies, to supply services back to those authorities, in the same manner as an in-house arrangement. In these cases, the EU procurement rules do not apply to those arrangements. See ECJ case C-107/98 and public procurement rules.

<sup>299</sup> Veolia's response [REDACTED]

<sup>300</sup> FMN, [REDACTED] and Veolia's supplemental response [REDACTED].

by local authorities.<sup>301</sup> It also provided examples of contracts being awarded to Teckals.<sup>302</sup> and

(d) Teckals were important competitors in the municipal collection market and Veolia did not believe that they were limited by the 20% revenue cap.<sup>303</sup> The cap does not in any way limit the ability of LATCos<sup>304</sup> to form Teckals in order to compete. Veolia provided several examples of this arrangement being used to provide services to geographically disparate local authorities (ie areas outside home local authority area).<sup>305</sup>

- 7.15 While Suez acknowledged that some local authorities are taking municipal collection in-house, it did not expect this to be a significant trend.<sup>306</sup> Suez considered that the proportion of local authorities that conduct collection in-house has stayed relatively stable at fifty percent and it expects it to remain stable. Suez also stated that on occasion some local authorities switch from outsourcing to in-house supply. It cited the example of [X] which switched to a Teckal when [X], meaning it could not guarantee it was getting value for money.<sup>307</sup>
- 7.16 Veolia submitted<sup>308</sup> that the main assets required for municipal waste collection services are collection vehicles. In many cases – [X] – the local authority funds the purchase of the collection vehicles to be operated by the supplier through low-cost prudential borrowing. It is therefore easy for local authorities to obtain collection vehicles for the purposes of self-supply.
- 7.17 Veolia also submitted<sup>309</sup> that local authorities can choose to self-supply or use a Teckal even after launching a formal tender. For this reason, the constraint of self-supply remains throughout the tender process and it is inaccurate to describe the cost of self-supply as a ‘ceiling’. It submitted that bidders have no way of knowing what the local authority’s cost of self-supply or using a Teckal would be and therefore, each bidder must submit a competitive bid in order to beat it.

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<sup>301</sup> FMN, [X]; Veolia’s response [X].

<sup>302</sup> [Overview Submission by Veolia](#), paragraphs 38-40.

<sup>303</sup> Under the Public Procurement rules, there is a requirement that the service entity must perform more than 80% of its activities for its “controlling contracting authority” in order to benefit from the Teckal exemption. 20% of turnover, based on a three-year average, can therefore be earned from other sources. Source: Veolia’s supplemental response [X].

<sup>304</sup> Local Authority Trading Companies are entities which are wholly owned by a local authority or by a group of local authorities (“LATCos”).

<sup>305</sup> Veolia’s supplemental response [X]

<sup>306</sup> Transcript of hearing with Suez, [X]

<sup>307</sup> Transcript hearing with Suez, [X]

<sup>308</sup> Veolia’s response [X]

<sup>309</sup> Veolia’s response [X].

## Customer views

- 7.18 We asked<sup>310</sup> the Parties' local authority customers for their views on switching from outsourcing to self-supply their collection services (either using in-house supply or using Teckals), including whether they had considered it, why they had chosen not to self-supply, and any barriers to doing so. We also asked about the extent to which Teckals participated in tender processes and whether the cost of self-supply functioned as a benchmark.
- 7.19 Out of 19 local authority respondents who currently outsource collection,<sup>311</sup> 14 had considered self-supplying (either through in-house or Teckals) their municipal waste collection services.
- 7.20 Out of these 14, one local authority has switched from outsourcing to self-supply. Blackburn with Darwen (a UA) moved its collection services in-house. This local authority told us that it moved the collection of recycling in-house from Biffa due to performance issues. Subsequent market testing stated that suppliers were not interested in supplying collection services but in processing, treatment and disposal of waste and recycling. Therefore, the local authority found that self-supply of municipal collection provided best value, when combined with an outsourced waste and recycling treatment, processing and disposal option.<sup>312</sup>
- 7.21 Local authorities that had considered self-supply provided the following broad explanations in relation to the decision to not self-supply:
- (d) Lack of expertise, skills and resources to self-supply. For instance, one local authority stated that self-supply required estate, facilities and infrastructure to run refuse collection vehicles, access to labour, access to vehicles.<sup>313</sup> Other local authorities highlighted lack of sufficient support services e.g. HR, Finance<sup>314</sup> and lack of expertise and/or experience,<sup>315</sup>

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<sup>310</sup> Questionnaire to local authorities – 'Please explain whether you have considered switching from outsourcing to self-supplying (either in-house or Teckals) your municipal waste collection services. In this regard, please explain the following: (a) If this has been considered, please explain the decision to self-supply or not; (b) Whether in-house teams or Teckals participate in the tendering process to win your contract; (c) If the above switch has not been considered, please explain what barriers and costs you perceive your local authority would face if it tried to self-supply its waste collection service; (d) If you chose to outsource your waste collection services, how likely are you to use the cost of self-supplying as a benchmark or affordability target while choosing a third-party supplier.'

<sup>311</sup> The 19 local authorities consisted of 4 waste collection authorities (WCAs) and 15 unitary authorities (UAs). The 14 that had considered self-supplying consisted of 4 WCAs and 10 UAs.

<sup>312</sup> [redacted] response to the CMA's phase 2 questionnaire, 28 January 2022, Q11

<sup>313</sup> Responses to the CMA's phase 2 questionnaire [redacted]. Similar points made by [redacted], [redacted]

<sup>314</sup> Responses to the CMA's phase 2 questionnaire from: [redacted], [redacted] and [redacted]

<sup>315</sup> Responses to the CMA's phase 2 questionnaire from: [redacted], [redacted], [redacted], [redacted], [redacted]

- (e) Lack of political buy-in to self-supply at the time;<sup>316</sup>
- (f) High risk for the local authority<sup>317</sup>;
- (g) Insufficient benefits.<sup>318</sup> The costs of self-supply are considered to be high due to staffing liabilities, for example, pension liabilities<sup>319</sup> and mobilisation costs including TUPE considerations;<sup>320</sup> and
- (h) Complexity of self-supplying.<sup>321</sup>

- 7.22 One local authority said it had considered self-supplying collection services, but this was discounted because it was too complex and it was unsure it would achieve value for money.<sup>322</sup> The local authority also stated that the costs of self-supplying could be substantial as it would have all the staffing liabilities, eg pensions, which currently sit with the contractor. Another local authority said that it has considered self-supplying waste collection, but also acknowledged that the additional pensions costs arising from this decision would be a significant challenge.<sup>323</sup> Similarly, a third local authority said that externalising the risks associated with providing the service was seen as more beneficial than any potential savings from in-house provision.<sup>324</sup>
- 7.23 Another local authority said that the option of taking collection services in-house has been considered at a high level, but the existing contractor's performance and the cost and complexity of the exercise meant it was not pursued.<sup>325</sup> The local authority also said that the lack of in-house expertise would also have been a factor if the project had progressed.
- 7.24 In addition to the above, Maldon District Council told us that it considered procuring collection services in-house when its outsourced provider was unable to continue providing the services at the agreed price.<sup>326</sup> However, it ultimately concluded that it did not have sufficient expertise to do this.
- 7.25 St Albans City and District Council told us that it will consider whether to bring collection services in-house when its current contract with [redacted] expires.<sup>327</sup> It said that the most challenging aspect of this will be gaining the required

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<sup>316</sup> Response to the CMA's phase 2 questionnaire from [redacted]

<sup>317</sup> Responses to the CMA's phase 2 questionnaire from: [redacted] and [redacted],

<sup>318</sup> Responses to the CMA's phase 2 questionnaire from: [redacted], [redacted], [redacted], [redacted]

<sup>319</sup> Responses to the CMA's phase 2 questionnaire from: [redacted], [redacted], [redacted]

<sup>320</sup> Responses to the CMA's phase 2 questionnaire from: [redacted] and [redacted]

<sup>321</sup> Responses to the CMA's phase 2 questionnaire [redacted] and [redacted]

<sup>322</sup> Response to the CMA's phase 2 questionnaire from [redacted]

<sup>323</sup> Response to the CMA's phase 2 questionnaire from [redacted]

<sup>324</sup> Response to the CMA's phase 2 questionnaire from [redacted]

<sup>325</sup> Response to the CMA's phase 2 questionnaire from [redacted]

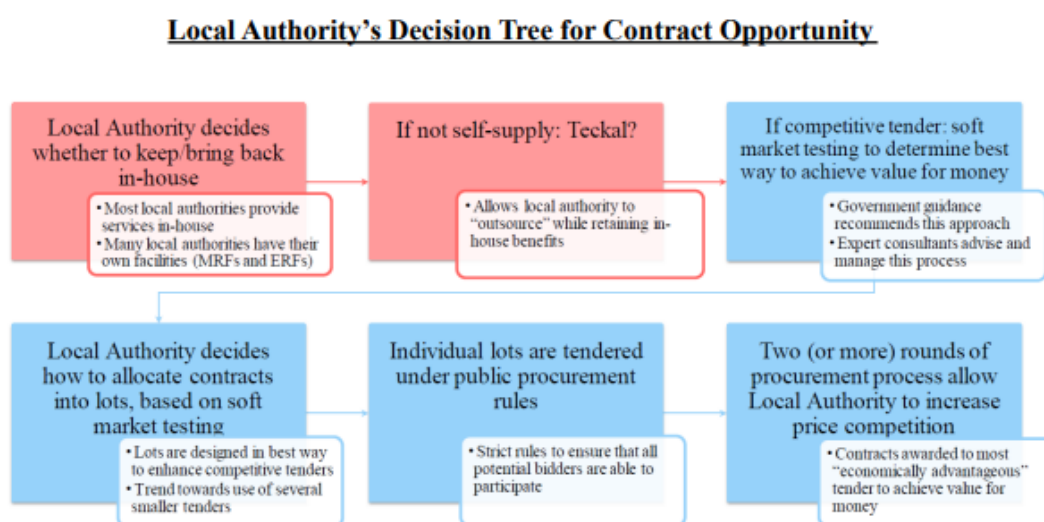
<sup>326</sup> Note of call [redacted]

<sup>327</sup> Note of call [redacted].

expertise, but this would be more straightforward to replicate for collection compared to other waste services.

- 7.26 To further assess the extent to which self-supply could exert a competitive constraint on suppliers during bidding processes, we asked local authorities whether self-supply teams (in-house or Teckals) participated in the tendering process for their contract and how likely they were to use the cost of self-supply as a benchmark or affordability target while choosing a third party supplier. While some local authorities told us that they could use or have used the cost of self-supply to benchmark third party suppliers,<sup>328</sup> respondents noted that in-house teams or Teckals do not bid in tendering processes.
- 7.27 In a submission, Veolia suggested that local authorities followed a two-step process (see Figure 7.1 below), where they first choose whether to self-supply or not and then choose to tender if they do not self-supply. Where this approach is taken, the fact that a tender has been launched may provide a signal to suppliers that self-supply is an unattractive alternative, and therefore may exert a weak constraint.

**Figure 7.1: Local Authority's decision tree for contract opportunity**



Source: Veolia's response [36]

- 7.28 Overall, the evidence from local authorities which currently outsource their waste collection indicates that they do often consider self-supply. However, the evidence also indicates that the main reasons local authorities did not choose to self-supply were the high costs which would need to be internalised from the current outsourced supplier, as well as the lack of expertise within local authorities to run the service. The only instance we have found of a local

<sup>328</sup> Among the 14 local authorities that considered self-supplying as an option, [36] indicated that either they already have or may use self-supply to benchmark third-party supplier bids submitted in a tender process.

authority bringing collection services back in-house was where performance issues with the current supplier combined with a lack of interest from alternative suppliers meant in-house supply provided value for money.

#### *Internal documents*

- 7.29 While the Parties' internal documents recognise that there has been an increase in local authorities' use of in-house services (particularly through Teckals), they also demonstrate that this increase is gradual:
- (a) An internal Suez presentation from December 2020 shows that, the proportion of waste collection authorities using outsourced contracts decreased by 4% in the 6 year period from 2013 to 2019, (from 45% to 41%).<sup>329</sup>
  - (b) An internal Veolia risk register<sup>330</sup> noted that insourcing by local authorities to LATCOs (Teckals) was [REDACTED]. [REDACTED].
- 7.30 When the Parties discuss their competitors in the municipal waste services market, the competitor set is generally limited to out-sourced suppliers (although it sometimes includes Teckals):
- (a) In an internal Suez presentation from December 2020, a slide titled 'Market – key players' lists the following suppliers (with the corresponding market shares and 'descriptions':<sup>331</sup>
    - (i) Veolia ([REDACTED] %): clear market leader;
    - (ii) Biffa ([REDACTED] %): Recently retained Cornwall contract and won Anglesey (£[REDACTED]);
    - (iii) Serco ([REDACTED] %): Norfolk Collections (£[REDACTED]) & Richmond Council (£[REDACTED]) contract wins;
    - (iv) Suez ([REDACTED] %): Recent Somerset win;
    - (v) Amey ([REDACTED] %): Focus on larger contracts;
    - (vi) Urbaser ([REDACTED] %): Entered the market in 2010 – significant gains; and
    - (vii) FCC ([REDACTED] %): Recently won Central Beds contract worth £[REDACTED].

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<sup>329</sup> Suez's internal document [REDACTED]

<sup>330</sup> Veolia's internal document [REDACTED]

<sup>331</sup> Suez's internal document [REDACTED]



(b) A Veolia internal strategy document dated January 2018 provides an overview of competitors in respect of municipal collection bidding where it [REDACTED]:<sup>332</sup>

(i) [REDACTED];

(ii) [REDACTED];

(iii) [REDACTED];

(iv) [REDACTED];

(v) [REDACTED];

(vi) [REDACTED]; and

(vii) [REDACTED].

### *Our assessment*

7.31 By way of initial observation, we distinguish between any competitive constraint imposed by self-supply (in-house or Teckals established by the 'home' local authority) and any constraint from Teckals outside the 'home' local authority. We consider the latter set of suppliers in the competitive assessment section of this chapter.

7.32 With respect to Veolia's submission that 58% of local authorities in England use a form of self-supply, we note that even if self-supply protects individual customers, it may not prevent the Merged Entity from raising prices or worsening quality of service for other customers. We therefore consider it necessary to assess the competitive constraint from self-supply for those customers not currently using self-supply.

7.33 To assess the competitive constraint that self-supply imposes on third-party suppliers bidding for municipal collection contracts, we considered the Parties' submissions, customer views and the Parties' internal documents.

7.34 We note that while Veolia submitted instances when local authorities have taken their outsourced waste collection in-house or awarded to Teckals, there are also instances where local authorities have switched from in-sourcing to outsourcing. Veolia provided two such examples<sup>333</sup> – in March 2017, Veolia entered into a municipal waste collection contract with the [REDACTED].<sup>334</sup> As part of

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<sup>332</sup> Veolia internal document, [REDACTED]

<sup>333</sup> FMN, [REDACTED]

<sup>334</sup> The South London Waste Partnership comprises four councils: Croydon, Kingston, Merton, and Sutton.

this contract, the [X] outsourced their municipal waste collection activities to Veolia, having previously supplied them in-house.

- 7.35 Veolia submitted that in-house supply and Teckals exert a significant constraint on municipal waste collection suppliers and local authorities could choose to self-supply even after launching a tender. However, we find that local authorities may not choose to self-supply for various reasons. First, some local authorities said that they would lack the necessary expertise, resources and skills to self-supply, including support services. We consider that Veolia's submission that employees can be transferred to the local authority through TUPE arrangements may apply to the frontline staff but [X].<sup>335</sup> Second, some local authorities noted that there was a lack of political buy-in to self-supply at the time. Suez recognised that this may not change significantly in the near future since the decision to outsource waste collection in some regions of the country has not changed, irrespective of changes in the political landscape. This implies that there is unlikely to be a radical shift towards self-supply. Third, local authorities talked about the high level of risk they would take on if they were to self-supply. We consider this reason in the context that collection services are key for a local authority's residents. Fourth, local authorities highlighted the high costs of self-supply including mobilisation costs using TUPE arrangements if switching and pension liabilities.
- 7.36 Evidence suggests that there is movement of customers both towards and away from self-supply. We consider that even in the event there was a gradual migration from outsourcing to self-supply this does not mean that customers will necessarily choose self-supply if the prices of outsourced services increased by, say, 5-10%.
- 7.37 Based on customer responses about the extent to which self-supply could exert a competitive constraint on suppliers during the bidding process, we provisionally conclude that benchmarking is not equivalent to competing directly. The cost of self-supply may be a ceiling on the cost of outsourcing, below which competition takes place and which may or may not be a binding constraint. In addition to price, a local authority would also consider the quality of the service (see chapter 8) while deciding on whether to self-supply.

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<sup>335</sup> Transcript of Suez Main Party Hearing.

### ***Provisional conclusion on product market***

7.38 Based on the evidence set out above, we provisionally conclude that relevant product market is the supply of non-hazardous municipal waste collection services, excluding self-supply.

## **Geographic market**

### ***Parties' submissions***

7.39 Veolia submitted that the appropriate geographic frame of reference for the supply of municipal waste collection services is national.<sup>336</sup> Veolia submitted that:

- (a) Vehicles are mobile assets and sites which can be used as vehicle depots are generally easy to find;<sup>337</sup>
- (b) Although there are economies of scale in serving neighbouring local authority areas, large waste collection companies generally bid for contracts regardless of their location; and
- (c) Barriers to entry are low for collection companies that are already active in other parts of the same country, especially for the municipal waste collection market where tenders are competitive and are subject to public procurement rules.<sup>338</sup>

7.40 Suez separately submitted that it may be appropriate also to consider the supply of municipal waste collection services on a regional basis.<sup>339</sup> Veolia noted that it did not consider a regional analysis to be appropriate as suppliers are able easily to bid for a collection contract in any part of the UK, and that it was straightforward to acquire vehicles and a vehicle depot in any part of the UK.<sup>340</sup>

### ***Our assessment***

7.41 The OFT previously considered the market for the collection of municipal waste on a national level, although it ultimately left the geographic frame of reference open.<sup>341</sup> EC decisional practice has also considered municipal

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<sup>336</sup> FMN, [3<]

<sup>337</sup> FMN, [3<]

<sup>338</sup> FMN, [3<]

<sup>339</sup> Suez response [3<]

<sup>340</sup> FMN, [3<].

<sup>341</sup> [OFT's decision of 4 June 2013 in case ME/6040/13](#), anticipated acquisition by Kier Group plc of May Gurney Integrated Services plc, paragraphs 21.

waste collection at the national level given the tendering processes used by local authorities and that environmental legislative frameworks are national in scope.<sup>342</sup>

- 7.42 Several local authorities submitted that it would be possible for waste collection companies that operate outside their local area to provide them with municipal waste collection services.<sup>343</sup> Two local authorities submitted that it would be important that a waste collection company had a proven track record elsewhere in the UK,<sup>344</sup> and another said that the waste collection company would need a contract manager and supervision team in the local area.<sup>345</sup> Local authorities also highlighted that if they were to switch supplier of municipal waste collection services, the new supplier would be using the same facilities and infrastructure<sup>346</sup> and existing staff would transfer to the new supplier under TUPE.<sup>347</sup>
- 7.43 Bid data submitted by the Parties also shows that several competitors (including the Parties, Biffa, and Serco) competed for contracts across the UK (as discussed below).

### ***Provisional conclusion on geographic market***

- 7.44 For the reasons set out above, we provisionally conclude that the appropriate geographic market is national. Any variations in competitive strength at a regional level would be reflected in the evidence considered in the competitive assessment.

## **Competitive assessment**

- 7.45 Our competitive assessment first examines competition for non-hazardous municipal collection contracts as a whole before considering the evidence on competition for non-hazardous municipal collection contracts that are relatively complex. As discussed in chapter 6, we consider various indicators of the complexity of customer requirements and found that some municipal

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<sup>342</sup> EC's decision of 30 July 2009 in case [COMP/M.5464](#), *Veolia Eau/Société des Eaux de Marseille/Société des Eaux d'Arles/Société Stéphanoise des Eaux*, paragraph 30; EC's decision of 3 August 2010 in case [COMP/M.5901](#), *Montagu/GIP/Greenstar*, paragraph 17; EC's decision of 3 April 2007 in case [COMP/M.4576](#), *AVR/Van Gansewinkel*, paragraph 15; EC's decision of 19 December 1997 in case [COMP/M.1059](#), *Suez Lyonnaise des Eaux/BFI*, paragraph 17.

<sup>343</sup> Notes of calls with [REDACTED], [REDACTED] and [REDACTED]

<sup>344</sup> Notes of calls with [REDACTED] and [REDACTED].

<sup>345</sup> Note of call with [REDACTED]

<sup>346</sup> Notes of calls with [REDACTED] and [REDACTED]

<sup>347</sup> Notes of calls with [REDACTED] and [REDACTED]

contracts were complex and potentially, as a result, attracts few bidders (paragraph 6.113).

7.46 In assessing the horizontal unilateral effects in the supply of non-hazardous waste collection services, we have considered:

- (a) How competition works;
- (b) Shares of supply;
- (c) Bidding data analysis;
- (d) Evidence from customers and competitors; and
- (e) Evidence from internal documents.

7.47 As mentioned above, in our assessment of horizontal unilateral effects we consider any competitive constraint imposed by Teckals outside the ‘home’ local authority (referred to as non-home Teckals in the rest of this chapter).

7.48 Finally, this section considers the evidence on entry and expansion in the municipal collection market in the UK.

### ***How competition works – selection criteria used by local authorities***

7.49 This subsection provides background on the criteria that local authorities use while choosing who to outsource their collection services to. It therefore gives an indication of the important parameters of competition and is relevant to our understanding the relative strength of suppliers in meeting customer requirements.

7.50 We asked local authorities to rank the factors that they consider important when deciding which supplier(s) to use for their waste management contracts.<sup>348</sup> They were asked to rank a list of factors from 1 (low importance) to 5 (very important).

7.51 Eight local authorities (three WCAs and five UAs) that currently outsource collection services<sup>349</sup> indicated that they assess bidders on quality and price.

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<sup>348</sup> Question wording: *please list the factors you believe are the most important factors when deciding which supplier(s) to use for the waste management contracts. To the extent the factors already listed [in the table] are relevant, please (a) Indicate the importance of each factor on a scale from 1-5 (where 1 is not important and 5 is very important); (b) Explain why the factor is important / not important. In particular, please explain whether the factor differs in importance between the different contracts outlined in question 3 [list of current contracts] above and refer to any specific criteria and weighting you use when assessing bids.*

<sup>349</sup> These include local authority that hold either collection-only contracts or contracts bundling collection with other services but not with disposal or treatment. The responses from local authorities that bundled collection with disposal or treatment would not be straightforward to interpret for collection services standalone.

These are given different weightings by different local authorities. While local authorities use quality and price to assess bidders, various factors lend themselves to the ability to offer better quality and price (for example, a local authority mentioned that extended geographical reach normally provides additional resilience;<sup>350</sup> another local authority rated innovation highly as it reduces cost<sup>351</sup>).

7.52 This is reflected in the responses which indicate that local authorities assessed bidders on a range of factors and not just quality and price:

- (a) Quality/reliability;
- (b) Price;
- (c) Financial standing;
- (d) Innovation;
- (e) Sustainable services; and
- (f) Track record.

**Table 7.1: Criteria used by local authorities to assess bidders for collection contracts**

<i>Criteria</i>	<i>No. of local authority respondents</i>	<i>Average score of importance (out of 5)</i>
Reliability of service	8	4.6
Quality of service	8	4.5
Financial standing	7	4.1
More environmentally friendly/ sustainable services	8	4.1
Price	8	4.0
Innovation capabilities	8	3.9
Track record	8	3.8
Access to infrastructure	7	3.3
Geographical reach	7	2.9
Provider's size	7	2.7
<b>N = 8 (5 UA, 3 WCA)</b>		

Source: CMA analysis of local authority responses. This analysis excludes the response from Watford (WCA) due to lack of ranking data.

7.53 Veolia submitted that the number of responses is 'insufficient to draw any robust conclusions on the criteria that local authorities use to assess bidders'. It also submitted that since local authority respondents were asked to rank to a list provided, which had no evidential weight, it would be illogical for a customer to not to indicate that it wants a good quality of service.

<sup>350</sup> Response to the CMA's phase 2 questionnaire [3<]

<sup>351</sup> Response to the CMA's phase 2 questionnaire [3<]

- 7.54 In response we note that we have used this evidence to further our understanding of how competition works in the market in a similar way to other qualitative evidence (eg customer calls). Therefore, while the number of responses is small, we consider that the consistency and quality of responses (in terms of some customers providing the underlying bid documents and the frequency with which customers mentioned these criteria in the responses more generally) allow us to place weight on it as evidence indicating the criteria used by local authorities.
- 7.55 Accepting Veolia's submission that it would be illogical for a local authority to exclude good quality of service from its selection criteria does not mean that quality of service is not taken into account. For example, Westminster Council told us that for its collection contract 'because it is a customer facing contract the quality element is extremely important to us because we just cannot afford ever to have dirty streets in Westminster, no matter what time of the year, what time of the day. It needs to be clean, so it needs a robust service provision. As such it has a very large emphasis on quality making sure that our residents are happy with the service but also that our business community is happy and our visitors ... Our waste collection and cleansing contract is probably the biggest in the UK in terms of the sort of scale and range of what we do but I think there are about 50 individual services specified in that contract. Ranging from to collect the waste to hazardous waste removal. Special events and protests, the winter gritting services included in that contract, and various other things'.<sup>352</sup>

### ***Shares of supply***

- 7.56 In this subsection, we consider the shares of supply for municipal collection services that are outsourced to third party suppliers (excluding Teckals).

#### ***Parties' submissions***

- 7.57 Veolia estimated market shares for municipal collection in terms of:<sup>353</sup>
- (a) the number of local authorities managed by a supplier;
  - (b) the number of households served at the end of 2020.

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<sup>352</sup> Call with [redacted]

<sup>353</sup> FMN, [redacted]

- 7.58 Using 2020 data, Veolia estimated that the Parties' combined share of the supply of municipal collection, excluding self-supply, in terms of households served was [X]% including an increment of [X]% from the Merger.<sup>354</sup>
- 7.59 Suez provided shares of supply for municipal collection in terms of:<sup>355</sup>
- (a) volumes of waste collected;
  - (b) annual contract value.
- 7.60 Suez did not submit shares of supply excluding self-supply. However, considering shares of supply that exclude self-supply, Suez estimated the Parties' combined share to be [X]% with a [X]% increment by volume and [X]% with an increment of [X]% by annual contract value.<sup>356</sup>
- 7.61 Veolia submitted that on any of these bases, the Merged Entity's share of supply would be below the level at which competition concerns generally arise, and that the increment resulting from the merger is small.<sup>357</sup>
- 7.62 Veolia also submitted that waste collection contracts can last between eight and ten years and that competition has [X], meaning that the current shares do not necessarily reflect competition today.<sup>358</sup>

### *Our assessment*

- 7.63 We requested data from the Parties and their competitors on the municipal collection contracts that they currently hold in the UK, including information on the number of households served by each contract.<sup>359,360</sup>
- 7.64 Using this data, we estimated shares of supply in terms of the number of households currently served, excluding self-supply. The shares are presented in Table 7.2.<sup>361</sup>

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<sup>354</sup> FMN, [X]

<sup>355</sup> FMN, [X]

<sup>356</sup> FMN, [X]

<sup>357</sup> FMN, [X]; Veolia's response, [X]

<sup>358</sup> Veolia's response, [X].

<sup>359</sup> The respondents to our questionnaire were Biffa, Serco, Viridor, FCC, Beauparc, Urbaser, Amey, Renewi, Grondon, Recycling Lives among others. This set of respondents covers suppliers that Veolia submitted accounted for at least [X] of the supply of municipal collection, plus three additional competitors.

<sup>360</sup> Veolia's response to working paper [X] lists Veolia, Suez, Biffa, Serco, Urbaser, FCC, Amey and Countrystyle.

<sup>361</sup> Amey is excluded from the share estimates because it is in the process of exiting the market. Amey's share is redistributed in proportion to the pre-exit shares of the other suppliers. Note of call [X]



**Table 7.2: Shares of supply by number of households served in the UK**

<i>Supplier</i>	<i>No of households served</i>	<i>%</i> <i>Share of supply</i>
Veolia	[3<]	[25-30%]
Suez	[3<]	[5-10%]
<b>Parties combined</b>	[3<]	<b>[30-40%]</b>
FCC	[3<]	[20-30%]
Biffa	[3<]	[10-20%]
Serco	[3<]	[10-20%]
Urbaser	[3<]	[5-10%]
Renewi	[3<]	[0-5%]

Source: CMA analysis of data provided by the Parties and third parties

7.65 These shares of supply show that the Parties will have a combined share of [30-40%] of the households currently served by the suppliers in the dataset, with a [10-20]% increment brought about by the Merger.

7.66 While the Merged Entity would be the largest supplier in the market (almost as large as the next two competitors combined), FCC, Biffa and Serco each has a significant share of supply ([20-30%], [10-20%] and [10-20%], respectively) and Urbaser would also have a material share of [5-10%], comparable to Suez's share of supply.

7.67 We consider these share estimates to be more reliable than Veolia's estimates, as they rely on data gathered directly from third parties.

7.68 We also considered the shares of supply in terms of the number of local authorities managed.<sup>362</sup> The results are broadly similar to those in terms of the number of households (Table 7.3).

**Table 7.3: Share of supply on the basis of the contracts currently held in the UK**

<i>Supplier</i>	<i>No. of contracts currently held</i>	<i>%</i> <i>Share of supply</i>
Veolia	[3<]	[20-30%]
Suez	[3<]	[10-20%]
<b>Parties' combined</b>	[3<]	<b>[30-40%]</b>
FCC	[3<]	[10-20%]
Biffa	[3<]	[20-30%]
Serco	[3<]	[10-20%]
Urbaser	[3<]	[10-20%]
Renewi	[3<]	[0-5%]
Recycling Lives	[3<]	[0-5%]
Viridor	[3<]	[0-5%]
Total	[3<]	

Source: Third parties, Parties, CMA calculations

<sup>362</sup> The share estimates do not include non-home Teckals and as such, all the share estimates may be over-estimated. The extent to which they are over-estimated is unclear, but we note that virtually no customers listed non-home Teckals as credible suppliers for their collection contracts if retendered.

- 7.69 Share of supply, expressed in terms of the number of contracts currently held, does not take account of variations in contract size. Given the diversity in the size of contracts that is characteristic of collection contracts, shares based on the number of local authority contracts may not accurately reflect the market position of suppliers whereas adjusting for the number of households served gives some insight into the scale of contracts won.
- 7.70 Overall, the shares of supply indicate that there are six viable suppliers in municipal collection but that they vary significantly in terms of scale and that the merged entity would be significantly larger than all other providers in the market.

### ***Evidence from bidding data***

#### *Parties' submissions*

- 7.71 Veolia submitted that its bidding data showed that [X].<sup>363</sup> [X].
- 7.72 It submitted that the bidding data analysis showed that Suez was the [X]. Veolia lost more frequently to [X].
- 7.73 Finally, Veolia submitted that it [X]. Veolia submitted that it was currently pursuing [X] municipal collection tenders and [X]. However, there was no overlap between these tenders.

#### *Our assessment*

- 7.74 Suez and Veolia each provided bidding data on the contracts for which they competed over recent years (four years for Suez and [X] Veolia).<sup>364</sup> As part of this data, the Parties submitted information on which competitors they believed to have also bid for each contract. Veolia submitted that this information provided its best current view of the participants it faced in these past tenders.<sup>365</sup> Suez's bidding data contained [X] tenders for which it competed between 2017 and 2020 and one tender for which it did not compete. Veolia's bidding data contained [X] tenders in which it participated between 2016 and 2020 and which had an estimated annual value greater than £[X].<sup>366</sup>

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<sup>363</sup> Veolia response [X].

<sup>364</sup> Parties response to [X].

<sup>365</sup> Veolia Response [X].

<sup>366</sup> The Parties' bidding data includes tenders for both standalone collection contracts and contracts where municipal waste collection services were combined with other services such as street cleansing, or HWRC management services. Therefore, this analysis encompasses contracts with a range of complexity.

- 7.75 It is not always transparent which suppliers bid in which tenders. The information on competing bidders for a given contract was based on the Parties' understanding or perception on whether the other Party or any third parties submitted a competing bid. Since the Parties' understandings or perceptions were not always accurate, we sought to improve the data by confirming with competitors and the other Party their actual bidding activity.<sup>367</sup> Therefore, if a supplier told us that it bid in a tender we included it in our analysis. If, on the other hand, a supplier told us that it did not submit a bid but the Parties had included it, we removed it from our analysis.
- 7.76 Competitors' data on tenders will not match perfectly, as firms may record slightly different date for the same tender.<sup>368</sup> Given the time available, and the confidentiality of the data provided by individual suppliers, it was not feasible to contact suppliers individually to confirm the matching of data across suppliers' datasets. However, we were able to conduct a manual matching exercise to judge whether suppliers had bid for the same tenders, by referring to the name of local authority, the approximate start date of the contract, the overlap in services listed as included in the contract, the approximate contract value, and the winner of the contract.<sup>369</sup>
- 7.77 We then carried out two types of analysis with these datasets:
- (a) Participation analysis—how frequently each of Veolia and Suez faced different competitors when bidding for contracts. This provides information on which suppliers are likely to compete against Veolia and Suez, respectively. All other things being equal, a supplier that competes more often against Veolia or Suez may exert a stronger constraint on them; and
  - (b) Loss analysis—how frequently each of Veolia and Suez lost tenders to different competitors. This provides information on which competitors, all other things being equal, may exert the strongest competitive constraints on the Parties.
- 7.78 The results of an analysis of Suez's data on how frequently it faces Veolia and how frequently it lost to Veolia are described below and presented in Table

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<sup>367</sup> Only Amey was not able to provide this data, so we relied on the Parties' beliefs on which contracts Amey bid for.

<sup>368</sup> For example, two suppliers may record a different contract start date or contract value, as each of these values may be approximate until the contract is actually signed (in which case the start date may only be observed by the winner).

<sup>369</sup> When matching, some variation was permitted in the contract value, as bids will naturally have some variation in their valuations, and customer name. For example, "Wycombe, Chiltern and South Bucks" was recognised as referring to the same local authority as "Chiltern, Wycombe and South Bucks joint waste contract". Differences on other factors were perceived to be indicative that contracts were not the same. If the start date was a different year then bids were viewed as not being the same contract. Similarly, if the contract winner was different, this was viewed as an indicator that they were not the same contract, as this information is published so should be common knowledge.

7.4. Out of the 14 tenders that contained information on which other competitors competed in the tender, Veolia competed in [X] of these tenders. Suez competed more often against Biffa ([X] tenders) and Serco ([X]), followed by FCC ([X]), Urbaser, and Amey (both [X] tenders), and Remondis ([X] tender).<sup>370</sup> Of the 14 tenders analysed, Suez lost [X]. Out of the [X] contracts that Suez lost, it lost [X] to Biffa, [X] to each of FCC and Veolia, followed by [X] each to Serco and Urbaser.

**Table 7.4: Suez bidding analysis**

<i>Supplier</i>	<i>Number of contracts participated against</i>	<i>Number of contracts lost to</i>
Biffa	[X]	[X]
Serco	[X]	[X]
FCC	[X]	[X]
Veolia	[X]	[X]
Urbaser	[X]	[X]
Amey	[X]	
Remondis	[X]	
Total bids	13	9

Source: Third parties, Parties, CMA calculations

7.79 Below we describe – and present in Table 7.5 – the results of an analysis of Veolia’s data for the period over which we received data from both Parties (ie 2017 to 2020):<sup>371</sup>

- (a) Participation analysis: Across the 30 tenders during 2017-2020, Veolia faced Suez in [X] tenders. Veolia competed more often with Serco ([X] tenders), Biffa ([X]), Urbaser ([X]), FCC ([X]), Amey ([X]); and
- (b) Loss analysis: Of the 30 tenders analysed, Veolia did not win [X] (an additional 3 were not awarded). Veolia lost most frequently to Serco and Urbaser on [X] and [X] occasions each respectively, followed by FCC on [X] occasions and Suez and Biffa on [X] occasions each.

<sup>370</sup> Remondis does not appear in the shares of supply analysis because it did not win any of the contracts according to the bidding dataset of the Parties. Veolia has also not identified Remondis as a supplier more broadly (ie outside of their bidding data) for municipal contracts that started since 2017 and with a value above £10 million. See Veolia’s response [X].

<sup>371</sup> Two sets of tenders, where no contract was not awarded at the end of the process, have been excluded from the analysis.

**Table 7.5: Veolia bidding analysis**

<i>Supplier</i>	<i>Number of contracts participated against</i>	<i>Number of contracts lost to</i>
Serco	[<]	[<]
Biffa	[<]	[<]
Urbaser	[<]	[<]
FCC	[<]	[<]
Suez	[<]	[<]
Amey	[<]	[<]
Continental Landscapes	[<]	[<]
Beauparc <sup>372</sup>	[<]	[<]
Total bids	28	16

Source: Third parties, Parties, CMA calculations

7.80 While we exercise some caution in interpreting the bidding data due to some ambiguities across the various datasets, it is still indicative of the competition for municipal collection services.

7.81 In summary, both sets of bidding data show that the Parties regularly face competition from each other, as well as competition from four other competitors (Biffa, Serco, FCC, Urbaser). Amey is exiting the market and Remondis bid for only one collection contract across both Parties' datasets.

### ***Evidence from customers***

7.82 To assess the relative strength of suppliers in a forward-looking manner, we asked Parties' local authority customers to list the suppliers that they would 'consider credible' if they were to re-tender their services.<sup>373</sup> They were also asked to indicate the strength of each supplier on a scale from 1 to 5 (where 1 is not very strong and 5 is very strong).

7.83 For collection contracts, we received responses from 14 local authorities (two WCAs and 12 UAs). Along with Biffa, Veolia and Suez were the most frequently mentioned suppliers. Veolia and Suez were mentioned 13 and nine times respectively. Biffa was mentioned 10 times, FCC seven, Serco six times, Urbaser four times, Amey and Viridor three times each. Countrystyle, Cory and Grundon were each mentioned only once.

<sup>372</sup> Beauparc does not appear in the shares of supply analysis because it did not win any of the collection contracts according to the bidding dataset of the Parties. Veolia has also not identified Beauparc separately (although it may be in the "others" category) in its municipal collection shares of supply. Veolia response [<].

<sup>373</sup> Question wording: *Please list the suppliers you would consider as credible if you were to re-tender the services listed in question in the near future (please pick up to three contracts that need to be re-tendered soonest). In doing so, please: (a) List the services you would include in each tender; (b) List the criteria you would use to assess bidders; (c) Rank the suppliers in order of overall preference; (d) Indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong); and (e) Provide an explanation for your rating. In doing so, please refer to the selection criteria you would consider to be important in such a tender.*

- 7.84 Only one local authority mentioned Ubico and Norse (non-home Teckals) but did not provide a rating for them as it said it had ‘insufficient knowledge of the company to do so.’<sup>374</sup>
- 7.85 The above evidence does not yet completely account for recent market exits and therefore overestimates the number of alternatives. In particular:
- (a) Viridor has sold its collection business to Biffa;
  - (b) Cory’s collection business was acquired by Biffa;<sup>375</sup>
  - (c) Amey does not plan to bid for new local authority contracts in the short term.<sup>376</sup>
- 7.86 Some customers have given certain third-party suppliers (not the Parties) low scores even though they do not consider them a credible supplier as revealed in the explanation of their ratings.<sup>377</sup> This means that the average score of third party suppliers may be over-estimated. This does not change the overall assessment, however.
- 7.87 Customers considered Veolia to be credible because:
- (a) It had relevant experience. For instance, experience in delivering contracts in London<sup>378</sup> and a strong track record in delivering contracts that were considered to be ‘complex and large’.<sup>379</sup> However, one customer noted Veolia’s mixed performance in London<sup>380</sup>;
  - (b) It offered a competitive bid<sup>381</sup>;
  - (c) It was innovative<sup>382</sup>;
  - (d) Good level of service<sup>383</sup> and responsiveness<sup>384</sup>; and
  - (e) it is the incumbent.<sup>385</sup>

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<sup>374</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>375</sup> Cory Group website: [Cory Environmental sells collection business to Biffa Waste Services | Cory Group](#), accessed by the CMA on 14 April 2022

<sup>376</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>377</sup> These include [redacted] score of Biffa, [redacted] score of FCC and Cory, [redacted] score for Urbaser.

<sup>378</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>379</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>380</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>381</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>382</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>383</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>384</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>385</sup> Response to the CMA’s phase 2 questionnaire from [redacted] and [redacted]

7.88 Customers listed Suez as credible because:

- (a) it is the incumbent<sup>386</sup>; and
- (b) track record.<sup>387</sup>

7.89 Based on customer views, the Parties face three strong competitors in municipal collection:<sup>388</sup>

- (a) **Biffa**. Biffa was considered credible due mainly to its track record<sup>389</sup> more generally and in the relevant region, although it received a lower overall score compared to the parties. For instance, one customer noted its experience in London<sup>390</sup> and another noted its regional presence<sup>391</sup>. A customer also noted reputational issues<sup>392</sup> and another customer noted its limited quality of service for managing ERF and delivering integrated contracts.<sup>393</sup> It was also identified by three further local authorities as able to meet their collection requirements if they were to tender tomorrow, due to its position as a large national competitor and having good sector coverage, but with a mixed local presence and infrastructure.<sup>394</sup>
- (b) **FCC**. It was mentioned by half the local authorities although it received a relatively low score compared to the Parties and Biffa. Customers listed FCC as credible due to its size<sup>395</sup>, track record<sup>396</sup> and regional presence<sup>397</sup>. One customer noted FCC's lack of track record around delivering contracts that are "complex and large".<sup>398</sup> It was also identified by one further local authority as a large competitor who is able to meet its collection requirements if it was to retender.<sup>399</sup>
- (c) **Serco**. It was mentioned by at least half the local authorities although it received a relatively low score, lower than the parties by a significant margin. Customers noted reputational issues.<sup>400</sup> One customer considered Serco credible based on recent experience in its own

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<sup>386</sup> Responses to the CMA's phase 2 questionnaire from [X] and [X]

<sup>387</sup> Responses to the CMA's phase 2 questionnaire from [X] and [X]

<sup>388</sup> There will inevitably be no views provided for suppliers that customers did not list (therefore, these comments will disproportionately tell us about strengths rather than weaknesses).

<sup>389</sup> Responses to the CMA's phase 2 questionnaire from [X] and [X]

<sup>390</sup> Response to the CMA's phase 2 questionnaire from [X]

<sup>391</sup> Response to the CMA's phase 2 questionnaire from [X]

<sup>392</sup> [X]

<sup>393</sup> Response to the CMA's phase 2 questionnaire from [X]

<sup>394</sup> Responses to the CMA's phase 1 questionnaire from [X] and [X]

<sup>395</sup> Response to the CMA's phase 2 questionnaire from [X]

<sup>396</sup> Response to the CMA's phase 2 questionnaire from [X]

<sup>397</sup> Response to the CMA's phase 2 questionnaire from [X]

<sup>398</sup> Response to the CMA's phase 2 questionnaire from [X]

<sup>399</sup> [X]

<sup>400</sup> Response to the CMA's phase 2 questionnaire from [X]

procurement process.<sup>401</sup> Another customer listed it as credible due to its track record.<sup>402</sup> It was also identified by two further local authorities as able to meet their collection requirements if they were to retender tomorrow, as having a local presence but relatively less sector coverage and limited infrastructure.<sup>403</sup>

7.90 The following suppliers were viewed as still viable but less strong than the three listed immediately above:<sup>404</sup>

- (a) **Urbaser.** It received few mentions – four out of a total of 14 local authorities. One customer considered Urbaser credible based on recent experience in its own procurement process.<sup>405</sup> Another customer<sup>406</sup> gave it a low score as it was not very familiar with it. We interpret this lack of brand awareness may be due to its recent entry,
- (b) **Countrystyle.** It was mentioned by just one customer<sup>407</sup> and was considered credible ‘based on industry experience’. A customer responding to the CMA’s Phase 1 Investigation noted that it is “emerging” but had no infrastructure in the area and did not have much capacity to expand at that time.<sup>408</sup>
- (c) **Grundon.** It was mentioned by just one customer<sup>409</sup> and was considered credible ‘based on industry experience’. Overall, customer views corroborate the position suggested by the shares of supply that the Parties are ranked highly as credible suppliers of municipal collection services along with four other suppliers (Biffa, FCC, Serco, and less so Urbaser).

#### *Customer concerns about the impact of the merger on collection services*

7.91 Of the 34 UAs and WCAs that responded to the CMA questionnaire during the CMA’s Phase 1 Investigation or our questionnaire at phase 2, 19 had concerns about the merger, three local authorities did not respond to this

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<sup>401</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>402</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>403</sup> [redacted]. [redacted].

<sup>404</sup> There will inevitably be no views provided for suppliers that customers did not list (therefore, these comments will disproportionately tell us about strengths rather than weaknesses).

<sup>405</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>406</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>407</sup> Response to the CMA’s phase 2 questionnaire from [redacted]

<sup>408</sup> [redacted]

<sup>409</sup> Response to the CMA’s phase 2 questionnaire from [redacted]



question,<sup>410,411</sup> and 12 did not have concerns about the merger. Of these 19, five local authorities explicitly mentioned concerns in collection. They said:

- (a) Newcastle-Under-Lyme (WCA) – *‘If this merger takes place it will mean we only have two large waste management companies operating throughout the UK. There are many other smaller players, but not necessarily national players, which could reduce competition especially when contracting collection contracts’*.<sup>412</sup>
- (b) Somerset Waste Partnership (UA) – *‘It would have reduced our recent tendering exercise by 1 meaning we would have had only 2 successful bidders to consider when awarding the contract. As a large provider focused on kerbside sort there are inherently a small number of potential bidders for our collections services already’*.<sup>413</sup>
- (c) Bracknell Forest (UA) – *‘The reduction of one supplier would be a significant detriment to competition in the waste collection market. This could lead to increased costs for tax payers and a worse service’*.<sup>414</sup>
- (d) Stafford (WCA) – *‘Whilst competition is healthy, I am concerned about the apparent reducing choice of suitable providers especially in relation to the more collection and processing contracts’*.<sup>415</sup>
- (e) [X] – *‘This could limit competition for waste contracts, particularly waste collection’*.<sup>416</sup>

7.92 In addition, there were 13 customers that raised concerns about the merger generally. While these customers were not specific about the services that gave rise to their concerns, some may relate to collections.<sup>417</sup>

7.93 The above evidence shows that some customers are concerned about the impact of the merger on the number of suppliers for municipal collection contracts.

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<sup>410</sup> Local authorities were provided with yes and no boxes along with the question: *Do you have any concerns about the impact on competition of this acquisition? Please explain your answer.* Where we have not received an updated response at Phase 2, we have used the Phase 1 response, where Local authorities were provided with yes/no box with the question: *Please indicate whether you have any concerns about the effects of this merger on competition. Please explain the reason for your answer.*

<sup>411</sup> [X] collection local authority.

<sup>412</sup> Response to the CMA’s phase 2 questionnaire from [X]

<sup>413</sup> Response to the CMA’s phase 2 questionnaire from [X]

<sup>414</sup> Response to the CMA’s phase 2 questionnaire from [X]

<sup>415</sup> Response to the CMA’s phase 2 questionnaire from [X]

<sup>416</sup> [X]

<sup>417</sup> For example, [X] raised the concern that ‘Veolia’s acquisition of the one of its top 5 competitors is clearly going to reduce competition across the waste sector (commercial and municipal markets). This will only increase pricing and reduce investment in facilities’.

## ***Evidence from competitors***

- 7.94 To assess the relative strength of suppliers in a forward-looking manner, competitors were asked to list (including themselves) who they considered as their strongest competitors in non-hazardous municipal waste collection contracts in the UK. They were also asked to rank these suppliers (out of 5, with 5 being the highest score).
- 7.95 The table below shows the average scores<sup>418</sup> from competitors. Competitors identified Veolia, Biffa and Suez as credible competitors for municipal collection contracts and gave them the highest ratings. Other competitors did not receive as high scores.

**Table 7.6: Supplier ratings**

<i>Supplier</i>	<i>Number of mentions</i>	<i>Average score out of 5 (weighted by the number of mentions)</i>
Veolia	5	5.0
Suez	4	3.2
Biffa	4	3.8
Urbaser	4	2.4
FCC	3	2.0
Serco	2	2.0
Beauparc	1	0.2
Amey	1	0.4
In-house	1	0.8

Source: CMA analysis of relevant customer questionnaire responses

Note: All competitors had ranked themselves but Biffa and Serco did not include themselves, so its score may be underestimated in the table. The Parties have also not ranked themselves.

- 7.96 In addition to ranking the suppliers, competitors also provided an explanation for the ratings. The criteria that competitors based the above rankings on were:
- (a) Track record/well established;<sup>419</sup> and
  - (b) Access to treatment/disposal infrastructure.<sup>420</sup>
- 7.97 Below is a summary of competitors' views on each of the suppliers:
- (a) **Biffa.** A competitor<sup>421</sup> submitted that while Biffa does not have as much disposal infrastructure, it has lots of know-how and can exploit synergies with its C&I collection business.

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<sup>418</sup> The ratings are weighted by the number of mentions.

<sup>419</sup> Responses to CMA Phase 2 questionnaire from [redacted], [redacted], [redacted] and [redacted].

<sup>420</sup> Responses to CMA Phase 2 questionnaire from [redacted], [redacted] and [redacted].

<sup>421</sup> Note of call [redacted]

- (b) **Serco.** A competitor<sup>422</sup> mentioned that Serco has strengthened its position in the past three years and won numerous new and large contracts.
- (c) **FCC.** A competitor<sup>423</sup> mentioned that FCC has a large number of contracts across the UK, including local authority waste collection, C&I waste, and waste treatment. Another<sup>424</sup> noted that FCC has a sizeable disposal network and limited municipal portfolio. One competitor noted that FCC occasionally bid for collections contracts but less frequently than three years ago.<sup>425</sup>
- (d) **Urbaser.** Urbaser considers municipal services, street cleansing and waste collection contracts as its core activity, representing over 50% of group revenue.<sup>426</sup> [§].<sup>427,428</sup> A competitor<sup>429</sup> mentioned that Urbaser is increasing its presence in the UK.
- (e) **Countrystyle.** While identified by two competitors as an entrant by winning the London Borough of Bexley contract for collection<sup>430</sup>, it was viewed by one competitor as '*a regional player who are unable to provide national coverage*'.<sup>431</sup>

7.98 Based on competitor views, the Parties are ranked highly, along with Biffa, as credible suppliers of municipal collection services along with three other suppliers (FCC, Serco, Urbaser). We note that none of the competitors mentioned non-home Teckals as competitors.

### **Evidence from internal documents**

7.99 The Parties generally refer to the same or a similar pool of competitors in their internal documents. This generally includes the other Party, Biffa, Serco, FCC and Urbaser. For example:

- (a) An internal Suez presentation from December 2020 notes Veolia, Biffa, Serco, Suez, Amey, Urbaser and FCC ([§]) as key players in the

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<sup>422</sup> Response to the CMA's phase 2 questionnaire [§]

<sup>423</sup> Response to the CMA's phase 2 questionnaire [§]

<sup>424</sup> Response to the CMA's phase 2 questionnaire [§]

<sup>425</sup> Response to the CMA's phase 2 questionnaire [§]

<sup>426</sup> Response to the CMA's phase 2 questionnaire [§]

<sup>427</sup> [§]

<sup>428</sup> [§]

<sup>429</sup> Response to the CMA's phase 2 questionnaire [§]

<sup>430</sup> Responses to the CMA's phase 2 questionnaire [§], [§]

<sup>431</sup> Response to the CMA's phase 2 questionnaire [§]

municipal waste collection market, where Veolia is described as the ‘clear market leader’.<sup>432</sup>

(b) In a note to Veolia’s Board of Directors [REDACTED].<sup>433</sup> The note also lists [REDACTED].

(c) A Veolia internal strategy document dated January 2018<sup>434</sup> provides an overview of competitors in respect of municipal bidding where it lists [REDACTED].

(d) A Veolia presentation to its [REDACTED].<sup>435</sup>

## **Overarching observations on competition in municipal collection services**

7.100 The evidence that we have considered – shares of supply, bidding data, views of customers and competitors, and the Parties’ own internal documents - indicates that the Parties are close competitors for the supply of non-hazardous municipal waste collection contracts. The evidence also indicates that the Parties face some competitive constraint from Biffa, Serco, Urbaser and FCC.

7.101 The evidence set out above considered competition for all non-hazardous municipal waste collection contracts. We now consider the evidence on competition for complex non-hazardous municipal waste collection contracts.

## **Competition for complex collection contracts**

7.102 As discussed in chapter 6, we have identified that the characteristics of some municipal waste contracts make them complex. This complexity may result from a variety of different characteristics, including scale, operational delivery, bundling of services, and local authority requirements. The degree to which a local authority’s non-hazardous waste collection requirements are complex cover a spectrum of complexity. The evidence in chapter 6, which looked at competition for complex contracts generally, indicated that a relatively small number of competitors is capable of bidding for and winning complex contracts. Veolia and Suez are two of the most credible and highly-rated providers.

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<sup>432</sup> Suez’s internal document, [REDACTED]

<sup>433</sup> Veolia internal document, [REDACTED]

<sup>434</sup> Veolia internal document, [REDACTED]

<sup>435</sup> Veolia’s internal document, [REDACTED]

7.103 In this subsection of the competitive assessment, we consider evidence on competitive conditions for customers with more complex requirements in collection of non-hazardous waste.

### ***Parties' submissions***

7.104 Veolia submitted that the evidence does not support the existence of a subset of complex municipal waste collection contracts for which only Veolia and Suez are credible bidders.<sup>436</sup> Rather, it submitted that the evidence showed that there were at least eight credible suppliers for contracts with complex requirements, those being: the Parties, Biffa, FCC, Serco, Urbaser, Countrystyle, and Grundon.

### ***Evidence from internal documents***

7.105 A Veolia internal strategy document from 2018<sup>437</sup>, which relates to municipal collection, discusses upcoming opportunities in the next two years (2018-2019), noting in that context that there are on average [X] bids per municipal collection procurement. Further, in the context of noting [X], the document states that competition is '[X]'.

(a) The same document, [X], provides an overview of [X]:

(i) [X];

(ii) [X];

(iii) [X];

(iv) [X].<sup>438</sup>

7.106 Veolia's internal documents also suggest that Serco, Biffa, FCC and Urbaser bid for more basic municipal service contracts and notes that [X] are most active in municipal waste procurement, with [X] being less prevalent:

(a) A [X] document from [X];<sup>439</sup>

(b) A Veolia internal strategy document from [X].<sup>440</sup>

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<sup>436</sup> Veolia's response [X]

<sup>437</sup> Veolia internal document, [X]

<sup>438</sup> The document also [X]. [X].

<sup>439</sup> Veolia's internal document [X]

<sup>440</sup> Veolia internal document, [X]

(c) In a Veolia [REDACTED]. [REDACTED].<sup>441</sup>

7.107 Among the evidence from internal documents already set out in chapter 6, some are particularly relevant to complex collection customer requirements.

(a) In Veolia's Municipal Roadmap from June [REDACTED].<sup>442</sup> For both contracts, Veolia also lists 'Likely other bidders' and only lists one other likely bidder for each contract. This suggests that these two contracts are not only complex, but also unlikely to attract much competition in Veolia's opinion.

(b) Veolia's [REDACTED]. [REDACTED].<sup>443,444</sup> This indicates that Veolia faces more competition for non-complex municipal collection contracts compared to complex municipal collection contracts. Therefore, it is targeting more complex contracts where it feels there is less competition and it has a more likely chance of success.

(c) In a [REDACTED] document [REDACTED].<sup>445</sup> This document firstly suggests that the bundling of other services with collection increases the complexity of a contract. Second, it also suggests that Veolia believes it faces more competition for non-complex contracts compared to complex contracts.

### **Contracts analysis**

7.108 We sent requests to the Parties' customers to provide information on their current waste management contracts. In this subsection, we identify a number of these contracts that have characteristics that are associated with greater complexity, as set out in chapter 6; and then analyse evidence on competitive conditions for the relevant customers. In particular, we consider evidence on the number of bidders identified for the contracts, the customers' views on the number and identity of credible suppliers in future; and the relevant customers' views on the Merger. Below, we first set out some details of the contracts that were reviewed for this analysis, before setting out the analysis itself.

7.109 Among the contracts for which we received data from customers, we first identified a subset of 14 contracts that included non-hazardous municipal waste collection services (either as a standalone service or alongside other

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<sup>441</sup> Veolia's internal document, [REDACTED]

<sup>442</sup> Veolia's Internal Document [REDACTED]

<sup>443</sup> Prudential borrowing is where a LA accesses loans from the National Loans Fund through the Public Works Loans Board. The LA can then use this loan to pay for capital expenditure that is necessary for the performance of a contract. Veolia submitted that these loans are low-interest loans that lower the price of waste contracts because the cost of borrowing is lower than funding the commercial cost of capital that would have to be included in any commercial bid. Veolia submitted this facilitates competition rather than adds to a contract's complexity.

<sup>444</sup> Veolia's internal document, [REDACTED]

<sup>445</sup> Veolia's internal document [REDACTED]

services). We excluded two contracts for which the customer provided an incomplete response. We then assessed which of the remaining 12 contracts had characteristics that were likely to be associated with more complex requirements. In particular, we considered three indicators of complexity on which we had data, namely:

- (a) whether the contracts were large in value;
- (b) whether the customers themselves considered that their requirements were complex;
- (c) whether the contract bundled other services with collection.<sup>446</sup>

7.110 A large proportion of the customer contracts for which we received information had characteristics associated with complexity. In particular, 11 of the 12 customer contracts on which we received information from customers fell into one or more of the categories mentioned above (see paragraph 7.109). Out of 12 contracts, 11 had an annual contract value in excess of £5 million. These are relatively large contract values: among all complex contracts on which we received information from the Parties and their competitors, only a third exceeded £5 million in value per annum. In total, 10 of the 12 contracts included services other than collection. For six of the 12 contracts, customers themselves considered that their requirements were complex or difficult to deliver.

7.111 Table 7-7 lists the 11 contracts that are part of this assessment. While six of the 11 contracts started before 2017, we consider that they are still informative about the competitive conditions for complex contracts due to the reasons listed in chapter 6.<sup>447</sup>

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<sup>446</sup> Collection is often bundled with other public-facing services such as street cleansing and grounds maintenance, eg the London Borough of Camden's contract with Veolia bundles waste collection with street cleansing and graffiti and fly-posting removal. Waste collection can also be bundled with disposal services which are not public-facing, eg Sheffield City Council's contract with Veolia bundles collection with sorting of recyclates, disposal by EfW incineration, disposal by landfill, and disposal of organic waste.

<sup>447</sup> In this regard we note that municipal collection contracts are long term. It is therefore likely that some of the evidence on previous bidding will be much older than other contract evidence. However, we note that the more recent contracts still had relatively few bidders and we place weight on that. Finally we note that we place this evidence in context of other evidence we have analysed and discussed in our provisional findings report.

**Table 7.7: Local authority contracts for collection services which have complex characteristics**

<i>Veolia contracts</i>				
<i>Local authority</i>	<i>Services included</i>	<i>Total contract value (£m)</i>	<i>Contract start</i>	<i>Duration (years)</i>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<i>Suez contracts</i>				
<i>Local authority</i>	<i>Services included</i>	<i>Total contract value (£m)</i>	<i>Contract start</i>	<i>Duration (years)</i>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: local authority responses to the CMA's questionnaire

7.112 With respect to these contracts, in the following subsections we consider evidence on:

- (a) how many bidders the relevant customers identified as having bid for the contract when it was last tendered;
- (b) how many suppliers (and which suppliers) customers identified as credible in a scenario where the customer would re-tender the services covered by that contract in the near future;
- (c) the customers' perceptions of the competitive strength of the Parties; and
- (d) the extent to which these customers had concerns about the Merger.

#### *Number of bidders identified*

7.113 Among the 11 contracts listed above, local authorities identified no more than 4 bidders for the contract when it was originally tendered. On average, customers identified 2.5 bidders in the tender, including the winner. Veolia and Suez competed against each other in [REDACTED] of the 11 contracts.<sup>448</sup> This evidence suggests that there have been only few bidders overall.

7.114 We note that the local authority customers were asked to provide the name of the winner and 'other bidders' for the relevant tender. It is possible that some local authorities may have excluded suppliers that participated in the tender

<sup>448</sup> [REDACTED], and [REDACTED]. [REDACTED].



process but were eliminated before the final round – for example, because customers might only have had capacity to review a limited number of bids. In this scenario, the number of bidders identified would understate the number of bidders in practice.

7.115 However, we consider that while the interpretation of the number of bidders identified is subject to some ambiguity, a number of points of context suggest that customers did not have a range of additional bidders to choose from beyond those identified in their responses. In particular:

- (a) A number of customers within this subset of customers are concerned about the impact of the Merger on competition and raised specific and detailed concerns in relation to collection (see paragraph 7.121). Two customers specifically indicated that the number of bidders they could choose from was small. We do not consider that this is consistent with local authorities having a wide choice of suppliers beyond those identified in their responses;
- (b) One Veolia internal strategy document [REDACTED].<sup>449</sup> [REDACTED];
- (c) Third parties told us that bidding costs could be substantial, both in absolute terms and relative to the contract that is being tendered (see paragraph 5.42 in Chapter 5). In this setting, not all credible bidders may bid for all opportunities, and this is consistent with third party submissions: some suppliers told us that they do not bid for some contracts or select tenders carefully;
- (d) While the average number of bidders identified for these 11 contracts is 2.5, this as an average and several contracts received bids from only two bidders or even one bidder. For example, [REDACTED] contract only received one bid (from Veolia), while [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] only identified two bidders for their contracts. We consider that such a limited number of bids identified by a customer is more likely to be explained by a lack of bidders than by customers limiting the number of bids despite a wider set of credible bidders;
- (e) When asked to list the suppliers that they would consider credible if they were to re-tender their current waste contracts, the local authority customers with the 11 complex contracts identified fewer than four credible suppliers on average; and

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<sup>449</sup> Veolia's internal document [REDACTED]

- (f) Some suppliers have told us that they rarely bid or are unlikely to bid for some contracts (see, for example paragraphs 6.77 and 6.82 to 6.84).

7.116 We therefore consider that some weight can be attached to this evidence on the number of bidders identified by local authority customers in relation to these 11 contracts which suggests that there is typically a small number of bidders for each individual contract when considered in the context of other evidence as described above. Given the small number of bidders for each contract, any two bidders would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns.<sup>450</sup> While Veolia and Suez do not bid against each other in all tenders – including for complex contracts – absent the Merger this would be likely to occur in a significant proportion of complex contracts. In particular, the Parties have competed against each other in just under one-third of the contracts listed above. This includes [X], where the Parties were the only two bidders.

### *Credible suppliers*

7.117 We asked the customers in these contracts to identify suppliers that they would consider to be credible if the customer re-tendered the services covered by the contract in the near future. The number of mentions for different competitors received from these customers is set out in Table 7.8.

**Table 7.8: Credible bidders identified by Local Authorities for complex municipal collection contracts**

<i>Competitor</i>	<i>Number of mentions</i>
Veolia	11
Biffa	8
Serco	7
Suez	6
FCC	4
Amey	2
Urbaser	2
Grundon	1
Countrystyle	1
<b>Number of contracts</b>	<b>11</b>

Source: Third parties, CMA calculations

7.118 Some suppliers were listed as credible far more frequently than others. Veolia and Suez were listed as credible for 11 and six contracts, respectively. Based on their responses, local authorities who listed the Parties as credible primarily valued their track record.

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<sup>450</sup> [CMA129](#), paragraph 4.10.

7.119 The other bidders identified by a comparable number of customers were Biffa, Serco and, to a lesser extent, FCC. In contrast, Urbaser, Grundon and Countrystyle were mentioned as credible competitors by a small minority of customers. While Amey was also mentioned by a small minority of customers, [REDACTED] exiting the market and therefore [REDACTED]. Overall, this implies that the Merged Entity will primarily face Biffa, Serco and FCC when competing for complex contracts that include collection services. This corroborates the evidence from internal documents that suppliers such as Urbaser tend to [REDACTED] and that FCC is seen to [REDACTED].

7.120 When interpreting this evidence, we take into account that not all suppliers that are credible will ultimately bid for a given contract (see paragraphs 7.115 and 7.116).

#### *Customer concerns*

7.121 Out of the 11 customers relevant to this analysis, four raised concerns about the Merger. In particular:

- (a) Somerset Waste Partnership submitted that the Merger would have reduced the number of participants in its recent tendering exercise by one, leaving only two successful bidders to consider when awarding the contract. It was concerned that there was inherently a small number of potential bidders for its collection services already;
- (b) RB Kensington and Chelsea submitted that it was very concerned about the acquisition. It said there was a lack of genuine competition for its waste collection tender, having received only two bids, and that further erosion in competition would make it unlikely that local authorities would achieve best value for their waste contracts. It said that allowing the Merger would be a disaster for competition within the industry;
- (c) Sheffield City Council raised a concern that Veolia's acquisition of one of its top five competitors was clearly going to reduce competition across the waste sector (including commercial and municipal markets), and that this would increase pricing and reduce investment in facilities.

7.122 In the context of 11 contracts, concerns from 4 customers is a substantial number, and the concerns raised by those customers are serious concerns directly related to the impact of the Merger on competition. In two cases the customers raise specific concerns about the small number of bidders from whom they had to choose in their tenders.

7.123 Seven of the 11 local authority customers indicated that they did not have concerns about the Merger. Two of these local authorities nevertheless noted competition risks around this Merger, specifically:

- (a) West Berkshire Council said that ‘Generally we do not have any concerns about this proposed acquisition. However, there are clear risks that may arise from the dominant size of the combined company’;<sup>451</sup> and
- (b) Solihull said that ‘The acquisition of Suez by Veolia does reduce the potential for competition when tendering but in our recent experience bidders are selective regarding what contracts they will bid for so more market providers does not guarantee more competition when bidding for contracts’.<sup>452</sup>

7.124 Westminster City Council simply stated that it has no concerns around the Merger and the London Borough of Brent said the Merger gives its current provider greater access to wider waste infrastructure will help it meet its waste objectives.<sup>453</sup> The remaining three respondents did not provide explanations for why they had no concerns with the Merger.

7.125 The concerns raised by customers are consistent with wider concerns raised by third parties in relation to the impact of the Merger on competition for customers with complex requirements, as set out in chapter 6. We consider that in future there will continue to be a demand from some local authorities for complex municipal collection contracts, and therefore the wider concerns in chapter 6 relating to complex contracts will continue to be a feature in future complex municipal collection contracts.

### ***Evidence from third parties***

7.126 In this subsection, we consider relevant third party evidence already set out in chapter 6 on the following topics:

- (a) Views on competitors for complex contracts;
- (b) Prevalence of integrated contracts.

7.127 These are, respectively, relevant to assessing the competition for complex collection contracts and to consider to what extent future procurement contracts are likely to differ.

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<sup>451</sup> Response to the CMA's phase 2 questionnaire from [redacted]

<sup>452</sup> Response to the CMA's phase 2 questionnaire from [redacted]

<sup>453</sup> Responses to the CMA's phase 2 questionnaire from [redacted] and [redacted]

## Views on competitors for complex contracts

7.128 Among the evidence from customers set out in chapter 6, some are particularly relevant to competition for municipal collection customer requirements that are complex. These include:

- (a) Suffolk County Council: *'we believe that for residual waste disposal contracts, complex waste contracts (e.g. integrated contracts) and those contracts involving large capital expenditure Suez and Veolia are 2 of a very small number of bidders and in our own experience the 2 strongest bidders. Removing one of these would reduce competition'*.<sup>454</sup>
- (b) WLWA: *'To our knowledge only Suez and Veolia are providing fully integrated Local Authority services eg collection of food waste, green waste, dry recycling, residual waste, HRRC management, transfer stations and disposal of food waste, green waste, dry recycling and residual waste'*.<sup>455</sup>
- (c) Local authorities mentioned that Veolia and Suez are the key suppliers able to offer services across the waste management supply chain and at a large scale. For instance, Essex Council said *'Certainly when you start looking at the players in the market that are able to handle the full range of waste processes, whether that be collection, operating recycling centres, residual waste treatment, biowaste treatment, Suez and Veolia are probably the key ones that sit within that space. The others operate within parts of the waste management field. [redacted], they are operating in segments of the waste management field rather than the full range of collection, treatment and disposal'*.<sup>456</sup>
- (d) Westminster told us that for its collection contract *'Veolia have a strong record around delivering contracts that are as large and complex as the City Council's'*.<sup>457</sup>

7.129 Among the evidence from competitors on integrated contracts set out in chapter 6, some are particularly relevant to complex collection customer requirements. These include:

- (a) Urbaser said that Veolia *'Has significant presence throughout the UK providing all waste services'*.<sup>458</sup>

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<sup>454</sup> Response to the CMA's phase 2 questionnaire from [redacted]

<sup>455</sup> Response to the CMA's phase 2 questionnaire from [redacted]

<sup>456</sup> [redacted]

<sup>457</sup> Response to the CMA's phase 2 questionnaire from [redacted]

<sup>458</sup> Response to the CMA's phase 2 questionnaire from [redacted]

- (b) Viridor said Biffa is less focussed on integrated contracts, but has a strong collection business.<sup>459</sup> Biffa confirmed said that they had not bid for an integrated contract since 2010.<sup>460</sup>
- (c) Viridor told us that it is now focussed on ERF after selling its collection business and MRFs to Biffa.<sup>461</sup> Viridor told us that for large integrated contracts, the main players are Veolia and Suez.<sup>462</sup> It also said that FCC bid for some of these contracts and that Biffa would not necessarily bid for an integrated contract because it does not have the infrastructure, but might be part of the solution.
- (d) FCC told us that Viridor used to be able to bid for integrated contracts, but it has subsequently restricted its business to EfW incineration and plastic reprocessing.

### *Prevalence of integrated contracts*

7.130 As set out at paragraph 6.42, we expect local authorities to continue to tender bundled contracts of some form. While there may be some unbundling in future procurements, many local authorities may not consider this, or may conclude that it is appropriate to continue with their current approach (where services are bundled together). We have also not seen unbundling of complex contracts identified as a major trend or risk in the Parties' internal documents that consider complex contracts.

## **Our assessment**

7.131 For the municipal collection market as a whole, the Merger will create the largest supplier in the market. However, four other competitors (Biffa, Serco, FCC and Urbaser) will each have a share of supply comparable to or larger than Suez post-Merger. A sizeable minority of customers was concerned about the Merger's impact on competition, although in some cases the customers did not specify whether this was in relation to collection services. Customers ranked the Parties, along with Biffa, highly and named them as credible suppliers along with three others (FCC, Serco and Urbaser). The Parties generally refer to the same or a similar pool of competitors in their internal documents, including the other Party, Biffa, Serco, FCC and Urbaser.

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<sup>459</sup> Response to the CMA's phase 2 questionnaire from [3<]

<sup>460</sup> Note of call [3<]

<sup>461</sup> Response to the CMA's phase 2 questionnaire from [3<].

<sup>462</sup> Note of call [3<]

7.132 Overall, the evidence indicates that the Parties are close competitors within the supply of non-hazardous municipal waste collection contracts, but that the Parties face some competitive constraint from Biffa, Serco, Urbaser and FCC.

7.133 As discussed in chapter 6, we have identified that the characteristics of some municipal waste contracts make them complex and that this affects competitive conditions. We therefore considered evidence on competitive conditions for customers with more complex requirements in the collection of non-hazardous waste.

7.134 In this respect we note that:

- (a) Internal documents provided by Veolia suggest that competition is [X]; that there are typically only [X] bids for a contract; and that [X] tend to compete mainly for more basic contracts. Veolia identifies weaknesses in all of the competitive constraints it faces, including that [X].
- (b) For a subset of collection contracts with characteristics associated with greater complexity, the relevant customers identified relatively few bidders as having competed for those tenders (the average number was less than three). A majority of those customers were concerned about the impact of the Merger on competition or submitted comments that we consider to be consistent with competition risks. Customers commonly identified Veolia, Biffa, Serco and Suez as credible suppliers for their complex contracts, as well as FCC to a lesser extent. Several third parties pointed to more limited competition for complex contracts, including those involving collection.

7.135 As noted in chapter 6, evidence from across the Parties' waste management activities 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, and we also take this into account alongside the market-specific evidence set out above.

7.136 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 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; and
- (d) Veolia and Suez are two of this small set of credible suppliers and the Merger will significantly reduce competition for these contracts.

## Entry and expansion

7.137 We now consider entry and expansion in the municipal collection market. The market for municipal collection services has witnessed recent entry and exit.

7.138 Recent exits include Amey, Cory (whose collection business was acquired by Biffa<sup>463</sup>) and Kier.<sup>464</sup> [X].<sup>465</sup>

7.139 About the exits, one competitor<sup>466</sup> said that *‘The last decade the focus for local authorities has been meeting the austerity measures, and so cost rather than service performance has been the driver. Passing risk to contractors and devolving themselves of responsibility for performance as contracts were awarded primarily on costs. In many cases this has proven to have caused problems and led to several companies who entered the market as ‘waste providers’ to leave the industry having not delivered the level of service expected, such as Kier, Cory, Amey, May Gurney’.*

7.140 Recent entry includes Countrystyle Recycling and Remondis. In 2021, Countrystyle won a collection contract with London Borough of Bexley for whom it already provided another service (operation of waste transfer service). Countrystyle was, however, viewed as *‘a regional player who are unable to provide national coverage’* by one competitor.<sup>467</sup>

7.141 Remondis was shortlisted for one tender in Scotland. Remondis was also believed to have bid for (but lost) the 2019 Newcastle City HWRC and haulage contract according to Suez’s bidding data.

7.142 None of the customers viewed either Countrystyle or Remondis as credible suppliers in future procurement (see paragraph 7.89).

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<sup>463</sup> Cory Group website: [Cory Environmental sells collection business to Biffa Waste Services | Cory Group](#), accessed by the CMA on 14 April 2022.

<sup>464</sup> Kier announced its exit from its Environmental Services business in 2019. Daniels Silverman website: [Kier to exit the housing, property investment and facilities management sectors. - Daniels Silverman](#), accessed by the CMA 12 May 2022.

<sup>465</sup> Note of call [X]

<sup>466</sup> Note of call [X]

<sup>467</sup> Response to the CMA’s phase 2 questionnaire from [X]



- 7.143 On the costs of entry, as discussed in chapter 5, third party views indicated that municipal bidding costs are not insignificant. For instance, one regional C&I collection competitor (Grundon)<sup>468</sup> with an interest in entering municipal collection submitted that it was precluded from doing so owing to the high cost of bidding (estimated at approximately £200,000) relative to the chance of winning (low).
- 7.144 Further barriers to entry include the importance of track record for customers while selecting a supplier. In addition to the evidence on the importance of track record and reliability from local authorities described in above, Grundon (a C&I collection provider) noted that *'reputation and track record are fundamental to municipal service contracts'* and therefore it was not eligible for municipal collection contracts since it has not undertaken a collection contract within the last 5 years.<sup>469</sup>
- 7.145 Similarly, a competitor, Urbaser submitted that it is very rare for a new company without municipal contracts to be able to enter the market, with Countrystyle being the exception.<sup>470</sup>
- 7.146 Therefore, our provisional assessment is that entry or expansion in municipal collection as a whole is unlikely to be sufficient to prevent possible loss of competition in a timely manner, because:
- (a) Importance of reliability, financial standing and track record indicate barriers to entry are not low;
  - (b) Municipal contract bidding costs are not insignificant;
  - (c) Several suppliers have exited the market; and
  - (d) Few examples of entry.

## Provisional conclusion

- 7.147 We provisionally find that the Merger will give rise to an SLC in the supply of non-hazardous municipal waste collection services, with the effect on competition arising more strongly in relation to competition for contracts of greater complexity.

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<sup>468</sup> Note of call [3<]

<sup>469</sup> Note of Phase 1 call [3<]

<sup>470</sup> Note of call [3<]

## **8. Operation and maintenance of material recovery facilities**

- 8.1 In chapter 6, we explained that the conditions of competition within particular markets of waste management may vary by some indicator of complexity, such as contract size, the nature of the service provided and customer requirements.
- 8.2 Our analysis in chapter 6 identified contracts for the supply of O&M services to local authorities for MRFs ('O&M of MRFs') as complex, as these contracts were either large in size or bundled with other services. In the light of the concerns raised about competition for complex contracts, we have investigated the O&M of MRFs separately. In phase 1, the CMA looked at the O&M of MRFs as part of its assessment of complex waste management contracts procured by local authorities but did not investigate as a standalone theory of harm.
- 8.3 In our assessment below, we have considered how closely the Parties compete with one another and whether the removal of the constraint the Parties place on each other is likely to lead to an SLC in the O&M of MRFs. As part of this assessment, we have also considered the competitive constraints placed on the Parties by other O&M operators that may bid for future local authority MRF O&M contracts.
- 8.4 The remainder of this chapter is structured as follows:
- (a) Background to services
  - (b) Market definition
  - (c) Indicators of competition
  - (d) Our assessment
  - (e) Barriers to entry and expansion
  - (f) Provisional conclusion

### **Background to services**

- 8.5 Under certain household waste collection contracts (known as kerbside sort contracts), waste is sorted into different containers before or during collection. In other cases, recyclable waste is sorted after collection, primarily at MRFs that use a combination of technologies, including automated 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) and manual sorting. The choice of method is driven by customer demand and recycling targets.

- 8.6 Not all waste mixes can be treated at all MRFs, therefore MRFs have different profiles and attract different customers. The waste that is sorted at MRFs primarily derives from municipal contracts, including household waste recycling centre management contracts and contracts for the processing and/or sale of dry mixed recyclables (ie paper, glass, plastics and metals) ('DMR'), whether as a standalone service or an add-on to municipal collection.
- 8.7 After material is sorted at an MRF, the recycled material can be sold on for recovery. We understand that typically the O&M operator is responsible for the resale of the recycled material. The resale market can be volatile, which can introduce considerable risk to the seller. Some local authorities submitted they have risk/profit sharing agreements with their O&M operator, although the exact degree of risk-sharing between the local authority and the O&M operator varies by contract.<sup>471</sup>
- 8.8 Based on data provided by the Parties, 112 MRFs were operational in 2019.<sup>472</sup> 48 are local-authority-owned MRFs that were developed under PPP/PFI contracts, and the remaining MRFs are privately-owned MRFs (or 'merchant MRFs'). Local authorities self-supply the O&M services for 17 of the local-authority-owned MRFs while remaining 31 are operated by third party suppliers.<sup>473</sup>
- 8.9 We understand that there have been no standalone O&M contracts procured by local authorities, but it is expected that such contracts would be brought to market when the PPP/PFI contracts expire.<sup>474</sup> We understand that at the end of the PPP/PFI contracts, the ownership of MRFs developed under the PPP/PFI scheme will revert to local authorities.<sup>475</sup> At that time, those local authorities will procure their O&M services from a third party, or self-supply.
- 8.10 The majority of the capacity at local-authority-owned MRF facilities is locked for the exclusive use of the local authority (or authorities) holding the PPP/PFI contract (as with ERFs – see chapter 9). Any remaining capacity at the MRF – CMC – is made available to the O&M operator and is used by the operator for its own commercial purposes, ie to sell to other customers (including other

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<sup>471</sup> [X], [X], [X], [X], [X], [X], [X] and [X] response to the CMA's O&M of MRF customer questionnaire.

<sup>472</sup> The Parties submitted data that was prepared by a third party consultancy, Tolvik. Tolvik's MRF Databook (dated 08 April 2021) is the most up-to-date data for which we have access.

<sup>473</sup> We discuss self-supply in more detail in paragraphs 8.29 to 8.32.

<sup>474</sup> [X].

<sup>475</sup> All eight local authorities that responded to our questionnaire submitted that their MRF reverts back to them upon expiry of their PPP contract.

local authorities, C&I customers, or other waste management companies) or used to service its own waste treatment contracts. Operators that have access to CMC will compete with merchant MRFs. The CMA assessed competition for the supply of non-hazardous waste sorting services using CMC separately during the phase 1 investigation and found that the Merger did not give rise to a realistic prospect of an SLC.<sup>476</sup> This being the case, we have not assessed this area and instead focus our assessment on the O&M of MRFs.

## Market definition

- 8.11 Veolia operates [X] MRFs in the UK, [X] of which employ automated optical sorting. Eight of those MRFs are operated for local authorities under PPP contracts and [X] are Veolia's privately owned merchant MRFs. Suez operates 14 MRFs in the UK, with a mix of automated optical and manual sorting. [X] of those MRFs are operated for local authorities under PPP contracts and the remaining [X] are Suez's privately owned merchant MRFs.

## Product market

- 8.12 The Parties overlap in the supply of O&M services of MRFs to local authorities. Veolia submitted that merchant MRF operators and self-supply should be included in the same market as the O&M of MRFs, on the basis that they are viable supply-side substitutes.<sup>477</sup>
- 8.13 In general, the boundaries of the relevant product market are determined primarily by reference to demand-side substitution.<sup>478</sup> In this case, there are no demand-side factors to take into account, as local authorities cannot feasibly switch away from their demand for O&M services (other than to self-supply, which we discuss below). In certain circumstances, we may aggregate markets based on considerations about the response of suppliers to changes in price. For this, we would require evidence that (i) firms routinely use their existing production assets to supply a range of different products that are not demand-side substitutes and that firms shift their existing capacity between these products depending on demand for each; and (ii) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.<sup>479</sup>

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<sup>476</sup> [Phase 1 Decision](#), paragraphs 438-466. In particular, see paragraph 464 where the CMA found that 'no local areas where the Merged Entity's combined weighted share of supply would exceed 25% with a significant increment'.

<sup>477</sup> Veolia's response [X]

<sup>478</sup> [CMA 129](#), paragraph 9.7.

<sup>479</sup> [CMA129](#), paragraph 9.8

- 8.14 Below, we therefore consider the arguments on whether merchant operators and self-supply are viable supply-side substitutes to local authority MRF operators, in the context of the framework set out in paragraph 8.13.

### *Merchant operators and municipal MRF O&M contracts*

#### *Parties' views*

- 8.15 Veolia submitted that there has been significant new entry from merchant MRF operators since the PPP/PFI contracts were tendered. According to Veolia, this has expanded the pool of suppliers and these operators will be 'well-placed to compete for O&M contracts for local-authority-owned MRFs'.<sup>480</sup>
- 8.16 Veolia also submitted that merchant MRFs are often used to sort municipal recyclates and that on this basis, operators of merchant MRFs are 'well-positioned to compete for O&M contracts of MRFs'.<sup>481</sup>

#### *Third party views*

- 8.17 Local authorities told us that it was important for their O&M provider to be large to mitigate against the risk associated with the volatile prices from the materials markets.<sup>482</sup> Some suppliers have sought to mitigate this risk through risk/profit sharing agreements with local authorities.
- 8.18 [X] submitted that the general risk profile of waste contracts was increasing, including through material sales prices swings. While some local authorities would take on this risk themselves, other local authorities were not in a position to do so because of their financial strategies. [X] submitted that the latter were likely to prefer a strong and relatively large partner who could spread the risk around a number of contracts to get a better financial outcome.
- 8.19 Similarly, Tolvik submitted that risk sharing has become increasingly common as suppliers are unwilling to bear the full risk of material pricing volatility.<sup>483</sup> Tolvik told us the market for MRFs is subject to 'considerable uncertainty' and this has led to a decline in the number of participants in the sector. This has been the case even in spite of the introduction of risk-sharing mechanisms by local authorities, in which the O&M operator and the local authority share the

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<sup>480</sup> Veolia's response [X]

<sup>481</sup> Veolia's response [X]

<sup>482</sup> See Recycled material sale sub-section for more detail.

<sup>483</sup> Note of call [X].

risks arising from the commodity price volatility. In its view, waste management companies operate local-authority-owned MRFs in order to maintain a broader relationship with their local authority clients, or because it allows them access to waste streams that may be strategic for the supplier, such as plastics.<sup>484</sup>

- 8.20 The evidence from third parties indicate that the scale and size of an O&M operator is important to local authorities, in part to manage the risks associated with the resale of recycled materials. The requirements of local authorities might therefore reduce the ability and incentives of O&M operators – particularly those without scale – to bid and/or compete strongly for future standalone O&M contracts.

#### *Experience and scale of merchant MRF operators*

- 8.21 In assessing merchant operators' capacity to bid for future standalone O&M contracts, we considered whether merchant operators would be able to use their existing 'production assets' to supply O&M services for local-authority-owned MRFs and operate their own merchant-MRFs, in response to changes in demand for each.<sup>485</sup>
- 8.22 Our analysis of the MRF dataset provided by Veolia shows that only five (including the Parties) out of the 32 merchant operators currently present in the UK supply O&M services to local-authority-owned MRFs and operate their own merchant MRFs. Table 8.1 provides a breakdown.

**Table 8.1: Count of MRFs in which operators supply O&M services to local-authority-owned MRFs and operate their own merchant MRFs**

<i>Operator</i>	<i>Local-authority-owned MRFs</i>	<i>Merchant MRFs</i>	<i>Total number under management</i>
Veolia	[3]	[3]	[6]
Suez	[3]	[3]	[6]
<b>Combined</b>	[3]	[3]	[6]
Biffa	[3]	[3]	[6]
Kier	[3]	[3]	[6]
Renewi	[3]	[3]	[6]

Source: Analysis of Tolvik MRF dataset

Notes: Based on information provided by Veolia, third parties and publicly available information, we updated the 2019 Tolvik dataset to reflect the changes in the O&M operator: 1) Biffa acquired five of Viridor's MRFs in 2021; and 2) [3].

- 8.23 Table 8.1 shows that Biffa is the largest operator of MRFs in the UK and along with the Parties, is the only other supplier that operates more than 10 MRFs. We consider that given Biffa's experience, scale and track record of supplying O&M services to local authorities and operating its own MRFs indicates that it would likely have the capacity to bid for future standalone O&M contracts.

<sup>484</sup> Note of call [3]

<sup>485</sup> [CMA129](#), paragraph 9.8.

While Kier and Renewi also operate across the board, we note both have a significantly smaller portfolio of MRFs and this will likely reduce the level of constraint they will exert on the Parties. We will consider the significance of the constraint that Biffa, Kier and Renewi pose in our competitive assessment.

- 8.24 Tolvik's dataset also indicates that there are 27 merchant MRF operators that do not currently supply O&M services to local authorities. 23 of these merchants operate only one MRF in the UK. Beauparc, Enva and H W Martin operate two merchant MRFs each and Grundon operates four MRFs in total across the UK. With the exception of Grundon, the long tail of merchant-only MRF operators have limited scale.
- 8.25 Grundon told us that, while it would be able to win 'sorting' contracts, it would not be prepared to take on the risk profile associated with the contract, [3<].<sup>486</sup> We consider that it is unlikely that Grundon would be likely to bid for the standalone local authority MRF contracts and will pose no or negligible constraint on the Parties.
- 8.26 As explained in paragraph 8.24, data from Tolvik shows that Grundon is a large operator of merchant-only MRF operators, and given that Grundon has expressed concerns about taking on the risks associated with local authority O&M contracts, it is unlikely that all of the other merchant-only MRF operators that operate fewer MRFs than Grundon, would be any more willing to bear these risks. On this basis, we consider that those smaller merchant-only MRF operators are also unlikely to bid for the O&M of MRF contracts.

#### *Provisional conclusion*

- 8.27 On the basis of the above evidence, our provisional view is that merchant MRF operators that have no experience of supplying O&M services to local authorities are unlikely to have the scale or incentives to bid for standalone O&M of MRF contracts and will likely pose no or negligible constraint on the Parties.
- 8.28 The other merchant MRF operators that have experience of supplying O&M services to local authorities (Biffa, Kier and Renewi) may have a greater incentive to bid for standalone O&M contracts in future. We will consider the significance of the constraint that these suppliers pose on the Parties in our competitive assessment.

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<sup>486</sup> Note of call [3<]

## *Self-supply*

### *Parties' views*

- 8.29 Veolia submitted that self-supply should be included in the same relevant market.<sup>487</sup>

### *Third party views*

- 8.30 Five out of the eight local authorities that responded to our questionnaire submitted that they are unlikely to self-supply the O&M of MRFs.<sup>488</sup> These authorities stated that they lack the in-house capacity and operational and engineering expertise to O&M their MRF. The remaining three local authorities submitted that they would have to undertake detailed analysis at the time of procurement before reaching a decision on self-supply.<sup>489</sup> One of these local authorities stated that it did not have the ability to self-supply, but if it was deemed viable, it would TUPE the existing contractor's staff.<sup>490</sup> Evidence from local authorities therefore indicates that the majority have neither the willingness nor ability to self-supply O&M services.
- 8.31 We note that 31 out of the 48 MRFs that are operated under the PPP/PFI contracts use a third party operator to supply O&M services. The majority of local authorities have, therefore, revealed their preference to outsource their O&M services at the time of the contract. The fact that some local authorities self-supply O&M services does not mean it is an option for all local authorities. In particular, given the technical challenges of operating and managing an MRF, we consider that it is unlikely that local authorities would opt to self-supply their O&M services in response to a small but significant increase in price by their third party O&M operator.<sup>491</sup>

### *Provisional conclusion*

- 8.32 Based on the above evidence, we do not consider that self-supply is a viable alternative to the provision of O&M services by specialised third party

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<sup>487</sup> Veolia's response [3<]

<sup>488</sup> [3<], [3<], [3<], [3<] and [3<] response to the CMA's O&M of MRFs questionnaire.

We asked local authorities to explain whether they would consider and have the ability to self-supply the O&M services for their MRF.

We sent questionnaires to all 11 of the local authorities the Parties provide O&M of MRF services for and received responses from eight local authorities.

<sup>489</sup> [3<], [3<] and [3<] response to the CMA's O&M of MRFs questionnaire.

<sup>490</sup> [3<] response to the CMA's O&M of MRFs questionnaire.

<sup>491</sup> See paragraph 7.12 and [CMA129](#), paragraph 9.7.



operators for all local authorities. Our provisional view is that self-supply will exert no or only a weak constraint on the Parties.

#### *Provisional conclusion on product market*

8.33 Based on the above evidence, we provisionally conclude the appropriate product market is the supply of O&M for MRFs services to local authorities.

8.34 For the reasons set out above, we provisionally conclude that merchant MRF operators that do not supply O&M services to local authorities will likely exert no or only a weak constraint on the Parties. Similarly, for the reasons set out above, we provisionally conclude that self-supply will likely exert no or only a weak constraint on the Parties.

#### **Geographic market**

##### *Parties' view*

8.35 Neither Party made submissions on the geographic market.

##### *Third party views*

8.36 Local authorities identified the Parties and Biffa most frequently as credible suppliers for standalone O&M contracts. The other suppliers identified by local authorities were also national suppliers that operate across the UK. No local authority named a supplier that is not currently operating in the UK.<sup>492</sup>

#### *Provisional conclusion on geographic market definition*

8.37 For the reasons set out above, we provisionally conclude that the geographic market is the UK.

#### **Provisional conclusion on market definition**

8.38 We provisionally conclude that the appropriate product is the supply of O&M services for MRFs to local authorities in the UK.

8.39 For the reasons set out above, we provisionally conclude that merchant MRF operators that do not supply O&M services to local authorities will likely exert no or only a weak constraint on the Parties. Similarly, for the reasons set out

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<sup>492</sup> See Credible bidders section for more detail.

above, we provisionally conclude that self-supply will likely exert no or only a weak constraint on the Parties.

## Indicators of competition

8.40 In this section, we set out the evidence on market shares and customer views on the credibility of suppliers.

### *Shares of supply*

#### *Parties' view*

8.41 Veolia submitted [redacted].<sup>493</sup>

8.42 Veolia submitted that shares of supply do not 'reflect competition for O&M today', as contracts that will be let for O&M today and in the future will not have design, finance or build elements.<sup>494</sup>

#### *Evidential value of market*

8.43 Local authorities told us that experience and track record were among the most important factors when deciding which supplier to select as their next O&M provider. In markets where experience matters, market shares are a relevant indicator of strength and ability to win future contracts. The suppliers that won the initial PPP/PFI contracts have gained considerable experience from operating local authority MRFs. Shares of supply are indicative of wider experience in O&M of MRFs, which is relevant to competition in this market. Moreover, we consider that suppliers that won the initial PPP/PFI contracts were selected in part for their O&M capabilities, as those contracts include the O&M of the MRF in addition to the design, finance and build elements that Veolia identifies.

8.44 Shares of supply based on capacity also tell us about the suppliers' strengths in winning large contracts. As explained in paragraph 8.17, some local authorities have a preference for larger suppliers that can absorb the risks of commodity price volatility. Suppliers that have a larger share have a greater ability to manage those risks.

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<sup>493</sup> Veolia's response [redacted]

<sup>494</sup> Veolia's response [redacted]

8.45 Taken together, we do not agree with Veolia's submission that market shares based on the wins of PPP/PFI contracts is unlikely to reflect competition today.

#### *Share of supply estimates using Tolvik dataset*

8.46 We calculated shares of supply using an external dataset prepared by Tolvik Consulting. This dataset contains information on each of the MRFs that were operational in the UK in 2019, the type of MRF (local-authority-owned or merchant), the operator of the facility in 2019 including adjustments where the Parties had taken over the operation of an MRF in 2020 and the capacity of the facility.<sup>495</sup>

8.47 For the reasons set in market definition, we consider the shares of supply of only those O&M operators that currently have experience of supplying O&M services to local authorities. We have calculated shares of supply based on the total capacity under management of only those companies.<sup>496</sup> Where the companies operates both local-authority-owned and merchant MRFs, we take into account the capacity under management of both types of MRFs, as it indicates experience of those suppliers in operating MRFs.<sup>497</sup>

**Table 8.2: O&M of MRFs share of supply estimates, by capacity**

	%
<i>Operator</i>	<i>Shares</i>
Veolia	[20-30%]
Suez	[10-20%]
<b>Combined share</b>	<b>[40-50%]</b>
Biffa	[40-50%]
Hills	[0-5%]
Kier	[0-5%]
Severn Waste	[0-5%]
Cory	[0-5%]
FCC	[0-5%]
Renewi	[0-5%]

Source: Analysis of Tolvik MRF dataset.

Notes: Based on information provided by Veolia, third parties and publicly available information, we updated the 2019 Tolvik dataset to reflect the changes in the O&M operator: 1) Biffa acquired five of Viridor's MRFs in 2021; and 2) Suez took over as the O&M operator at two local-authority-owned MRFs that had been previously operated by Kier.

#### *Provisional conclusion*

8.48 The Parties are the second and third largest operators of MRFs by capacity in the UK, with a combined market share of [40-50%] incorporating a significant

<sup>495</sup> We consider Tolvik data is reliable as it provides an independent view based on multiple sources of information. We discuss Tolvik in more detail in Chapter 9.

<sup>496</sup> See 'Market definition'.

<sup>497</sup> As set out in paragraph 8.22, there are only five suppliers that operate both local-authority-owned and merchant MRFs: Veolia, Suez, Biffa, Kier and Renewi.

increment of [10-20%]. These market shares indicate that the Parties have had significant historical success in past contracts that incorporated a significant O&M element.

- 8.49 Post-Merger, Biffa and Parties would account for in excess of [80-90%] of the market. No other provider has a share exceeding 5%. The Merger increases concentration by a very significant amount (by nearly 800 points using the HHI measure) in an already highly concentrated market.<sup>498</sup> Overall, we consider these shares show that the Parties and Biffa are likely to be highly significant competitors for future contracts involving O&M of local-authority MRFs.

### ***Credible bidders***

- 8.50 Following Veolia's response to our working paper on services for complex contracts, we gathered further information and sent out questionnaires to all of the local authorities that currently outsource the supply of O&M services to the Parties.

### ***Parties' views***

- 8.51 Veolia submitted that there was a large number of MRF operators that could bid for standalone O&M contracts for local authorities.<sup>499</sup>

### ***Third party views***

- 8.52 We asked local authorities to list the suppliers that they would consider as credible suppliers for the provision of O&M of their MRFs and to indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong). Table 8.3 summarises the results.

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<sup>498</sup> The HHI is a measure of market concentration that takes account of the differences in the sizes of market participants, as well as their number. The HHI is calculated by adding together the squared values of the percentage market shares of all firms in the market. The change in the HHI can be calculated by subtracting the market's pre-merger HHI from its expected post-merger HHI ([CMA129](#), paragraph 4.4)

<sup>499</sup> Veolia's response [[3<](#)]

**Table 8.3: Summary of customer scoring of the strength of suppliers**

<i>Competitor</i>	<i>Average rating unadjusted for non-mentions</i>		<i>Average rating adjusted for non-mentions as a score of zero</i>	
	<i>No of respondents</i>	<i>Average rating (out of 5)</i>	<i>No of respondents</i>	<i>Average rating (out of 5)</i>
Veolia	6	4.8	6	4.8
Suez	5	4.6	6	3.8
Biffa	5	3.6	6	3.0
Viridor	3	3.3	6	1.7
FCC Environment	3	3.3	6	1.7
Grundon	2	3.5	6	1.2
Countrystyle Recycling Limited	1	4.0	6	0.7
Serco	1	4.0	6	0.7
Envia	1	3.0	6	0.5
Martins	1	3.0	6	0.5
Amey	1	3.0	6	0.5
Hills	1	3.0	6	0.5
MVV	1	2.0	6	0.3

Source: CMA analysis of customer questionnaire.

8.53 Veolia, Suez and Biffa were identified the most frequently and received high average ratings from local authorities, regardless of the method of analysis used. In particular:

- (a) All customers that responded identified Veolia as a credible supplier and it received a very high average score of 4.8. All six local authorities explained their rating by reference to Veolia's experience, either nationally or on their current MRF. For example, East Sussex submitted that Veolia has 'lot of experience in operating MRFs in the UK'.<sup>500</sup>
- (b) Suez was identified by all but one local authority and received a very high average rating of 4.6. Similar to Veolia, the five local authorities that listed Suez explained that Suez has good experience nationally and/or on their MRF. For example, GMCA submitted that Suez has 'Size, experience, innovation, access to contingency capacity'.<sup>501</sup>
- (c) Biffa was identified by all but one local authority and received an average rating of 3.6. Local authorities also assessed Biffa with regards to Biffa's experience. While East Sussex submitted that Biffa had 'Lots of experience operating MRFs in the UK', GMCA stated that Biffa was 'Smaller scale so [doesn't] come with the advantages of the large Veolia and Suez'.<sup>502</sup>

<sup>500</sup> [3<] response to the CMA's O&M of MRFs questionnaire.

<sup>501</sup> [3<] response to the CMA's O&M of MRFs questionnaire.

<sup>502</sup> [3<] and [3<] responses to the CMA's O&M of MRFs questionnaire

- (d) Some other suppliers also received high ratings, including Viridor and FCC, though they were identified less frequently. There is a long tail of other suppliers were identified three or fewer times.

#### *Provisional view*

- 8.54 Overall, we consider that the above evidence shows that local authorities considered the Parties to be the strongest suppliers, followed by Biffa.

### **Assessment**

- 8.55 We have assessed whether the Merger is likely to lead to horizontal unilateral effects in the supply of O&M of MRFs services to local authorities in the UK.
- 8.56 Based on the evidence set out above, we assess how closely the Parties compete with one another and whether the removal of the constraint that they place on each other would lead to an SLC in the supply of O&M services to local authorities. We also assess the current competitive constraints placed on the Parties by other O&M operators that may bid for future O&M contracts procured by local authorities.
- 8.57 Local authorities told us that they value a supplier's experience, technical expertise and scale. The Parties' competitive strengths with respect to each of these criteria is demonstrated by their high market shares. The Parties are the second- and third-largest suppliers by capacity, with a combined share of [30-40%], incorporating a significant increment of [10-20%]. The market shares demonstrate the Parties' past strengths in winning O&M contracts and experience in operating MRFs in the UK. It is likely to be a good indicator of how the Parties will compete in future O&M contracts. The Merger results in a significant increase in concentration in an already concentrated market.
- 8.58 Local authorities identified Veolia and Suez as the strongest and second-strongest suppliers in the market, receiving the most mentions and the highest average scores by a material margin.
- 8.59 Our assessment of complex contracts indicates that the Parties would have been two of the three strong competitors for integrated contracts that include services related to MRFs.
- 8.60 We have found that the evidence taken together strongly suggests that the Parties are close competitors to each other. Absent the Merger, the Parties would have placed a strong constraint on each other in the supply of O&M services to local authorities.

- 8.61 We considered the current constraints from other O&M operators on both of the Parties. Overall, the evidence shows that Biffa is the only other strong competitor to each of the Parties. Biffa is the largest operator of MRFs in the UK, by capacity and by the number of MRFs under management. Biffa was also identified by local authorities as a credible bidder but received fewer mentions and lower scores than the Parties. Nonetheless, the evidence indicates that Biffa is a strong competitor to the Parties and will likely be a significant competitor in future O&M contracts. Biffa is likely to be the only other strong competitor for complex contracts that include services related to MRFs. Overall, Biffa will likely pose a strong constraint on the Parties but, on its own, we do not consider Biffa would sufficiently constrain the Parties to prevent an SLC from arising.
- 8.62 There is a small number – six in total – of smaller O&M operators that have low market shares not exceeding 5%. Combined the smaller O&M operators' market share is lower than that of Suez, which is the third largest supplier. Those other O&M operators received low ratings from local authorities. In our view, these O&M operators will likely exert only a weak competitive constraint, and significantly weaker than the constraint that the Parties place on each other. In our view, the presence of these competitors will not materially constrain the Parties, post-Merger.
- 8.63 In chapter 6, we identified a number of complex contracts that included services relating to MRFs (including the O&M) that had been bundled with other waste management services (integrated contracts). Suppliers bidding for these types of complex integrated contracts would not only have to demonstrate their competitive strengths with respect to the O&M of MRFs but also their ability to manage a range of other services. Our findings from the complex contract analysis indicated that there are few suppliers that have the capability to compete for these types of contracts. The Parties and Biffa were identified within the set of capable suppliers. The implication from this analysis is that the Parties and Biffa would likely have been the only strong competitors for O&M MRF contracts that are bundled with other waste management services. In this respect, the Merger reduces the number of credible bidders from three to two.
- 8.64 As explained above, the evidence from our shares of supply analysis and customer views has already indicated that the Parties and Biffa are likely to be the strongest competitors for standalone O&M MRF contracts. To the extent that the O&M of MRF forms a significant component of an integrated contract, it is likely that the Parties and Biffa will have a competitive advantage in those tenders ahead of other suppliers, such as Viridor and FCC.
- 8.65 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).

8.66 Based on our assessment, we provisionally find that the Merger will result in the removal of a direct and significant constraint on each of the Parties and that overall, the remaining constraints post-Merger will not be sufficient to prevent an SLC.

## **Entry and expansion**

8.67 For the reasons set out in market definition, we do not consider that entry by merchant MRF operators or self-supply will likely constrain the Parties and prevent an SLC.

## **Provisional conclusion**

8.68 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 MRFs to local authorities in the UK.



## 9. Incineration services

9.1 Incineration of residual waste is a widely used method of waste disposal. Some waste is burned in order to produce electricity and this is made available on the national grid. Incineration plants that produce electricity from burning residual waste are called ERFs.<sup>503,504</sup>

9.2 There were 54 ERFs operational in the UK in 2020:

(a) 42 ERFs were built under the Public Private Partnership/Private Finance Initiative scheme;

(b) Three are local authority funded ERFs; and

(c) Nine are merchant ERFs.<sup>505</sup>

We provide a brief explanation of each of the three ownership models and their relevance to our competition assessment.

### *PPP/PFI ERFs*

9.3 The majority of ERFs in the UK were developed, constructed, financed and operated under the PPP/PFI scheme on behalf of local authorities.<sup>506</sup> The average PPP/PFI contract duration is around 20–25 years. At the end of the PPP/PFI contract, 26 out of the 42 facilities will revert ownership to the local authority that commissioned the infrastructure; the remaining will transfer to the incumbent operator of the plant, effectively becoming a merchant ERF.

9.4 The majority of the operational capacity at the PPP/PFI ERFs is typically reserved ('locked') for use by the local authority that commissioned the infrastructure under the PPP/PFI contracts.<sup>507</sup> The remaining capacity – CMC – is made available to the operator of the ERF and is typically used by the operator for its own commercial purposes, ie selling to other customers including other local authorities, C&I customers, or other waste management companies or to service the operator's own waste treatment contracts.<sup>508</sup> The

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<sup>503</sup> FMN, [3<]

<sup>504</sup> Residual waste is the portion of non-hazardous, solid, combustible waste that cannot be recycled and can include household waste and commercial and industrial waste.

<sup>505</sup> The Parties provided a dataset with information on ERFs that had been prepared by an independent third party Tolvik Consulting in 2021. The analysis undertaken in this chapter relies on Tolvik's dataset and is therefore based on data from 2020. Where possible, we have sought to update the information.

<sup>506</sup> FMN, [3<]

<sup>507</sup> FMN, [3<]

<sup>508</sup> FMN, [3<]

proportion of capacity used as CMC varies by ERF, but typically accounts for approximately 20% of total capacity.<sup>509</sup>

#### *Local authority ERFs*

- 9.5 Three ERFs were developed, financed and operated for local authorities outside of the PPP/PFI scheme. These local authority ERFs are not affected by the Merger and are not considered further in this chapter.

#### *Merchant ERFs*

- 9.6 Merchant ERFs are privately-owned facilities in which the merchant owner will sell capacity at its ERFs to customers that have to dispose of waste. Typically, the majority of the capacity is sold via fixed term contracts known as fuel supply agreements (**FSAs**), which have a duration of one year or more; or short-term contracts via the spot market.<sup>510</sup> There were nine merchant facilities that were operational in 2020 and another 14 are in development.
- 9.7 The customers' cost of merchant capacity includes two components:
- (a) Price per tonne of waste disposed (known as a 'gate fee'): where a supplier sells its capacity on the spot market, the price may vary depending on demand for waste disposal, the availability of ERF capacity in the region, the volume of waste involved, and the contract term.<sup>511</sup> The price under fuel supply agreements may depend on the estimated future ERF capacity in the area, inflation, and costs required to supply and deliver the waste to the facility.<sup>512</sup>
  - (b) Cost of transport: the supplier of the ERF facility either collects the waste from the customer; or requires the customer to deliver the waste to the facility.<sup>513</sup> Where the supplier collects the waste, this cost of transport is passed on to the customer.<sup>514</sup> The customer bears the cost of transport if it delivers the waste.

#### *Assessment of the supply of O&M services to local authorities and the supply of disposal services using incineration*

- 9.8 We assess the impact of the Merger on competition in two ways:

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<sup>509</sup> CMA analysis of Tolvik databook

<sup>510</sup> FMN, [3<]

<sup>511</sup> FMN, [3<]

<sup>512</sup> FMN, [3<]

<sup>513</sup> Based on analysis of data provided in email from Veolia [3<]

<sup>514</sup> FMN, [3<]

- (a) First, we consider the O&M of the PPP/PFI ERFs (referred to as local-authority-owned ERFs), and specifically the future O&M contracts for the assets that will revert to local authority ownership when the PPP/PFI contract expires.<sup>515</sup> At that time, the local authority will likely re-tender and procure O&M services from third party operators. Our assessment of this is set out in section 2 of this chapter.
- (b) Second, we consider the supply of waste disposal services by incineration. This relates to the competition between merchant ERFs and operators that have access to merchant capacity (either CMC from local-authority-owned ERFs or capacity at merchant ERFs). Our assessment of this is set out in section 3 of this chapter.

## **Operation and maintenance services for Energy Recovery Facilities to local authorities**

9.9 In this section, we set out our assessment of the effect of the Merger on the supply of O&M of ERF services to local authorities ('O&M of ERFs'). In our assessment, we have considered how closely the Parties compete with one another and whether the removal of the constraint the Parties place on each other is likely to lead to an SLC in the supply of O&M of ERFs. As part of this assessment, we have also considered the competitive constraints placed on the Parties by other O&M operators that may bid for future O&M of ERFs contracts. In our final assessment, we draw on the evidence from chapter 6 where we considered contracts for specific waste management services that involved complex requirements.

9.10 The remainder of this section is structured as follows:

- (a) Market definition;
- (b) Indicators of competition;
- (c) Our assessment;
- (d) Barriers to entry and expansion; and
- (e) Provisional conclusion

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<sup>515</sup> As discussed in more detail in this section, it is likely that subsequent tenders will be primarily for the O&M of ERFs, though there may be some elements of refurbishment, repair and/or retrofit included in the contract.

## Market definition

### *Product market*

- 9.11 The Parties overlap in the supply of O&M of ERFs. Veolia submitted that merchant ERF operators could compete for O&M of ERF contracts.<sup>516</sup> Further, Veolia submitted that technology suppliers could potentially compete, and that self-supply will provide a competitive constraint on the Parties.<sup>517</sup>
- 9.12 In general, the boundaries of the relevant product market are determined primarily by reference to demand-side substitution.<sup>518</sup> In this case, there are no demand-side factors to take into account, as local authorities cannot feasibly switch away from their demand for O&M services. In certain circumstances, we may aggregate markets based on considerations about the response of suppliers to changes in price. For this, we would require evidence that (i) firms routinely use their existing production assets to supply a range of different products that are not demand-side substitutes and that firms shift their existing capacity between these products depending on demand for each; and (ii) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.<sup>519</sup>
- 9.13 Below, we consider the arguments whether merchant operators are viable supply-side substitutes for local authority ERF operators. We also consider whether technology suppliers and in-house supply are supply-side alternatives, in the context of the framework set out in paragraph 8.13.

### *Merchant Operators and Municipal O&M Contracts*

#### *Parties' views*

- 9.14 Veolia submitted that merchant ERF operators have the technical know-how and experience to compete for municipal contracts.<sup>520</sup> Veolia noted that:
- (a) There is no differentiation in the technology used by local-authority-owned and merchant ERFs. On this basis, Veolia submitted that the operational

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<sup>516</sup> FMN, [3<]

<sup>517</sup> See sub-sections 'Competition from technology suppliers' and 'Self-supply' for more detail.

<sup>518</sup> CMA129, paragraph 9.7.

<sup>519</sup> CMA129, paragraph 9.8.

<sup>520</sup> Veolia's supplemental submission [3<]

requirements of merchant and local authority customers are therefore the same, as is the technical expertise needed to operate such facilities.<sup>521</sup>

- (b) The skills and knowledge required to be an operator of a merchant ERF operator and a local-authority-owned ERF are the same. For all ERFs, the O&M operator requires the ability to recruit and train a specialised workforce that have the engineering knowledge to able to operate and maintain large, high pressure steam boilers, boiler generators and auxiliary systems of an ERF.<sup>522</sup>
- (c) Some local authorities may have additional requirements that are not relevant for the operation of a merchant plant. For example, the local authority may request the O&M provider to arrange the sale of electricity generated at the facility, whereas in the case of merchant ERFs, this would typically be arranged by the project company owning the facility, which is not necessarily the O&M provider. Another difference in requirement is that the local authority may require the operator to source and manage the supply of third party waste for incineration, which would typically not sit with the O&M provider in the case of merchant plants. However, in Veolia's view, these additional requirements should not be an obstacle for operators with merchant ERF experience, in particular if the staff employed to deliver the O&M services at the local authority ERF will transfer via TUPE; this will give the merchant ERF operator a 'ready-made set of staff with experience of operating that particular ERF'.<sup>523</sup>

9.15 Veolia submitted that there are suppliers that operate both merchant ERFs and local-authority-owned ERFs. In addition to Viridor, which currently operates both local-authority-owned ERFs and merchant ERFs, Veolia identified a further six merchant operators that it considered either already operate local-authority-owned ERFs, or would be 'just as credible bidders' for future standalone local authority O&M contracts.<sup>524</sup> These were:

- (a) Bouygues;
- (b) Pinnacle;
- (c) Covanta;
- (d) Vogen/Aviva;

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<sup>521</sup> Veolia's supplemental submission [3<]

<sup>522</sup> Veolia's supplemental submission on [3<]

<sup>523</sup> Veolia's supplemental submission on [3<]

<sup>524</sup> Veolia's supplemental submission on [3<]

(e) enfinium (formerly WTI); and

(f) Indaver.<sup>525</sup>

9.16 Of the list of suppliers identified by Veolia in paragraph 9.15, only Viridor, enfinium and Bouyges were operating ERFs in 2020.<sup>526</sup> With respect to the other suppliers identified by Veolia:

(a) Covanta, Vogen/Aviva and Indaver were identified as prospective operators by Tolvik, as the ERFs were still under construction or had only been commissioned; and

(b) Pinnacle is not listed as an ERF operator, either current or future, in Tolvik's dataset.

9.17 We also identified Levenseat from Tolvik's dataset. Levenseat currently operates one merchant ERF in Scotland.

#### *Third party views*

9.18 Evidence from third parties supports the view that there are limited technological differences between merchant and local authority owned ERFs. Third parties told us that merchant ERF operators would have the technical capabilities required to operate and manage a local-authority-owned ERF.<sup>527</sup> In this respect, technological barriers for merchant ERF operators to supply O&M services to local authority owned ERFs are likely to be low.

9.19 Technological barriers, however, are only one form of barrier that may prevent supply-side substitution or entry by merchant operators into the supply of O&M services to local authorities.

9.20 We therefore considered the likelihood that merchant operators could use their existing 'production assets'<sup>528</sup> to supply O&M services to their existing merchant ERFs and to local-authority-owned ERFs, in response to changes in demand for each. In this respect, we consider the following evidence supports the view that merchant operators may be potential supply-side substitutes:

(a) Two of the four merchant operators currently present in the UK – Viridor and enfinium – also supply O&M services to local authorities. Viridor is the

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<sup>525</sup> Veolia's supplemental submission [3<]

<sup>526</sup> The Parties submitted data on ERFs prepared by an independent third party, Tolvik Consultancy. The dataset includes information on ERFs that were operational in 2019 (when the dataset was prepared) and a list of ERFs that were being commissioned or under construction.

<sup>527</sup> Customer responses to third party questionnaires.

<sup>528</sup> Production assets in this case likely relates to the management personnel with the experience and technical expertise to O&M of an ERF.

second biggest operator of local authority ERFs and it submitted that it would bid for future 'O&M only' contracts (ie contracts that do not include the design and construction of an ERF).<sup>529</sup>

- (b) Local authorities indicated that they would 'consider' or 'potentially consider' using a merchant ERF operator when they tender for O&M services when their existing PPP/PFI contracts expire.<sup>530</sup>
- (c) Most competitors confirmed that merchant operators would be viable competitors for O&M services supplied to local authorities in response to our question. Further, when considering future tenders, some competitors identified current merchant ERF operators as potential rivals.<sup>531</sup>
- (d) Indaver, one of the merchant ERF operators identified by Veolia, will carry out the O&M for the new PPP Ness ERF in Aberdeen.<sup>532</sup> The Ness ERF is expected to become operational in August 2022.

9.21 We sought information from three merchant ERF operators that currently operate ERFs in the UK (enfinium, Bouygues, Levenseat) and one merchant ERF operator that was about to enter the UK (Covanta) about their plans to bid for standalone local authority O&M contracts (ie O&M only contracts).

9.22 Two merchant operators (one current and one future operator in the UK), indicated that they would be less likely to bid for standalone local authority O&M contracts, as it would represent a departure from their core business models:

- (a) enfinium told us that it would not be interested in looking at O&M contracts on their own. In enfinium's view, the 'risk-reward arrangement conflicts with its business model'. enfinium noted that it might have 'an interest' in continuing O&M of Parc Adfer – the PPP/PFI ERF it currently operates in North Wales – given its knowledge and experience of operating that plant. However, for the other facilities that are coming up to the end of their life, unless there was going to be a 'significant redesign, rebuild and investment', it 'probably would not want to participate in' bidding for the standalone O&M contracts.<sup>533</sup> On this basis, we do not believe that enfinium will bid for local authority O&M only contracts when the existing PPP contracts expire.

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<sup>529</sup> Note of call [3<].

<sup>530</sup> [3<], [3<], [3<], [3<] and [3<] responses to the CMA's O&M of ERFs customer questionnaire.

<sup>531</sup> [3<], [3<], [3<], [3<] and [3<] responses to the CMA's O&M of ERFs competitor questionnaire.

<sup>532</sup> Acciona – the lead partner – won the PPP contract for the design, build, operation and maintenance for the NESS ERF, and awarded the O&M element of the contract to Indaver. See [Acciona webpages](#) for more detail.

<sup>533</sup> Note of call [3<]

(b) Covanta submitted that its preferred business model is to own and operate ERFs; and given that PPP/PFI assets will revert back to local authority ownership, a 'standalone O&M contract may not be of interest to bid'. It also noted that the incumbent contractor is best placed to win the future tender, which would discourage Covanta (and, in its view, other competitors) from bidding.<sup>534</sup> On this basis, we do not believe Covanta will bid for standalone local authority O&M contracts when the existing PPP contracts expire.

9.23 The evidence from enfinium and Covanta indicates that merchant ERF operators may have limited incentives to bid for standalone local authority O&M contracts, as their core business is to own and operate merchant ERFs.

9.24 While the other current merchant operators – Bouygues and Levenseat – did not respond to our questionnaire, we note that neither of those have significant experience of operating ERFs relative to the Parties or the other major ERF operators in the UK. Similarly, of the other merchant ERF operators identified by Veolia in paragraph 9.15, we note these operators (ie Vogen/Aviva, Indaver and Pinnacle) have no or very limited experience of operating any ERFs in the UK, either of merchant or local-authority-owned ERFs.<sup>535</sup> We also note that no customer or competitor identified any of these firms as credible bidders (see 'Credible suppliers').

#### *Provisional conclusion*

9.25 On the basis of the above evidence, our provisional view is that enfinium and Covanta will likely not bid for standalone local authority O&M contracts and will therefore not pose a constraint on the Parties for those contracts.

9.26 The evidence from enfinium and Covanta supports the view that merchant ERF operators, as a group, may also have limited incentives to bid for standalone O&M contracts. Given the other merchant ERF operators have significantly less experience of operating ERFs in the UK than enfinium, we also consider that these merchant ERF operators are unlikely to pose a significant constraint on the Parties.<sup>536</sup> Taking all of the evidence in the round, our provisional view is that merchant ERF operators are likely to pose no or only a weak constraint on the Parties.

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<sup>534</sup> Email from [redacted].

<sup>535</sup> See section 'Management and technical expertise' for more detail.

<sup>536</sup> See section 'Credible suppliers' for more detail.



## *Competition from technology suppliers*

- 9.27 As set out in paragraph 8.13, to consider technology suppliers as supply-side substitutes, we would require evidence that technology suppliers routinely use their existing production assets to supply engineering and construction services and O&M services and have shifted their existing capacity between these two services; and that the conditions of competition are the same for both services.<sup>537</sup>

### *Parties' views*

- 9.28 Veolia submitted that technology suppliers, such as Hitachi Zosen Inova (HZI), CNIM and STC Power, could 'develop operational expertise from their experience as a technology supplier' and compete for O&M of municipal ERFs.<sup>538</sup> It noted that CNIM's subsidiary MES Environmental (MESE) has won contracts for the O&M of ERFs in the UK previously. These ERFs are now operated by Paprec, which 'integrated CNIM's O&M teams in 2021'.<sup>539</sup>

### *Third party views*

- 9.29 enfinium told us that Engineering, Procurement and Construction (EPC) contractors have sought, to some extent, to carry out the 'engineering operation and maintenance of the plant' in addition to the building of the plant. However, in enfinium's view, they 'do not have the skillset to do...the day-to-day fuel management and fuel sourcing' and would 'focus more on the maintenance side'.<sup>540</sup> This indicates that technology suppliers may need to partner with a waste management firm to undertake the operational element of the ERF and that they do not have the operational expertise to provide O&M services.
- 9.30 Evidence from third parties indicates that technology suppliers have in the past been subcontracted by the O&M operator to provide the EPC (or 'design and build') elements of the overall PPP/PFI contract.<sup>541</sup> Technology suppliers appear to have competed for the EPC element, rather than for the O&M component of those contracts. We note that no technology supplier currently supplies O&M services to local authorities.<sup>542</sup> No customer or competitor identified any of the technology providers as credible bidders for future local

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<sup>537</sup> [CMA129](#)

<sup>538</sup> Veolia's supplemental submission [3<]

<sup>539</sup> Veolia's supplemental submission [3<]

<sup>540</sup> Note of call [3<]

<sup>541</sup> Note of calls with [3<], [3<] and [3<].

<sup>542</sup> See 'Shares of supply' section – no technology supplier was identified as a current or future O&M operator.

authority standalone O&M contracts.<sup>543</sup> Based on this evidence, it does not appear as if the same firms compete for EPC and O&M services; it is therefore not clear that the conditions of competition between the two services will be same.

- 9.31 While Veolia cited MESE as an example of a technology supplier that has supplied O&M services, we note that MESE was a subsidiary of CNIM and that it would have had its own personnel and technical expertise to supply O&M services to local authorities. We consider the constraint that MESE exerts on the Parties in our competitive assessment, on the basis that it is an O&M supplier to local authorities. Given that CNIM has sold MESE to Paprec, it is not clear that CNIM would be able supply O&M services to local authorities without investment in staff and management with experience and expertise in the provision of O&M services.

#### *Provisional conclusion*

- 9.32 Based on the above evidence, our provisional view is that technology suppliers are not viable supply-side substitutes and will exert no or only a weak constraint on the Parties.

#### *Self-supply*

##### *Parties' view*

- 9.33 Veolia submitted that self-supply was a competitive constraint: operators of local-authority-owned ERFs will face competition from local authorities choosing to operate their own ERFs.<sup>544</sup> Veolia noted that it was aware of two local authorities that already own and operate their own ERFs: Coventry and Solihull Waste Disposal Company; and London Energy (the local-authority funded ERFs).<sup>545</sup>

##### *Third party views*

- 9.34 All seven local authorities that responded to our questionnaire indicated that management experience and technical expertise in operating ERFs is an important selection criterion.<sup>546</sup> Veolia submitted that that an O&M provider will require a 'specialised workforce' with knowledge in engineering. Viridor told us the key criterion for winning an O&M contract is the 'expertise

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<sup>543</sup> See 'Credible suppliers' section for the full assessment.

<sup>544</sup> Veolia's supplemental submission [3<]

<sup>545</sup> Veolia's supplemental submission [3<]

<sup>546</sup> See 'Selection criteria' for more detail.

in...operating the plant'.<sup>547</sup> enfinium told us that the supply of O&M services is a 'specialised skill'.<sup>548</sup> The evidence from third parties indicates that supplying O&M services is not straightforward and requires a specialised workforce.

- 9.35 We note that no local authority identified self-supply as a supply-side alternative to outsourcing O&M provision when the PPP contracts expire.<sup>549</sup> Given that all local authorities outsourced the supply of O&M services for all of the ERFs constructed under the PPP/PFI scheme, it is unlikely local authorities would have the management capability and other staff with technical expertise or experience to provide these services.<sup>550</sup> A local authority would require significant investment to acquire a skilled management team and may, depending on available skills of any workforce transferring by TUPE, have to recruit additional workforce with the necessary technical expertise for self-supply.

#### *Provisional view*

- 9.36 On the basis of the above evidence, we do not consider that self-supply is a viable alternative to the provision of O&M services by specialised third party operators and will exert no or only a weak constraint on the Parties.

#### *Provisional conclusion on product market definition*

- 9.37 Based on the evidence, we provisionally conclude that the appropriate product market is the supply of O&M services for ERFs to local authorities.
- 9.38 For the reasons set out above, we consider that enfinium and Covanta will exert no constraint on the Parties; and merchant-only ERF operators, technology suppliers and self-supply are likely to pose no or only a weak constraint on the Parties.

### ***Geographic market***

#### *Parties' views*

- 9.39 Neither Party made submissions on the geographic market.

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<sup>547</sup> Note of call [3<]

<sup>548</sup> Note of call [3<]

<sup>549</sup> We asked local authorities to explain what plans were in place for the O&M of their ERF when the current PPP/PFI contract expires.

<sup>550</sup> See 'Management and technical expertise' section for further discussion.

### *Our assessment*

- 9.40 We asked waste disposal competitors which firms they believe would be able to bid for the supply of services for the O&M of local authority-owned ERF contracts in the UK. Overall, respondents submitted that several national suppliers, including the Parties, Viridor, and FCC, would likely submit tenders for these contracts. Similarly, local authorities told us that the same suppliers would be capable of bidding for the O&M of local authority-owned ERF contracts. No local authority or competitor named a supplier that is not currently operating in the UK.

### *Provisional conclusion on geographic market definition*

- 9.41 For the reasons set out above, we provisionally conclude that the appropriate geographic market is the UK.

### ***Provisional conclusion on market definition***

- 9.42 Based on the above evidence, we provisionally conclude the appropriate product market is the supply of O&M services for ERFs to local authorities in the UK.

## **Indicators of competition**

- 9.43 As explained in the introduction to this chapter, the timing of the Merger broadly coincides with the period in which the first PPP/PFI contracts are set to expire and revert to local authority ownership. These local authorities will require O&M services for their ERFs and will likely re-tender for those services. Within the next five years, six out of the 42 PPP/PFI contracts are due to expire.
- 9.44 In this section, we set out the evidence on the key indicators of competition that will help inform the likely future shape of this market and the effect of the Merger on the supply of O&M services for ERFs to local authorities in the UK. 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.
- 9.45 The remainder of this section is structured as follows:
- (a) How competition works;

- (b) Suppliers' characteristics;
- (c) Incumbency advantage;
- (d) Credible suppliers;
- (e) Shares of supply; and
- (f) Internal documents.

9.46 Within each of these subsections, we have first set out any relevant submissions made by the Parties and third parties, before setting out our own assessment of the evidence and those submissions by the Parties and third parties. The evidence in this section informs our overall assessment which is set out in the subsequent section.

### ***How competition works***

#### *Selection criteria*

- 9.47 We sought to understand what factors local authorities consider important when deciding which supplier to use for O&M services of their ERFs.
- 9.48 We asked local authorities to list the factors that they consider important when deciding which supplier(s) should provide O&M services for their ERF when their PPP contract expires, in order of importance (where one is not very important and five is very important).<sup>551</sup> Six local authorities responded to this question. Table 9-1 sets out the average rating for each selection criteria.

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<sup>551</sup> In particular, we asked:

*Using the table below, please list the factors you believe are most important when deciding which supplier should provide your O&M services for your ERF when the PPP/PFI contract ends. To the extent that the factors already listed in the table are relevant, please:*

- a. *Indicate on a scale from one to five (where one is not very important; and*
- b. *Provide an explanation for your rating. In doing so, please refer to any specific criteria and weighting you use when assessing bids.*

We sent questionnaires out to all 17 of the Parties' PPP/PFI ERF customers and received 11 responses in total. Not all local authorities answered all questions because their contracts were not due to expire for many years.

**Table 9.1: Average rating of selection criteria by local authorities**

<i>Selection criteria</i>	<i>Average score</i>
Management and technical expertise in operating and managing local-authority ERFs	4.8
Price	4.8
Reliability of service, including access to contingency capacity	4.8
Quality of service	4.5
Financial resources of supplier	3.7
Costs associated with transferring between suppliers	3.1
Access to other waste management service infrastructure	3.2
Ability to innovate and introduce efficiencies	2.9
Experience of contracting with supplier for other waste management services	2.5

Source: CMA analysis of local authority responses to questionnaires

9.49 Local authorities considered the following factors the most important when deciding on their next O&M provider: management and technical expertise; price; reliability of service, including access to contingency capacity;<sup>552</sup> quality of service and the financial resources of the supplier.

9.50 We considered the evidence on the Parties' relative strengths with regard to 'Price' and 'Quality of service' as part of our overall assessment; and the 'Financial resources of a supplier' is considered in chapter 5.

9.51 In response to our working papers, Veolia made submissions with regards to (i) management and technical expertise and (ii) reliability of service, including access to contingency capacity. We consider its submissions below.

*Management and technical expertise in operating and managing local-authority ERFs*

9.52 Veolia submitted that the CMA has asked only about expertise in operating local authority ERFs, not ERFs in general, which would include both merchant ERFs and overseas ERFs.<sup>553</sup>

9.53 One local authority submitted that, while previous experience was 'absolutely crucial', it was not essential that the expertise was gained from providing O&M services to local authority owned ERFs.<sup>554</sup> As such, our analysis with respect to management and technical expertise is agnostic to whether the experience was gained at merchant or local-authority-owned ERFs. However, as explained in market definition, merchant ERF operators in the UK market have significantly less experience and in our provisional view, merchant ERF operators will pose only a weak constraint on the local authority ERF operators.

<sup>552</sup> Contingency capacity refers to alternative treatment or processing options when capacity at the ERF is unavailable, such as in the case of planned maintenance or breakdowns.

<sup>553</sup> Veolia's response [3<]

<sup>554</sup> [3<] response to the CMA's O&M of ERF customer questionnaire.

- 9.54 Separately, we also note that GMCA submitted that it would require its O&M provider to have a track record of operating older facilities,<sup>555</sup> indicating that suppliers that have operated their facilities for a significant period of time will have a competitive advantage in future O&M tenders.

*Reliability of service, including access to contingency capacity*

- 9.55 Veolia submitted O&M operators would need to consider the availability of contingency capacity to manage the risks of planned and unplanned maintenance and outages at the facilities. This is considered to be the normal course of operating ERFs. Veolia submitted that when competing for O&M of local-authority-owned ERFs, bidders will likely be expected to describe how they will handle such contingency situations and local authorities may give some weight to their answer in scoring bids.<sup>556</sup>
- 9.56 Suez told us that contingency arrangements may be required for an extended period of time – maybe as long as six months – particularly in the context of ERFs that may require substantial refit or refurbishment.<sup>557</sup>
- 9.57 Veolia, however, submitted that it is difficult to place weight on the criterion related to contingency capacity, noting in particular that this factor was included in ‘reliability of service’ more generally. As such, Veolia submitted that it is impossible to infer anything about how local authorities perceive access to contingency capacity. Veolia noted that most local authorities that responded said they would be content either to procure contingency capacity separately or to accept a bid from a supplier that relies on third party facilities for contingencies.<sup>558</sup>
- 9.58 While we note Veolia’s submission that contingency capacity was part of a more general ‘reliability of service’ criterion, our analysis of the free-text explanations provided in the local authority responses to our questionnaire indicates that contingency capacity was an important feature of this criterion. In particular, two local authorities referred to the need for a continuity of service during periods of unavailability.<sup>559,560</sup>

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<sup>555</sup> Note of call [§<]

<sup>556</sup> Veolia’s supplemental submission [§<]

<sup>557</sup> Suez Main Party Hearing transcript

<sup>558</sup> Veolia’s response [§<]

<sup>559</sup> Responses to the CMA’s phase 2 O&M of ERF customer questionnaire from [§<] and [§<].

<sup>560</sup> Further, one local authority referred to the fact that it looks for bidders to ‘demonstrate where they own and/operate facilities elsewhere’, though it was unclear whether this was in relation to using this capacity as contingency or demonstrating track record ([§<]).

9.59 We also asked local authorities specifically about the importance of contingency capacity:

- (a) Three out of six local authorities submitted that contingency capacity is important when considering which company to use for the O&M of their ERF.<sup>561</sup> These authorities noted that contingency capacity is particularly important towards the end of the plant's life and that the service is critical and cannot be offline for long.
- (b) One local authority submitted that a supplier with access to its own contingency capacity at its own facilities would be a bonus, but it would accept a bid as long as the company was able to build relationships with third party ERFs nearby.<sup>562</sup>
- (c) Two local authorities submitted they may consider procuring contingency capacity separately from their O&M services contract.<sup>563</sup>

9.60 Overall, we consider that the evidence from local authorities shows that contingency capacity is an important consideration for local authorities when selecting an O&M supplier.

### ***Suppliers' characteristics***

9.61 In this subsection, we consider in more detail the evidence on the suppliers' characteristics and, in particular, the extent to which the Parties and their rivals have assets or underlying capabilities that may make it more or less likely that they will be able to compete on attractive terms. In particular, we consider suppliers' underlying strengths in relation to service reliability and their ability to access contingency capacity, as well as evidence on their strengths in relation to management and technical expertise.

### ***Management and technical expertise***

9.62 As identified in paragraph 10.40 above, local authorities consider management and technical expertise to be among the most important factors when selecting an O&M provider for local authority owned ERFs.

#### ***Third party views***

9.63 Local authorities submitted that the Parties have strong track records and experience of providing O&M services. In particular, all seven local authorities

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<sup>561</sup> [3<], [3<] and [3<] responses to the CMA's O&M of ERFs customer questionnaire.

<sup>562</sup> [3<] response to the CMA's O&M of ERFs customer questionnaire.

<sup>563</sup> [3<] and [3<] responses to the CMA's O&M of ERF customer questionnaire.



that identified Veolia as a strong supplier referenced Veolia's track record or experience, with Surrey stating that Veolia has 'lots of technical expertise operating ERF plant[s]'.<sup>564</sup> Similarly, all five local authorities that identified Suez as a strong supplier referenced Suez's track record or experience.<sup>565</sup> For example, East Sussex County Council/Brighton and Hove City Council stated that Suez had 'lots of experience in operating ERFs in the UK'.<sup>566</sup>

### *Parties' relative strengths in management and technical expertise*

- 9.64 Veolia has the largest network of ERFs in the UK, with nine local-authority-owned ERFs currently under management, and [redacted] merchant [redacted]. It established its network of ERFs gradually over a period of time, winning its first PPP/PFI contracts in 2002 (Hampshire County Council and Sheffield City Council) and the last in 2013 (Leeds). Veolia has supplied the O&M services for each of its ERFs for the entire duration of the PPP/PFI contract, ie from day one of the contract to date. Veolia has gained extensive management and technical expertise through the provision of O&M services to its network of ERFs.
- 9.65 Suez has the third largest network of ERFs in the UK, with seven local-authority-owned ERFs currently under management. Suez won its first PPP/PFI contract in 2001 (Kirklees Council); and most recently won the contract for the O&M of Bolton ERF in 2019, where Suez took over operation from Viridor following the early termination of Viridor's contract.<sup>567</sup> With the exception of Bolton ERF, Suez has supplied the O&M services for each of its ERFs for the entire duration of these PPP/PFI contracts and has also established extensive management and technical expertise from the provision of these services to local authorities.
- 9.66 As set out in the 'Shares of supply' section, other O&M operators also have a number of ERFs under management. In particular, Viridor and FCC currently operate 10 and 6 ERFs, respectively. However, the shares of supply analysis does not capture the relative experience of the O&M operators. It is the case that some firms (potentially with high shares) may have operated plants for only a short period, and others for a longer period. Given the importance of experience to local authorities, we examine the relative differences in total experience by combining the total years each supplier has operated its ERFs ('plant years'). Figure 9.1 sets out the results. While we acknowledge that this

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<sup>564</sup> [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted] responses to the CMA's O&M of ERF customer questionnaire.

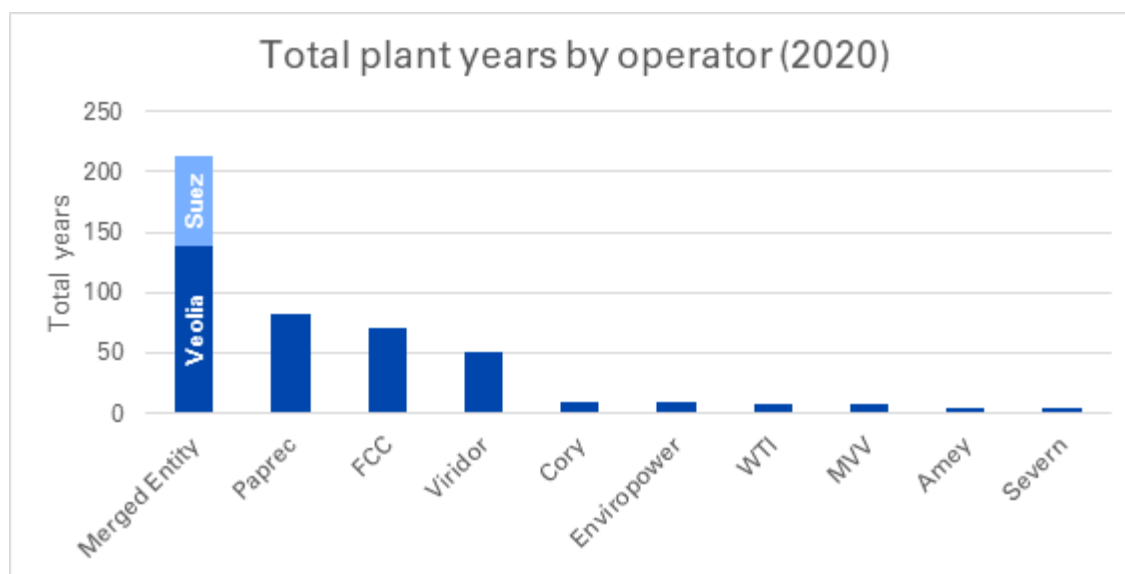
<sup>565</sup> [redacted], [redacted], [redacted], [redacted] and [redacted] responses to the CMA's O&M of ERF customer questionnaire.

<sup>566</sup> [redacted] response to the CMA's O&M of ERF customer questionnaire

<sup>567</sup> We note that the contract for the O&M of Bolton ERF was bundled with other waste management services.

is not a metric used by local authorities, we consider that it is indicative of relative experience across suppliers.

**Figure 9.1: Total plant years on all ERFs by operator, 2020**



Source: CMA analysis [3].

Note: We calculated plant years using data from Tolvik on the year the plant first began operation and any changes in operator over the time period. We have included experience both from merchant ERFs and local-authority-owned ERFs.

Paprec has acquired MESE and Tiru and have combined their respective experiences to produce a single total for Paprec.

9.67 Figure 9.1 shows that Veolia and Suez will have a combined total of 214 plant years, which is nearly triple the experience of the next closest suppliers, Paprec and FCC, and four times Viridor's experience. We note that there are likely to be diminishing returns to experience and the relative differences between the Parties and these other O&M operators may not represent a significant competitive advantage. However, there is a very significant difference in relative experience between the Parties and the long tail of competitors. This analysis shows that only a few O&M operators (Viridor, FCC and Paprec) have a similar profile of experience and expertise to the Parties.

#### *Provisional conclusion*

9.68 Based on the evidence above, it is clear that the Merged Entity has significant management and technical expertise. Other O&M operators – Viridor, FCC and Paprec – while having accumulated less experience than the Merged Entity, have still gained extensive management and technical expertise through their provision of O&M services over a period of time. However, there is a tail of O&M operators that have significantly less experience, which places them at a competitive disadvantage to the Merged Entity and the other experienced O&M operators.

## *Access to contingency capacity*

9.69 In paragraph 9.60, we explained that access to contingency capacity is likely to be important factor to local authorities when they select their next O&M provider. In considering the relative importance of contingent capacity, we have first assessed whether landfill and Refuse Derived Fuel export are adequate contingencies, as submitted by Veolia; and then O&M operators' ability to access incineration capacity as a contingency.

### *Landfill and RDF export as alternative contingencies*

- *Parties' views*

9.70 Veolia submitted bidders can use alternatives such as landfill and/or RDF export; [REDACTED].

9.71 Suez told us it currently disposes of some waste to landfill but with the likely 'landfill ban' that is being brought in, it noted that the way that it deals with contingency will change. Suez indicated RDF export has increased in cost with the introduction of taxes in Europe, and from Suez's perspective, RDF export has been always been seen a short-term solution. As set out in paragraph 9.56, Suez indicated that contingency arrangements may be required for extended periods of time, particularly if the ERFs will require substantial maintenance work at the end of the PPP/PFI contract.

- *Third party views*

9.72 Evidence from third parties indicates that landfill and RDF export are weak constraints on incineration services and their use in the UK is on a downward trend.<sup>568</sup>

9.73 We asked whether local authorities would consider landfill and RDF export as adequate contingencies to replace incineration in the event that their ERF was offline. Of the six local authorities that responded to our questionnaire:

(a) two local authorities submitted that landfill was not an adequate contingency,<sup>569</sup> while the remaining four local authorities noted that it would be undesirable or a last resort.<sup>570</sup>

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<sup>568</sup> See paragraph 9.195 onward.

<sup>569</sup> [REDACTED] and [REDACTED] responses to the CMA's O&M of ERF customer questionnaire.

<sup>570</sup> [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to the CMA's O&M of ERF customer questionnaire.

(b) five local authorities submitted they would ‘consider’ RDF export.<sup>571</sup> Three of these identified that RDF is less desirable than an ERF solution.<sup>572</sup> One local authority submitted it would not consider RDF to be a sufficient contingency.<sup>573</sup>

9.74 Similarly, most competitors submitted that landfill and RDF export are adequate substitutes but are not desirable contingencies.<sup>574</sup>

9.75 The evidence from third parties indicates that landfill and RDF export are not favoured but potentially adequate contingencies. Accordingly, to the extent contingency follows the general waste hierarchy, we consider that local authorities would value incineration as a contingency in order to avoid landfill and RDF where possible.<sup>575</sup>

*O&M operators’ ability to access incineration capacity, as a contingency*

- *Parties’ view*

9.76 Veolia submitted that in order to win a contract, an O&M contractor may need to identify the availability of capacity in general, rather than capacity available at short notice.<sup>576</sup> [REDACTED].<sup>577</sup> Veolia also submitted that [REDACTED] of the capacity controlled by Parties is dedicated to the local authority that owns the ERF. According to Veolia, there is [REDACTED] spare (merchant) capacity at these facilities over the course of a year, let alone in a particular week when another ERF in the area may require contingency at short notice.<sup>578</sup>

9.77 Veolia submitted that there are a [REDACTED] of alternative disposal outlets available around every local-authority-owned ERF so no operator should have difficulties in finding contingency options while bidding to operate any such ERF, or while operating one.<sup>579</sup>

9.78 Suez told us that one of its strengths when bidding for contracts is that it has capacity at its other ERFs. In Suez’s view, [REDACTED]. [REDACTED].<sup>580</sup>

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<sup>571</sup> [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to the CMA’s O&M of ERF customer questionnaire.

<sup>572</sup> [REDACTED], [REDACTED] and [REDACTED] responses to the CMA’s O&M of ERF customer questionnaire.

<sup>573</sup> [REDACTED] response to the CMA’s O&M of ERF customer questionnaire.

<sup>574</sup> [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to the CMA’s O&M of ERFs competitor questionnaire.

<sup>575</sup> See paragraphs 5.3 to 5.12.

<sup>576</sup> Veolia’s response [REDACTED]

<sup>577</sup> Veolia’s supplemental submission [REDACTED]

<sup>578</sup> Veolia’s response [REDACTED]

<sup>579</sup> Veolia Supplemental Response [REDACTED]

<sup>580</sup> Suez, Main Party Hearing

- *Third party views*

- 9.79 Of the six ERF competitors that responded to our questionnaire, all except one said that they use their own ERFs and third party incineration capacity for contingency, although the ratio of mix varies by supplier. Viridor submitted that it usually uses its own ERFs but at times may use third party sites for timing, capacity or geographic reasons.<sup>581</sup> Amey, Beauparc and Urbaser indicated that they can often acquire contingency capacity from third party competitors but did not disclose the proportion of capacity acquired from third party sites.<sup>582</sup> FCC submitted that it has not acquired contingency capacity from third party competitors.<sup>583</sup>
- 9.80 In response to our question about the ability to access contingency capacity from third parties, some competitors indicated that it is not always possible to acquire capacity at third party sites because of capacity constraints at those sites: Amey submitted that it has seen strong competition for available capacity in the market;<sup>584</sup> FCC indicated that existing ERFs usually operate at 'full' capacity;<sup>585</sup> and Viridor said there have been times when ERF capacity has not been available.<sup>586</sup> Only Urbaser indicated that that it had not been 'particularly difficult to secure contingency support from other operators'.<sup>587</sup>
- 9.81 Evidence from competitors indicate that it is not always possible to access incineration capacity at third party sites. We note that the two competitors with the largest network of ERFs (other than the Parties) tend to use their own ERFs for contingency capacity.

- *O&M operators' ERF network*

- 9.82 As set out in 'Shares of supply' section, the Parties will have the largest network of ERFs in the UK, post-Merger, followed by Viridor and FCC.
- 9.83 We consider that operators that have a large network of ERFs, such as the Parties, Viridor and FCC, will in relative terms, face a lower risk to their business if one of their ERFs is closed for a period of time, as that operator will be more likely than a smaller operator to use its network of ERFs to access contingent capacity; and because the impact of an ERF shutdown will be low relative to the absolute size of its business, than it would be for a smaller operator. Larger network operators will therefore benefit from scale

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<sup>581</sup> [X] response to the CMA's O&M of ERF competitor questionnaire.

<sup>582</sup> [X], [X] and [X] responses to the CMA's O&M of ERF competitor questionnaire.

<sup>583</sup> [X] response to the CMA's O&M of ERF competitor questionnaire.

<sup>584</sup> [X] response to the CMA's O&M of ERFs competitor questionnaire

<sup>585</sup> [X] response to the CMA's O&M of ERFs competitor questionnaire.

<sup>586</sup> [X] response to the CMA's O&M of ERFs competitor questionnaire.

<sup>587</sup> [X] response to the CMA's O&M of ERFs competitor questionnaire

advantages, which confers a competitive advantage in dealing with planned or unplanned outages.

#### *Provisional conclusion*

- 9.84 Access to contingency capacity is an important factor for some local authorities; and overall, landfill and RDF export are considered to be less favoured contingencies. In our provisional view, those bidders that offer alternative and more sustainable contingencies than landfill and RDF export, all other things being equal, will have a higher likelihood of winning local authority O&M contracts.
- 9.85 Operators that have access to their own network of ERFs may benefit from some advantages when bidding for these contracts. The Parties, Viridor and FCC may benefit in this respect, as these suppliers have the largest ERF network in the UK.

#### ***Incumbency advantage***

- 9.86 In this section, we consider whether the incumbent O&M provider has a higher likelihood of winning the re-tender of the standalone O&M contract over other bidders because it has a degree of plant-level incumbency advantage. We examine the potential sources of any incumbency advantage and assess the impact that this may have on competition for future standalone O&M contracts. However, our assessment is not to say that O&M opportunities for existing ERFs will not be contestable – local authorities have told us that they will put their O&M contracts out to tender and have indicated a willingness to change provider if a more competitive supplier presents itself.<sup>588</sup>

#### *Parties' views*

- 9.87 Veolia argued that there is no incumbency advantage. When ERF O&M contracts come to market, an independent consultant will typically prepare a report that sets out the works required, and any potential bidder will have sufficient information to assess the viability of the plant. The age of the facility is not an impediment for any new operator that takes on the O&M of the ERF.<sup>589</sup> Veolia also argued that to the extent there is an incumbency advantage in the form of having a greater likelihood of winning the O&M contract for specific facilities that a supplier currently operates, there is no

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<sup>588</sup> [3<], [3<], [3<] and [3<] responses to the CMA's O&M of ERFs customer questionnaire.

<sup>589</sup> Veolia, Main Party Hearing.

merger effect. That is, the advantage to either of the Parties is the same with or absent the Merger.<sup>590</sup>

- 9.88 Suez, when assessing the strengths of its rivals for the upcoming Tees Valley ERF contract, noted that it would be able to [REDACTED].<sup>591</sup>
- 9.89 Suez told us that that there is a [REDACTED] associated with taking on the O&M of an ERF that another supplier has operated.<sup>592</sup> It submitted that the incumbent has advantages in terms of information about pricing, risks and other issues.<sup>593</sup> However, Suez told us that it would bid for an O&M contract if it received sufficient information from the local authority.<sup>594</sup> In this regard, Suez stated that when it took over the O&M for GMCA, the local authority provided all available information, [REDACTED].<sup>595</sup>
- 9.90 Suez told us that the challenge for the new operator would be to understand the size of the investment required for the replant of the facility and whether the local authorities were providing the necessary information to bidders for them to understand the potential costs.<sup>596</sup> According to Suez, cost of the refurbishment can be difficult to estimate as it depends on the replanting involved.<sup>597</sup>

### *Third party views*

- 9.91 Viridor submitted that the tendering process for the standalone O&M contracts would be subject to public procurement rules and the incumbent would have the same likelihood as other bidders.<sup>598</sup>
- 9.92 A number of other third parties, however, indicated that incumbents would have a higher likelihood of winning the next tender.<sup>599</sup> One reason posited by third parties was that the incumbent would have a better understanding of the technical specificities of the plant (consistent with Suez's submissions). Urbaser submitted the incumbent operator would 'better understand the true running rates for an asset' and the 'efficiency profile of the ERF'.<sup>600</sup> In its view, the incumbent's knowledge of the particular asset would 'result in a benefit for the incumbent provider during the bidding process'. Beauparc submitted that

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<sup>590</sup> Veolia's response [REDACTED]

<sup>591</sup> See paragraph 9.130 for more detail.

<sup>592</sup> Suez, Main Party Hearing, [REDACTED]

<sup>593</sup> Suez, Main Party Hearing, [REDACTED]

<sup>594</sup> Suez, Main Party Hearing, [REDACTED]

<sup>595</sup> Suez, Main Party Hearing, [REDACTED]

<sup>596</sup> Suez, Main Party Hearing, [REDACTED]

<sup>597</sup> Suez, Main Party Hearing, [REDACTED]

<sup>598</sup> Viridor response [REDACTED]

<sup>599</sup> See [REDACTED], [REDACTED] and [REDACTED] responses [REDACTED]; email from [REDACTED].

<sup>600</sup> [REDACTED] response to CMA RFI.

in addition to the incumbent's familiarity with the asset, the incumbent would understand 'all of the potential refit costs'.<sup>601</sup>

- 9.93 Another reason provided by third parties for the potential incumbency advantages is around the uncertainty that non-incumbents would have about how the asset had been maintained and operated by the previous supplier. FCC told us that while it would bid for ERFs that it currently operates, it would have to assess whether it would bid for the O&M of ERFs that have been operated by another supplier. FCC said that these are 'hugely...complex assets' akin to 'power plants' and that it would be quite difficult to be certain that the ERF has been maintained to the right level. Taking on the asset would be 'high risk' in FCC's view and this risk may take the form of considerable repair costs at an unknown point during the contract.<sup>602</sup> This risk is exacerbated by the age of the technology that a new provider would have to manage. Similarly, Tolvik told us that the risk and reward trade-offs of taking on an asset from another provider might reduce the number of suppliers that bid for O&M only contracts.<sup>603</sup>
- 9.94 Most of the evidence from third parties indicates that incumbents may have an advantage in the tendering process arising from an incumbent's knowledge and experience of operating the plant. This will allow them to bid strategically for facilities they wish to keep (ie there are plant level incumbency advantages). By contrast, potential O&M bidders will face a degree of uncertainty about the condition of the ERF for which they are bidding, in particular about the quality of the maintenance undertaken by the incumbent supplier. Given the informational asymmetry, it is likely that any new supplier will face risks relating to the condition of the ERF asset that an incumbent is less likely to face. However, we note that the Parties and firms like Viridor plan to [§<]. On this basis, although it may be that an incumbent operator will be more likely to win the future O&M contract of the plant where it is the incumbent, any plant-level incumbency advantage is unlikely to be significant enough to prevent suitably experienced O&M bidders competing for and winning future O&M contracts. That is, as explained in paragraph 10.76 above, it is expected that O&M contracts will still be contestable.

#### *The Parties' incumbency advantage and the merger effect*

- 9.95 We note that market participants will have limited opportunities to learn about how this process works, as there are only six O&M contracts that will come up for re-tender in the next two to five years. Therefore, it may take time for the

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<sup>601</sup> [§<] response to CMA RFI.

<sup>602</sup> Note of call [§<]

<sup>603</sup> Note of call [§<]



market participants to understand the extent to which they can rely on the consultants' reports and due diligence to determine the condition of the facilities in question.

- 9.96 In this context, we consider that the Parties' breadth of experience means that they may be more likely than other bidders to be able to overcome incumbency advantage where another operator is the incumbent. In particular, as discussed in paragraphs 9.64 to 9.68 above, the Parties' combined experience is significantly greater, and together they operate more ERFs, than any other supplier. As such, they will be able to draw on more knowledge to assess facilities held by others, so the information asymmetry may affect the Parties less strongly than other bidders when they bid for contracts that they do not currently hold. Another advantage of the Parties' scale and large portfolio of contracts is that it allows them to spread the risk of any unexpected cost more easily than a smaller operator that takes on a problematic or costly O&M contract. In both respects, the Parties' experience and scale advantages may reduce the impact of incumbency when they bid for contracts in which they are not the incumbent, relative to smaller O&M operators. The Merger therefore removes one of the limited number of competitors that would otherwise be well positioned to compete for O&M contracts, given the potential advantages enjoyed by incumbent operators.

#### *Shares of supply for reverting assets*

- 9.97 We consider the implication that plant-level incumbency advantage may have for the O&M contracts that are likely to be contestable, ie the assets that will revert to local authority ownership on expiry of existing PPP contract. Tolvik's dataset identifies that 26 of the 42 PPP ERFs will revert to the local authority upon expiration of the PPP/PFI contract. Table 2 sets out shares of supply on this basis.

**Table 9.2: Share of supply based on ERFs that will revert to local authorities**

Supplier	Number of PPP ERFs currently operated	Share
Veolia	[>]	[30-40%]
Suez	[>]	[20-30%]
Paprec	[>]	[10-20%]
Viridor	[>]	[10-20%]
FCC	[>]	[5-10%]
WTI	[>]	[0-5%]
MVV	[>]	[0-5%]
Urbaser/Balfour	[>]	[0-5%]

Source: CMA analysis [redacted].

Notes: Amey has been excluded because [redacted]. By excluding Amey, the shares of supply reflect forward-looking incumbency advantage. Amey had a share of supply of [redacted]%. Its share of supply is distributed in proportion to other firms' shares of supply.

- 9.98 Pre-Merger, Veolia and Suez would benefit from any incumbency advantage on the highest number of facilities that will revert to LA ownership on expiry of

the existing PPP contract ([X] and [X] ERFs, respectively). The Merged Entity would benefit from incumbency advantage on five times the number of facilities as the next largest suppliers (Paprec and Viridor). The Merged Entity's combined share is [50-60%] By comparison, the Parties' combined share is [40-50%] when considering all ERFs (ie including both those reverting to local authorities and merchant ERFs).<sup>604</sup>

- 9.99 This suggests that for a significant proportion of contracts, Veolia or Suez will have a competitive advantage, and will therefore be a more important competitive constraint for all other suppliers bidding for the contract. For the contracts where the Parties are not the incumbent, the third party that is currently operating the plant will likely be a stronger constraint on all rivals. Overall, the Parties' competitive strengths for the reverting assets may be higher than the 'average' strength reflected by the shares of supply.

#### *Provisional view*

- 9.100 Based on the above evidence, we provisionally conclude that an incumbent will likely benefit from some competitive advantage when they bid for the O&M contracts.
- 9.101 We consider that the evidence shows that, for a large proportion of contracts that will revert to local authorities at the expiry of PPP contracts, Veolia and Suez will have a competitive advantage and will therefore be a stronger competitive constraint for *all* other suppliers bidding for the contract (including each other).<sup>605</sup> We note that other suppliers will benefit from this same advantage on the ERFs they currently supply, but this will be on fewer ERFs than Veolia and Suez. Further, as explained in paragraph 9.96 above, the Parties' experience and scale advantages may reduce the impact of incumbency when they bid for contracts in which they are not the incumbent, relative to smaller O&M operators.
- 9.102 Overall, the Parties are likely to benefit from any incumbency advantage more than most of the other operators.

#### ***Credible suppliers***

- 9.103 No PPP/PFI contracts have yet expired so there is no recent evidence on how suppliers will compete for O&M only contracts. In this context, views from local authorities and competitors are particularly important to understand how closely the Parties might be expected to compete with each other and other

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<sup>604</sup> See 'Shares of supply' section

<sup>605</sup> See paragraphs 9.97 to 9.99.

rivals for the upcoming O&M tenders. First, we consider customers' assessment on the relative credibility of potential suppliers; and second, we consider rivals' assessment on the relative strength of potential bidders for O&M only contracts. Then we set out evidence from local authorities and rivals on the impact of the Merger on the supply of O&M services for ERFs.

9.104 While we acknowledge that some local authorities that responded to our questionnaire will not tender the O&M of their ERF for a number of years, we note that some local authorities felt they lacked the knowledge to answer our question and detailed this in their response. Where this occurred, we did not include those responses in our analysis.

#### *Local authorities' views on credible suppliers*

9.105 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 on a scale from 1-5 (where 1 is not very strong and 5 is very strong). Table summarises the results.

**Table 9.3: Summary of local authority scoring of the strength of suppliers**

<i>Competitor</i>	<i>Average rating unadjusted for non-mentions</i>		<i>Average rating adjusted for non-mentions as a score of zero</i>	
	<i>No of respondents</i>	<i>Average rating (out of 5)</i>	<i>No of respondents</i>	<i>Average rating (out of 5)</i>
Veolia	6	4.8	6	4.8
Suez	5	4.6	6	3.8
FCC	4	3.5	6	2.3
Viridor	4	3.5	6	2.3
Cory	2	3.5	6	1.2
Enfinium	2	3.0	6	1.0
Amey	1	4.0	6	0.7
Covanta	1	4.0	6	0.7
Biffa	1	3.0	6	0.5
MVV	1	2.0	6	0.3

Source: CMA analysis of response to questionnaire by local authorities.

9.106 Veolia and Suez were identified most frequently and given the highest average ratings, regardless of the method of analysis used. In particular, all customers that responded identified Veolia as a credible supplier and Veolia received a very high average score of 4.8. Customers explained their rating by noting Veolia's strengths in terms of experience and track record. Suez was identified by all but one customer and received a very high average rating of 4.6. When treating non-mentions as scores of zero (the supplier is not considered a credible supplier), Suez received an average score of 3.8. Similar to customer's explanations of Veolia's capabilities, customers explained that Suez has strengths in terms of experience and track record. We note that Veolia's current customers identified Suez as a strong credible competitor and vice versa.

9.107 FCC and Viridor were identified next most frequently (four times each), and both received an average rating of 2.3, when treating non-mentions as a zero score.

9.108 Overall, we consider that the above evidence shows that the local authorities we engaged with considered the Parties to be the strongest suppliers and FCC and Viridor were also considered to be moderately strong.

#### *Suppliers' view on strength of O&M competitors*

9.109 We asked competitors to list the suppliers they would consider as their strongest competitors in O&M in the UK and indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong). Table summarises the results.<sup>606</sup>

**Table 9.4: Summary of competitor scoring of the strength of suppliers**

Competitor	Ignoring non-mentions		Treating non-mentions as zero	
	No of respondents	Average rating (out of 5)	No of respondents	Average rating (out of 5)
Veolia	4	5.0	4	5.0
Suez	4	4.8	4	4.8
Viridor	4	4.8	4	4.8
FCC	4	3.5	4	3.5
enfinium	3	3.3	4	2.5
Covanta	1	3.0	4	0.8
Biffa	1	2.0	4	0.5
Self-supply	1	1.0	4	0.3

Source: CMA analysis of competitor questionnaire

Note: Beuparc listed Veolia, Suez, FCC and Viridor but only provided a rating of 5 for Veolia and Suez. Given the incompleteness of the submission, we have excluded Beuparc's scoring from this analysis

9.110 Veolia, Suez, Viridor and FCC were identified the most frequently (four times each) and Veolia, Suez and Viridor received high average ratings (5, 4.8 and 4.8, respectively). Most competitors explained their ratings with reference to each supplier's existing network of ERFs, experience and track record. We note that we asked competitors their views on the suppliers they considered to be their own strongest competitors, rather than the closest competitors to the Parties, and we have interpreted the results accordingly. Nevertheless, we consider it likely that a strong competitor to one supplier will be a strong competitor to all suppliers (unless they are competing for different niches).

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<sup>606</sup> Four suppliers gave ratings to other competitors. However, we note that there are a limited number of suppliers in the market in any case.

### *Provisional conclusion*

- 9.111 Third party ratings identified Veolia and Suez as among the strongest suppliers in the market; the Parties were identified most frequently and received very high average scores.
- 9.112 We note that almost all local authorities and competitors used experience and track record to assess the strength of suppliers. As discussed in paragraph 9.115 below, the Merged Entity will have significantly more experience than any of its competitors. Further, we note that the evidence from local authorities is consistent with other evidence we have received, included from competitors, shares of supply and internal documents.

### ***Shares of supply***

#### *Parties' views*

- 9.113 The Parties say no or limited weight should be placed on the shares of supply as they are based on contracts that were tendered 5-25 years ago and included design and construction (D&C), whereas future contracts will be for O&M only. Therefore, shares of supply measure their strength in D&C, and not (strictly) O&M.
- 9.114 Veolia also submitted that the shares of supply take into account only facilities that were operational in 2020 and the CMA should take into account facilities that will come online in the next few years. Veolia submitted that on this basis, the Parties' combined share is [X].<sup>607</sup>

#### *Evidential value of market shares*

- 9.115 Local authorities told us that experience and track record were among the most important factors when deciding which supplier to select as their next O&M provider.<sup>608</sup> In markets where experience matters, market shares are a relevant indicator of strength and ability to win future contracts. The suppliers that won the initial PPP/PFI contracts have gained considerable experience from operating local authority ERFs. Shares of supply are indicative of wider experience in O&M of ERFs, which is relevant to competition in this market. Moreover, we consider that suppliers that won the initial PPP/PFI contracts were selected in part for their O&M capabilities, as those contracts include the

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<sup>607</sup> Veolia's response [X].

<sup>608</sup> See 'Selection criteria' and 'Management and technical expertise' sections for more detail.

O&M of the MRF in addition to the design, finance and build elements that Veolia identifies.

- 9.116 We acknowledge that past tenders were also in part driven by the bidder's ability to manage the subcontracting of a D&C supplier. We consider that this is relevant experience for future tenders. In particular, Urbaser stated that local authorities may prefer bidders that were able to demonstrate experience in delivering retrofit works or who were aligned with a strong EPC partner.<sup>609</sup> Further, Suez told us that its proven track record in refurbishment stemmed from its experience designing and constructing ERF facilities.<sup>610</sup> As such, experience in D&C and/or managing relationships with D&C suppliers may be relevant in future O&M tendering, as the age of facilities and development of technology and regulatory requirements might require local authorities to invest in re-planting, and refurbishment and/or repairs that will likely be necessary.
- 9.117 We do not agree with Veolia that no or limited weight should be placed on market shares, but we will consider the evidence from market shares in the round with all the other evidence in our overall assessment.
- 9.118 As discussed in paragraph 9.26 above, we considered that merchant-only operators will pose no or only a weak constraint on the Parties for standalone local-authority O&M contracts. As such, we have excluded merchant-only operators from the market shares.<sup>611</sup>
- 9.119 With regards to Veolia's submission that we should take into account facilities that will come online in the next few years (see paragraph 9.114), we do not consider that it would be appropriate in this case, as it will not accurately reflect the future strengths of suppliers in the market. In particular, we note:
- (a) Of the 17 ERFs under construction that Veolia considers should be included in the shares of supply analysis, 3 are public sector ERFs and the other 14 are merchant ERFs.<sup>612</sup> With the exception of FCC and MVV, all of the other future suppliers will only operate merchant ERFs. As discussed in market definition, we consider that merchant-only suppliers will have limited incentives to bid for standalone O&M contracts and will likely pose no or a weak constraint on the Parties.

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<sup>609</sup> Urbaser's response [3<]

<sup>610</sup> Suez, Main Party Hearing, [3<]

<sup>611</sup> This excludes Equitix, Co Gen, Equitix/Iona, Vital Energy, Vogen/Aviva, SSE, Spencer, Bouygues and Levenseat.

<sup>612</sup> As explained in paragraph 9.20(d), Indaver in partnership with Acciona, won the PPP contract for the Aberdeen NESS ERF and will carry out the O&M of this facility.

(b) It is not clear that all the ERFs in Tolvik’s dataset will come online in the next few years. Tolvik explains that its list includes ERFs that are ‘seeking planning consent, have planning consent or for which planning consent has been refused but some form of appeal/new submission is expected’.<sup>613</sup> Additionally, Tolvik states that its previous (upwards) trend of number of ERFs has been reversed because projects have ‘reached financial close, seemingly ceased being progressed, been cancelled and/or have been refused consent’.<sup>614</sup>

9.120 Nonetheless, we acknowledge that by the time that some local authorities tender for the O&M of their ERF, at least some of the new operators will have gained some experience and expertise. Therefore, we estimate market shares based on current and future ERF capacity but note that including ERFs that are not operational will likely overstate the strength of these new operators, as they have yet to gain the relevant experience in the O&M of ERFs; and will understate the strength of the Parties and the other current O&M operators.<sup>615</sup>

#### *Shares of supply estimates using Tolvik dataset*

9.121 We calculated shares of supply using an external dataset prepared by Tolvik Consulting.<sup>616</sup> This dataset contains information on each of the ERFs that were operational in the UK in 2020 (local-authority-owned and merchant owned), including on the owner of the ERF, the operator of the facility and the capacity of the facility.<sup>617</sup> We calculated shares of supply based on the assumed operational capacity of ERFs.<sup>618</sup>

9.122 The results of these shares of supply calculations are presented below in Table 9.5.

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<sup>613</sup> See Tolvik’s ‘UK Energy from Waste Statistics – 2020’ report

<sup>614</sup> See Tolvik’s ‘UK Energy from Waste Statistics – 2021’ report

<sup>615</sup> See paragraph 9.124 for market shares of current and future ERF capacity.

<sup>616</sup> We consider Tolvik data is reliable as it provides an independent view based on multiple sources of information. We discuss Tolvik in more detail below.

<sup>617</sup> We used Tolvik’s 2020 dataset as it was the most recent dataset available to us. We consider this is reasonable as the number of operational ERFs is reasonably stable across years. In particular, Tolvik’s ‘UK Energy from Waste Statistics – 2021’ records one fewer operational ERF in 2021 than 2020.

<sup>618</sup> Our analysis includes both merchant ERFs and local-authority-owned ERFs.

We calculate shares of supply using capacity to reflect that competition for larger contracts would be expected to be more vigorous, and therefore winning larger contracts is more probative of competitive strength. We also calculated shares of supply based on a count of sites, but this did not substantially affect our conclusions.

**Table 9.5: O&M of all ERFs share of supply estimates, by capacity**

<i>Operator</i>	<i>Shares</i>
Veolia	[20-30%]
Suez	[20-30%]
<b>Combined share</b>	<b>[40-50%]</b>
Viridor	[20-30%]
FCC	[10-14%]
Cory	[5-10%]
Paprec	[0-5%]
MVV	[0-5%]
Urbaser/Balfour	[0-5%]

Source: CMA calculations using Tolvik dataset

Notes: Amey has been excluded because [redacted]; and enfinium because it submitted that it does not, and likely will not tender for 'O&M only' contracts. By excluding Amey & enfinium, the shares of supply reflect forward-looking concentration. Amey and enfinium had shares of supply of [redacted] and [redacted] respectively.

By excluding, its share of supply is distributed in proportion to other firms' shares of supply.

9.123 The Parties are the second and third largest providers of O&M services in the UK. Only Viridor has a larger share than the Parties, and FCC is the only other provider with a share exceeding 10%. The Merged Entity would become the largest supplier in the market, with a combined share of [40-50%]. The Merger increases the degree of concentration, as measured by HHI, by over 850 points which is very significant amount.<sup>619</sup>

9.124 As explained in paragraph 9.120, we have also calculated market shares including ERFs based on current and future capacity (ie ERFs that are still not operational).<sup>620</sup> The results showed that the Merged Entity would have the largest share in the market, with a combined share of [30-40%], incorporating an increment of [10-20%]. Viridor and FCC are the next largest suppliers, with a share of [20-30%] and [10-20%], respectively. All other suppliers have a share of [5-10%] or less. We note that the Parties' shares may be understated as it is not certain that all of the facilities identified in the Tolvik dataset will actually come online.<sup>621</sup>

### *Provisional conclusion*

9.125 The Parties are the second and third largest suppliers by capacity and the Merged Entity would be the largest supplier by a significant degree, with a combined market share of [40-50%]. These market shares indicate the Parties' significant historical success in past contracts that incorporated a significant O&M element. Moreover, to the extent that future O&M contracts will also to an extent involve D&C – which we understand to be the case –

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<sup>619</sup> The HHI is a measure of market concentration that takes account of the differences in the sizes of market participants, as well as their number. The HHI is calculated by adding together the squared values of the percentage market shares of all firms in the market. The change in the HHI can be calculated by subtracting the market's pre-merger HHI from its expected post-merger HHI (CMA129, paragraph 4.4)

<sup>620</sup> We excluded suppliers that submitted that they would not bid for standalone O&M contracts, ie [redacted], [redacted] and [redacted]. We have also excluded merchant-only and self-supply for the reasons set out in market definition.

<sup>621</sup> See paragraph 9.119(b) for more detail.



these historical shares are even more likely to be reflective of the Parties' historical success in similar contracts. We consider these shares to be a relevant indicator that show that the Parties are likely to be two highly significant competitors for future contracts involving O&M.

- 9.126 Viridor and FCC will be the next largest competitors (with shares of [20-30%] and [10-20%], respectively), indicating that they are strong competitors and will likely pose a constraint on the Parties post-Merger. This is consistent with evidence from third parties. While Cory's share of supply of [5-10%] is not trivial, we note that the Merged Entity would be still be five times its size. The other O&M operators each have market shares below 5% and are considerably smaller than the Parties.
- 9.127 Further, we note that even a lower bound estimate of the Parties' market shares shows that the Merged Entity would be a very significant supplier in the market, with only Viridor and FCC also having shares above 10%.
- 9.128 The market share analysis set out above may understate the importance of the Parties in two ways. First, it does not take into account plant specific incumbency advantages – specifically for the assets that will revert to local authority ownership – from which the Parties may benefit when competing for those contracts they currently operate, which may make them stronger and closer competitors to each other in a subset of contracts. The Merger therefore removes one of the limited number of competitors that would otherwise be well positioned to compete for O&M contracts, given the potential advantages enjoyed by incumbent operators. Second, it does not take into account the extent to which the Parties have operated their plants on average for longer than their rivals, yielding more total institutional experience, which may also make them closer competitors than their shares of supply suggest. We take these factors into account in the section setting out our assessment of the theory of harm.<sup>622</sup>

### ***Internal documents***

- 9.129 The Parties' documents indicate that both Parties intend to bid for O&M contracts in the ERF market and consider themselves to be market leaders in the O&M of ERFs. In particular:

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<sup>622</sup> See 'Assessment' section for our overall assessment.

- (a) A Veolia Internal Document sets out that it [REDACTED].<sup>623</sup> Similarly, another Veolia Internal Document [REDACTED]. [REDACTED].<sup>624</sup>
- (b) A Suez Internal Document identifies Suez as the number three player in [REDACTED]. [REDACTED]. [REDACTED].<sup>625</sup>
- (c) In a 2030 strategy document Suez [REDACTED].<sup>626</sup> [REDACTED].

9.130 While we acknowledge that the ongoing tender for the Tees Valley Energy Recovery Facility includes design and construction, and therefore is not fully representative of a bid for a standalone local authority O&M contract, we believe it provides relevant insight into the market. In particular, because [REDACTED], Suez's assessment of its and rivals' strengths in its Internal Documents seems to [REDACTED]. In one such document, [REDACTED]. [REDACTED]. This document also notes Suez's win strategy is supported by its proven track record.<sup>627</sup> While Veolia [REDACTED].<sup>628</sup>

## Assessment

9.131 Based on the evidence set out above, we assess how closely the Parties compete with one another and whether the removal of the constraint that they place on each other would lead to an SLC in the supply of O&M services to local authorities. We also assess the current competitive constraints placed on the Parties by other O&M operators that may bid for future O&M contracts procured by local authorities.

9.132 Experience and technical expertise is a key indicator of competition and among the most important selection criteria for local authorities. The Parties' competitive strengths with respect to this criterion are demonstrated by each of the Parties' track records of operating and managing a large network of ERFs. Taken overall, Veolia has the most experience (in plant years) and Suez has the third most. The Parties' combined management experience is significantly greater than that of the next closest supplier. By the number of ERFs under management, the Parties are first and third. The Parties are the second and third largest suppliers by capacity, with a combined market share of [40-50%], incorporating a significant increment of [20-30%], and the Merger would create the largest supplier in the market. The Parties' market shares

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<sup>623</sup> Veolia's internal document, [REDACTED]

<sup>624</sup> Veolia's internal document, [REDACTED]

<sup>625</sup> Suez's internal document, [REDACTED]

<sup>626</sup> Suez's internal document, [REDACTED]

<sup>627</sup> Suez's internal document [REDACTED]

<sup>628</sup> Note of call [REDACTED]

are significant in a highly concentrated market, in which the top four suppliers account for 84% of supply.

- 9.133 While the Parties' combined share is in itself concerning, the Parties' strengths are likely to be stronger than indicated by the market share analysis. In particular, we found that there is a material degree of plant-level incumbency advantage such that the incumbent operator will be more likely to win future O&M contracts, and for a significant proportion of contracts (c.60%), Veolia or Suez will be the incumbent. Therefore, they will be a stronger constraint on all other suppliers bidding for the contract, including the other Party.
- 9.134 Local authorities consider contingency capacity to be important when selecting an O&M or ERF provider. Veolia and Suez each have an extensive network of ERFs and the Parties' combined network will be the largest in the UK. On this basis, we consider that the Parties' access to infrastructure may confer further competitive advantages over most other O&M operators in the bidding process, as they will have superior access to contingency capacity through its extensive network.
- 9.135 In its internal documents Veolia identifies itself as the strongest player in the market, and in its internal documents Suez recognises itself as the third. Third party ratings identified Veolia and Suez as the first and second strongest suppliers in the market, receiving the most mentions and the highest average scores by a material margin.
- 9.136 We have found that the evidence taken together strongly demonstrates that the Parties are close competitors to each other. Absent the Merger, the Parties would have placed a strong constraint on each other in the supply of O&M services to local authorities.
- 9.137 We considered the current constraints from other O&M operators on both of the Parties. Viridor and FCC are also close competitors of the Parties. Viridor and FCC have significant experience of supplying O&M services in the UK albeit to a lesser extent than Veolia and Suez and are likely to be significant competitors in future O&M contracts. Viridor is the largest supplier by capacity with a market share of [20-30%] and FCC is the fourth largest with a share of [10-20%]. Each operates an extensive network of ERFs which they may be called upon to demonstrate the availability of contingency arrangements when they bid for O&M contracts. However, Viridor and FCC are incumbents in fewer of the ERFs that will revert to local authorities and will likely face a stronger constraint from the Parties than vice versa.

- 9.138 The evidence shows that Viridor and FCC are likely to be strong competitors for future O&M contracts and therefore will pose a strong constraint on the Parties. However, on their own, we do not consider they would sufficiently constrain the Parties to prevent an SLC from arising.
- 9.139 Other O&M operators such as MVV, Paprec and Cory have experience of supplying O&M services in the UK and may potentially bid for standalone O&M contracts. However, with respect to each of the key indicators of competition, the evidence suggests that each of these other O&M operators is significantly weaker than the Parties, Viridor and FCC. The combined tail of the other O&M operators' shares of supply by capacity, by number of ERFs under management and management experience is significantly less than the Parties' combined totals. Local authorities considered that these operators were less credible bidders for future O&M contracts. Therefore, the evidence suggests that these O&M operators may impose some competitive constraint on the Parties, but it is likely to be relatively limited.
- 9.140 For the reasons set out in the market definition, we consider that merchant ERF operators that do not provide O&M services to local authorities will likely exert no or a weak constraint on the Parties.
- 9.141 We have found in chapter 6 that disposal by incineration (ERFs) is a complex service (paragraph 6.125):
- (a) Chapter 6 (paragraph 6.63) reported a local authority [3<] submitting that 'There are currently specialists for delivery of an O&M contract for operation of an EfW/ERF, but the market narrows significantly for operation of further waste treatment facilities whereby operations and management of waste flows can be quite complex as the national strategy pushes local authorities towards waste minimisation and maximising recycling at higher cost'.<sup>629</sup>
  - (b) Of the 13 complex contracts analysed in, Table 6.4 one was for the disposal of waste by incineration as a standalone service and two other contracts included the management of ERFs as a part of a broader integrated contract.
- 9.142 As set out in chapter 6, where the contracts for specific waste management services involve complex requirements (whether for some customers or all customers), we take into account a greater likelihood of closer competition between the Parties and weaker constraints from third parties. We consider that the factors that we have identified that indicate complexity

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<sup>629</sup> [3<] response to the CMA's local authority customer questionnaire.

(paragraph 6.41) apply generally to O&M services for municipal ERFs. In particular, the contracts are typically large in size, they involve the operation of infrastructure, they are long in duration, they involve a variety of risks and the bidding process requires significant resource. The issue of complexity therefore exists in relation to O&M services whether or not they are bundled with other services for local authorities, but as previously noted, Veolia and Suez are likely to be particularly strong competitors when services are bundled.

9.143 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) 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.

9.144 Based on our assessment, we provisionally find that the Merger will result in the removal of a direct and significant constraint on each of the Parties and that overall, the remaining constraints post-Merger will not be sufficient to prevent an SLC.

## **Entry and expansion**

9.145 For the reasons set out in market definition, we do not consider that entry by technology suppliers or self-supply is likely to sufficiently constrain the Parties in a timely manner and prevent an SLC from arising.

## **Provisional conclusion**

9.146 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 ERFs to local authorities in the UK.

## Supply of waste disposal services by incineration

9.147 In this section, we consider the effect of the Merger on the supply of waste disposal services by incineration (or ‘disposal by incineration’). As set out in the introduction to this chapter, this relates to the competition between ERF operators that have access to merchant capacity (either CMC from the local-authority-owned ERFs or merchant ERFs).

9.148 This section is structured as follows:

- (a) Market definition;
- (b) Local area assessment;
- (c) Provisional conclusion.

### **Market definition**

#### *Product market*

9.149 The Parties overlap in the supply of waste disposal by incineration, which we take as our starting point for determining the relevant product market. In response to representations from the Parties, we have considered whether other disposal methods such as landfill and RDF export<sup>630</sup> belong in the same relevant market. On this basis, we have assessed whether landfill and RDF export are demand-side substitutes to disposal by incineration in the ordinary course of business rather than as a contingency (which we have considered separately in section 2 of this chapter).

#### *Landfill*

9.150 Landfill involves the disposal of non-hazardous waste in structures specifically designed for its containment, built in or on the ground, and in which the waste is isolated from the surrounding environment (eg groundwater, air, and rain).<sup>631</sup>

#### *Parties’ views*

9.151 Veolia submitted that landfill exercises a strong constraint on disposal by incineration. It cited an example where [redacted].<sup>632</sup> Veolia, however, noted that

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<sup>630</sup> RDF is shredded residual waste that may be exported to be incinerated abroad (see FMN, [redacted]).

<sup>631</sup> FMN, [redacted]

<sup>632</sup> FMN, [redacted]

there was the wider UK Government's policy is to reduce the use of landfill down.<sup>633</sup>

9.152 Suez said that [redacted].<sup>634</sup>

### *Regulatory changes*

9.153 In January 2021, the Department for Environment, Food and Rural Affairs published its 'Waste Management Plan for England', which sets out the measures to be taken so that, by 2035, the amount of municipal waste sent to landfill is reduced to 10% or less of the total amount of municipal waste generated (by weight).<sup>635</sup> As noted at paragraph 9.151 above, Veolia also said that the UK Government's strategy is ultimately to reduce the use of landfill to zero.<sup>636</sup>

9.154 There has been a declining trend of landfill (as a proportion of total waste generated) from around 80% to 40% over the ten year period between 2010 and 2019.<sup>637</sup> It is reasonable to expect this declining trend will continue over the next five years to meet the target of 10% or less of total waste generated by 2035.

9.155 The regulatory measures being introduced to reduce the use of landfill will impact the waste disposal strategies of local authorities today, even if the target date is several years away.

### *Third party views*

9.156 Three of the four local authorities that we spoke to told us that they either do not send waste to landfill or have only used landfill for contingency reasons. [redacted] however, told us that landfill was its main disposal route.<sup>638</sup>

9.157 We also sent questionnaires to 13 of the Parties' customers asking whether landfill was an adequate substitute for incineration services; and to indicate the amount of waste it had disposed via landfill. Six customers responded to only the second of these questions: three of them indicated that they had sent almost no waste to landfill, and two indicated the waste sent to landfill

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<sup>633</sup> FMN, [redacted]

<sup>634</sup> Suez, Main Party Hearing, [redacted]

<sup>635</sup> DEFRA, [Waste Management Plan for England](#), January 2021, page 6.

<sup>636</sup> DEFRA, [Waste Management Plan for England](#), January 2021, page 12 and FMN, [redacted]

<sup>637</sup> FMN, [redacted]

<sup>638</sup> Note of calls with [redacted], [redacted], [redacted], [redacted].

accounted for less than 22% of waste disposed and the other response was not informative as the total volume of residual waste was not provided.<sup>639</sup>

9.158 Veolia submitted that the sample was too small to draw any conclusions on the competitive constraints that landfill exerts on disposal by incineration, noting that ‘very few third parties’ responded to our questionnaire. Veolia also noted that we had only spoken to local authorities and not to its commercial customers.<sup>640</sup>

9.159 We have taken note of Veolia’s submissions on the number of questionnaire responses and have placed the appropriate weight to the evidence from third parties. We received some mixed views on local authorities’ current preferences on the use of landfill. Six customers indicated that they used it to a limited extent or only for contingency purposes; while for two customers, we note that disposal by landfill accounted for around a fifth of total waste disposed of by that customer and for one county council, it was at least 50%.

#### *Provisional conclusion on landfill*

9.160 We do not consider that Veolia’s submission in relation to [redacted] is indicative of overall substitution patterns from incineration to landfill. We consider that the other evidence set out above is more informative to the question being addressed.

9.161 In our provisional view, the evidence on the upcoming regulatory changes to reduce the use of landfill strongly indicates that use of landfill will decline. We have seen that its use has halved in the 10-year period between 2010 and 2019.

9.162 Evidence from third parties indicates that some local authorities would not consider using landfill or would use only for contingency. While some local authorities still use landfill for a non-trivial proportion of their waste disposal, we consider that the overarching regulatory objective to reduce the use of landfill will result in those customers switching to sustainable alternatives, such as disposal by incineration. We consider that the regulatory changes will likely impact on waste disposal strategies today, as local authorities plan to meet the target.

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<sup>639</sup> Responses to the CMA’s phase 2 customer questionnaire [redacted], [redacted], [redacted] and [redacted], See [redacted]. It also noted that landfill is not an ‘adequate sustainable substitute for our current EfW Contract’.

<sup>640</sup> Veolia’s response [redacted]



9.163 On the basis of the above evidence, we provisionally conclude that landfill is likely to be a weak constraint on disposal by incineration and have therefore not included in the same relevant market.

#### *RDF Export*

9.164 RDF is shredded residual waste that may be exported to be incinerated abroad.<sup>641</sup> As explained in paragraph 9.148, we consider whether RDF export is a demand-side substitute to disposal by incineration in the ordinary course of business rather than as a contingency.

#### *Parties' views*

9.165 Veolia submitted that [redacted] for waste disposal. [redacted].<sup>642</sup> Veolia cited two examples – West Sussex County Council and Dorset Council – where RDF export firms won waste disposal contracts.<sup>643</sup>

9.166 Veolia said RDF export was still used to a significant extent (especially for C&I volumes). Veolia also said that RDF export volumes had fallen partly because of reduced residual waste volumes due to Covid-19, green initiatives, and expansion of merchant incineration capacity within the UK.<sup>644</sup> Suez submitted that RDF export volumes was on the decrease, which was in part explained the introduction of taxes in other European countries.<sup>645</sup>

#### *Third party views*

9.167 Tolvik submitted that, in its view, it would be difficult for RDF export to be competitive in future.<sup>646</sup> It explained that the decrease in RDF export was partly driven by increases in taxes in Europe. This aligns with Suez's submission, noted at paragraph 9.166 above, that higher taxes in Europe was one of the reasons behind the decline in RDF export.

9.168 We asked 13 of the Parties' customers whether they considered RDF export to be an adequate substitute to disposal by incineration; and to indicate the volumes of residual waste that was sent for RDF export.<sup>647</sup> All five of the local

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<sup>641</sup> FMN, [redacted]

<sup>642</sup> Veolia's response [redacted]

<sup>643</sup> Veolia's response [redacted]

<sup>644</sup> Veolia's supplemental response [redacted]

<sup>645</sup> Suez's main party hearing [redacted]

<sup>646</sup> Note of call [redacted]

<sup>647</sup> Question wording: Please indicate if you consider landfill and RDF export to be an adequate substitute for incineration services. In doing so, please indicate (i) the volume of residual waste your local authority sent to landfill in 2020; (ii) the volume of residual waste your local authority sent for RDF export in 2020; and (iii) the volume of residual waste your local authority sent to an energy from waste facility in 2020. Explain what factors

authorities that responded to our question indicated that RDF export was not used or used a very limited extent.<sup>648</sup>

- 9.169 We asked the Parties' competitors their views on the degree to which their business faced a competitive constraint from RDF export. Biffa said that RDF exports may offer a benefit to an operator through the surety of disposal but that would be subject to comparative price for disposal at third party waste transfer stations or UK ERF facilities. However, Biffa also said that RDF export had been falling in recent years, which it understood to be partly due to Brexit, taxes imposed and the increasing ERF capacity in the UK.<sup>649</sup>
- 9.170 Evidence from third parties and Suez indicate that RDF export is declining, which was in part driven by higher environmental taxes abroad and because of the increase in incineration capacity in the UK. On the basis of this evidence, we do not believe that RDF export is likely to be an adequate alternative disposal method for customers, in the ordinary course of business.

*Veolia's response to third party views*

- 9.171 Veolia submitted that the sample was too small to draw any conclusions on the competitive constraints that RDF export exerts on disposal by incineration, and that we had only spoken to local authorities and not to its merchant customers.<sup>650</sup> Veolia also submitted that because we had only spoken to the Parties' customers, and [X], those customers are unlikely to be letting contracts now or in the future and therefore we should have spoken to customers that were currently assessing the market or customers of waste companies that [X].
- 9.172 We have taken note of Veolia's submissions on the number of questionnaire responses and have placed the appropriate weight to the evidence from local authorities. We consider it appropriate to focus on the Parties' customers as they are most likely to be harmed by the Merger. We consider their views on substitutability of RDF export is relevant to the market definition, as it helps inform our assessment of whether the Parties' customers would switch demand from disposal by incineration to RDF export, in response to 5–10% price increase.

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you consider when choosing between whether to dispose of residual waste at a landfill, via RDF export, and at an energy from waste facility.

<sup>648</sup> [X].

<sup>649</sup> [X] response to CMA Phase 2 competitor questionnaire

<sup>650</sup> Veolia's response [X]

### *Provisional conclusion on RDF export*

- 9.173 We do not consider that Veolia's isolated examples of local authorities switching to RDF export substitution is indicative of overall substitution patterns from incineration to RDF export.
- 9.174 While it may be the case that RDF export is still used as a disposal by some customers, we note that these are not typically the Parties' customers. Evidence from Parties and third parties also indicates that RDF export is declining, in part driven by increase in taxes abroad and thereby increasing the costs of this method of waste disposal; and because there has been an increase in incineration capacity in the UK. Overall, the evidence indicates that it is unlikely that RDF export is an adequate substitute to disposal by incineration.

### *Provisional conclusion on product market*

- 9.175 On the basis of the above evidence, we provisionally find that the relevant product market is the supply of waste disposal services by incineration.

### *Geographic market*

- 9.176 In this section, we consider the evidence related to the appropriate geographic market for disposal by incineration.

### *Parties' view*

- 9.177 Veolia submitted that that the supply of disposal services by incineration could be analysed on a national, regional and local catchment area basis.<sup>651</sup> Suez submitted that waste was transported over substantial distances for processing at incineration facilities.<sup>652</sup> Suez proposed analysing the market for incineration on both a national and regional basis.

### *Third party views*

- 9.178 We sent questionnaires to seven of the Parties' competitors and asked what proportion of the cost of providing incineration services was accounted for by transport costs; and whether or how transport costs affected the area over which they competed. Five of the six competitors that responded said that transport costs contribute to the cost of incineration and the viability of treatment method in a significant way, and only one said it was not affected by

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<sup>651</sup> FMN, [3<]

<sup>652</sup> Suez's response [3<]

transport costs. Competitors' estimates of transport costs ranged from 5% to 20% of the costs of providing incineration services

- 9.179 We consider the competitor evidence indicates that transport costs are significant and that distance affects competitiveness because facilities located less far away were preferable to customers because of lower transport costs for those customers, or better gate fees. As such, we consider that the competitor evidence suggests that transport costs are likely to limit the area over which suppliers are able to compete effectively.

#### *Catchment area analysis*

- 9.180 When assessing mergers that involve a number of local geographic markets, we may examine the geographic catchment area within which the great majority of the relevant site's custom is located. Catchment areas are a pragmatic approach to identifying the most significant competitive alternatives available to customers of the merger firms.
- 9.181 To calculate the catchment area in this case, we analysed evidence on the distance over which waste is transported to the Parties' ERFs, by using Parties' data on the customers that use merchant capacity, and their distances from each of the Parties' sites.<sup>653</sup> We then ordered customers by distance and identified the shortest travel time that would capture 80% of merchant volumes (called a national 80<sup>th</sup> percentile catchment area).<sup>654</sup> This analysis showed that 80% of the Parties' customers' waste travelled 106 minutes' drive time.
- 9.182 Veolia submitted that 80% catchment areas were inappropriate because it is a rule of thumb used as a standard for consumer markets, where customers may travel from locations other than their home; and waste travels long distances in this market.
- 9.183 We disagree with the Parties' arguments and consider 80% catchment areas to be a relevant way to capture the most significant competitive constraints that are likely to constrain the merger firms. Our approach to using 80% catchments in a commercial context is not unusual.<sup>655</sup> As set out above, the focus of the market definition is to identify the 'main significant competitive alternatives'. With respect to Suez's argument that customers transport waste

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<sup>653</sup> The analysis excludes capacity that is tied up in long-run contracts with local authorities, because we consider the competition for this capacity in section 2 of this chapter.

<sup>654</sup> In this case, we calculated a national catchment area using drive-time and volume of waste travelled. This was preferred to alternative measures, such as individual catchment areas for each ERF; or driving distance or straight line distance as the measure of distance; or number of customers.

<sup>655</sup> See [Ausurus Group Ltd and Metal & Waste Recycling](#), Final Report (14 August 2018), paragraph 6.64 and [Breedon Group/Cemex Investments Limited](#), Final Report (26 August 2020), paragraph 160.

long distances, we note that this is already captured by the catchment area analysis itself.

- 9.184 Our analysis of the distances over which waste is transported showed that the large majority of waste does not travel all over the UK, and only a minority of waste is transported beyond 106 minutes' drive time. Evidence from the Parties' competitors also indicates that transport costs are significant, and distance affects the competitiveness of ERFs. Those facilities that are less far away were preferable to customers, as it reduces transport costs for those customers.

*Provisional conclusion on geographic market*

- 9.185 On the basis of the above evidence, we provisionally find that ERFs located in different parts of the UK are unlikely to exert the same constraint, and that a national geographic market would not be appropriate, and that the ERFs located outside a customer's local area are unlikely to exert a significant competitive constraint on ERFs within the local area. We estimated the catchment size for disposal by incineration is a 106-minute drive time and consider local areas with a radius of this distance to be an appropriate area over which to conduct a competitive assessment.

*Provisional conclusion on market definition*

- 9.186 We provisionally conclude that the market definition is the supply of waste disposal services by incineration at a local level.

**Local area analysis**

- 9.187 In order to identify overlaps between the Parties' ERFs, we drew isochrones around each of the Parties' nine ERFs.<sup>656</sup> We identified 11 overlaps between the Parties' facilities. In this section, we provide an overview of our approach to analysing to what extent the Merger would give rise to competition concerns in these areas of overlap. We then set out the results and conclusions of our assessment.
- 9.188 Evidence from third parties indicates that price and distance are the key parameters of competition in this market (as discussed in paragraph 9.183) and did not point to any other significant aspects differentiating the offering of different ERFs or suppliers. In a relatively undifferentiated market such as this, the merged entity may have a greater incentive to restrict volumes to the

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<sup>656</sup> An isochrone is a line that connects points that are an equal travel time away from a focal point.

extent it has a large share of supply, as the benefits of a higher price would apply to a greater volume than would be the case for a smaller firm.<sup>657</sup> Also, where the market is concentrated among fewer rivals, price increases may be more likely.<sup>658</sup>

9.189 In this case, we assess the effect of the Merger on competition by calculating the Parties' combined market shares in each of the overlap areas. The higher the Parties' combined share, the greater the Parties' incentive to restrict volumes and increase price levels is likely to be.

9.190 In the remainder of this section, we explain our choice of concentration measure; then we set out the results and conclusions.

### *Concentration measure*

9.191 In our assessment, we considered multiple potential concentration measures: fascia count,<sup>659</sup> site count<sup>660</sup> and shares of supply by capacity, unweighted and weighted by distance. We considered shares of supply by capacity to be a superior measure to fascia and site count as it assumes that suppliers in the area exert a competitive constraint proportional to their merchant capacity (rather than an equal competitive constraint).

9.192 We then considered whether to use unweighted or linear distance-weighted shares of supply by capacity. Unweighted shares of supply would give the same weight to all capacity within the catchment area (ie capacity inside the catchment area would receive the same weight as capacity right next to the centroid facility), whereas linear distance-weighted shares would adjust the weights based on the distance between the ERF facility and the centroid facility.<sup>661</sup> Given that distance affects the competitiveness of an ERF, we considered that it would be more appropriate to use the linear distance-weighted shares of supply by capacity as the measure of concentration for our assessment.

9.193 [S] submitted that linear distance-weighted shares of supply produces unreliable and inappropriate results because in markets like this where there

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<sup>657</sup> CMA129 paragraph 4.38(b).

<sup>658</sup> CMA129, paragraph 4.38(a).

<sup>659</sup> This counts the number of suppliers in each area. Fascia counts may under or overstate the extent of competition in an area, as they treat each brand as being equally important and therefore do not reflect the differences between them. See [Sainsbury's/Asda](#), footnote 119.

<sup>660</sup> This counts the number of ERFs in each location. As an indicator for diversion, this concentration measure assumes all facilities in an area exert equal competitive constraint and would attract the same volume diversion if prices of the centroid facility were to increase.

<sup>661</sup> The linear weighting is achieved by adjusting the capacity of a facility by its proportional distance in the 80% travel time catchment area from the centroid facility: ie a competitor facility located half way (in terms of travel time) between the centroid facility and the 80% travel time catchment boundary would have its capacity reduced by 50%.

are relatively few customers, and where many are located long distances from the centroid, the weighted shares based on the centroid do not represent choices available to those customers.<sup>662</sup> Further, [3<] submitted that the only reasoning for the importance of distance comes from third parties.

9.194 In the Geographic market section, we set out the evidence on why distance affects the competitiveness of an ERF. In our provisional view, it is therefore appropriate to use linear distance-weighted shares as the concentration measure, as it reflects our considerations on the relative importance of distance in this market and is the best methodology available to us. Using unweighted shares of supply by capacity would ignore distance – which is a key parameter of competition – and would therefore be less suitable.

#### *Results of our local area assessment*

9.195 In this section, we set out the results of our local area assessment for the 11 overlaps. We used supplier merchant capacity data for Parties and third parties to estimate linear distance-weighted shares of supply within each catchment area.

#### *Weighted shares of supply results*

9.196 Table 9.6 below shows the linear distance-weighted shares of supply for all 11 overlap areas.<sup>663</sup>

**Table 9.6: Parties' local area shares of supply of capacity for incineration services, overlaps areas, 2020**

<i>Entity</i>	<i>Veolia or Suez facility</i>	<i>Combined weighted share of supply</i>	<i>Increment</i>
SELCHP	Veolia	[10-20%]	[0-5%]
Ferrybridge FM1	Veolia fuel supply agreement	[20-30%]	[0-5%]
Ferrybridge FM2	Suez fuel supply agreement	[20-30%]	[0-5%]
Ferrybridge FM2	Veolia fuel supply agreement	[20-30%]	[0-5%]
Leeds	Veolia	[20-30%]	[0-5%]
Kemsley	Suez fuel supply agreement	[20-30%]	[5-10%]
Kemsley	Veolia fuel supply agreement	[20-30%]	[5-10%]
Sheffield	Veolia	[30-40%]	[0-5%]
Avonmouth EfW	Suez fuel supply agreement	[40-50%]	[0-5%]
Teesside	Suez	[40-50%]	[10-20%]
Wilton 11	Suez	[50-60%]	[10-20%]

Source: CMA analysis of Parties customer and supplier data.

9.197 Table 9.6 shows that there are nine local areas that either have a low combined weighted share of supply (below 30%) or a low increment (below

<sup>662</sup> [3<]

<sup>663</sup> [3<] is excluded from the analysis. Where [3<] shares are reallocated to the Parties and third parties in proportion to their pre-Merger linear distance-weighted shares of supply, the Merged Entity at Wilton 11 and Teesside has combined shares of supply of more than 40%. See [3<]

5%) or both. On this basis, we do not believe that the Merger will likely give rise to an SLC in these local markets.<sup>664</sup>

9.198 In the other two local areas – Teesside and Wilton 11 – the combined weighted share of supply exceeds 40%, and the increment is more than 10%. Table 9.7 shows weighted shares for Wilton 11 and Teesside for the Parties and competitors.

**Table 9.7: Weighted shares of supply, by capacity for Wilton 11 and Teesside ERFs, 2020**

<i>Entity</i>	<i>Suez's Wilton 11</i>	<i>Suez's Teesside</i>
Veolia	[10-20%]	[10-20%]
Suez	[30-40%]	[20-30%]
Veolia and Suez combined	[50-60%]	[40-50%]
Increment	[10-20%]	[10-20%]
WTI	[40-50%]	[50-60%]

Source: Analysis of Parties customer and supplier data

9.199 The linear distance-weighted shares of supply show that the merged entity would be largest supplier at Wilton 11 and the second largest supplier at Teesside. Post-merger, WTI would be the only major competitor in each of these local areas.

#### *Veolia's views on Wilton 11 and Teesside local areas*

9.200 Veolia submitted that the weighted shares do not reflect any meaningful overlap between the Parties in the Wilton 11 and Teesside local areas due to several local area specific reasons.<sup>665</sup>

- (a) Amey's Allerton Park ERF is the closest facility to the Teesside and Wilton 11 ERFs. The estimated CMC at this Amey facility [X].
- (b) Spencer energy works is located just outside the 106 minute catchment area (118 minutes from Teesside ERF, and 122 minutes from Wilton 11 ERF). This facility came online in 2021 with an estimated merchant capacity of 182ktpa.
- (c) [X]
- (d) There are three active RDF export ports within the catchment areas of Teesside and Wilton ERFs. [X].

<sup>664</sup> While the CMA can be concerned with mergers involving small increments, this is typically where the combined market share is very high (ie the acquirer already is a very large or leading player), and/or the overall concentration is very high. In Avonmouth, where the increment is very small, and the combined weighted share is considerable (at [40-50%]), there are a number of other competitors in the area and so we would not consider this to be an area that would typically give us concern.

<sup>665</sup> Veolia's supplemental response [X]



(e) [REDACTED]

9.201 Veolia also submitted that incineration capacity is increasing which means it is conservative to make an assessment based on 2020 shares of supply. Veolia provided Tolvik data on 18 ERFs that have recently opened or are expected to open in the near future.<sup>666</sup>

*Our response to Veolia's representations*

9.202 In response to Veolia's argument with regard to entry (paragraph 9.201), we note that only one of these planned ERFs are likely to be within the Wilton 11 or Teesside catchment area. This planned ERF is being built by WTI and the extent it will provide a constraint in this area depends not only on its location, but also on its capacity. However, it is possible WTI will allocate some capacity to the Parties (and other third parties) as it does at the nearby Ferrybridge ERF. Therefore, the extent this would lessen concerns at Wilton 11 or Teesside depends on any plans for the Parties to have access to capacity at this new ERF. We intend to investigate this over the following weeks.

9.203 We have also considered Veolia's submissions set out in paragraph 9.200 and provide our responses below:

- (a) We have excluded Amey from our weighted shares of supply analysis because [REDACTED]. We do not consider that Veolia's argument in relation to the constraint from Amey's Allerton Park (see paragraph 9.200(a)) is relevant to our assessment.
- (b) With respect to the entry of new capacity by Spencer energy works (see paragraph 9.200(b)), we note that the ERF is outside our national catchment size of 106 drive minutes and therefore is not within the catchment area. Accordingly, no weight is given to that ERF when calculating the weighted shares of supply.
- (c) With regards to Veolia's point that [REDACTED].
- (d) As explained in market definition, we do not consider RDF export to be a demand side substitute to disposal by incineration, so we do not consider that it is relevant to our assessment that there are RDF export ports in these local markets (see paragraph 9.200(d)).

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<sup>666</sup> Veolia's supplemental response [REDACTED]

(e) With regards to Veolia's submission in paragraph 9.200(e), we note that the [X]. [X].

9.204 On the basis of the above assessment, we do not believe that Veolia's submissions require us to change our assessment or conclusions on the Wilton 11 or Teesside local areas. We consider that the combined weighted shares of [50-60%] and [40-50%] at Wilton 11 and Teesside respectively, and increment of [10-20%] and [10-20%] respectively will likely give rise to an SLC in these local markets.

### **Provisional conclusion**

9.205 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 waste disposal services by incineration in the Wilton 11 and Teesside local markets.

## 10. Supply of composting services

### Introduction

10.1 Composting is the process by which a part of the organic matter of waste is decomposed by the activity of microorganisms in the presence of oxygen. The resulting product of this process is compost which, depending on its quality, can be used for soil improvement. There are two broad categories of composting facilities in the UK:<sup>667</sup>

(a) **Composting of organic waste at in-vessel composting facilities**

process mixed organic waste, including food and garden waste, in an enclosed container or vessel.

(b) **Open-windrow composting facilities** process unmixed garden waste only.

10.2 There are currently around 50 IVC facilities and 250 OWC facilities in the UK.<sup>668</sup>

10.3 Disposal of waste through composting takes place at two types of facility, each with a different approach to allocation of capacity. In particular:

(a) PPP-backed composting facilities, commissioned by a local authority, with a proportion of capacity dedicated to the local authority that commissioned the infrastructure, with the remaining capacity sold to the merchant market.<sup>669</sup>

(b) Merchant composting facilities which are typically operated by regional suppliers and whose capacity is sold entirely on the merchant market.<sup>670</sup>

10.4 Customers of composting facilities are either local authorities, C&I customers or waste management companies.<sup>671</sup> Different types of customer have different approaches to purchasing access to composting capacity. Local authorities procure disposal services through composting using a tendering process, which may be for standalone composting services or in combination with other services.<sup>672</sup> C&I customers typically acquire disposal services through composting on the merchant market on an ad hoc, spot basis or by

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<sup>667</sup> FMN, [3<]

<sup>668</sup> FMN, [3<]

<sup>669</sup> FMN, [3<]

<sup>670</sup> FMN, [3<]

<sup>671</sup> FMN, [3<]

<sup>672</sup> FMN, [3<]

way of competitive tender.<sup>673</sup> Waste management companies such as Suez may also purchase composting capacity via agreements with third party composting facilities.<sup>674</sup>

- 10.5 Suppliers transport waste from customer sites to composting facilities using specialised vehicles.<sup>675</sup> Suppliers may transport this waste to a transfer station for temporary storage before transporting to the relevant composting facility.<sup>676</sup> The price the customer pays for a contract may reflect the supplier's transport costs (among other factors such as staff costs).<sup>677,678</sup>
- 10.6 In the following sections we discuss the market definition and carry out an assessment of competitive effects.

## **Market definition**

- 10.7 The CMA has not previously considered the frame of reference for composting services. The European Commission has previously identified the composting of fermentable waste (garden waste and bio-waste) as a separate segment in the broader material recovery market.<sup>679</sup>
- 10.8 The Parties overlap in the supply of disposal services through composting using both OWC and IVC facilities.<sup>680</sup>
- 10.9 We discuss product and geographic market definition for supply of disposal services through composting below.

## **Product market**

- 10.10 In this section, we consider whether supply of disposal services through composting using IVC and OWC are separate product markets.
- 10.11 Composting at IVC facilities processes comingled organic waste, including food and garden waste, in an enclosed container or vessel which is monitored

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<sup>673</sup> FMN, [3<]

<sup>674</sup> Suez's response [3<]

<sup>675</sup> FMN, [3<]

<sup>676</sup> FMN, [3<]

<sup>677</sup> FMN, [3<]

<sup>678</sup> Ie the cost of service depends on both the gate fee and cost of getting the waste to the composting facility.

<sup>679</sup> EC decision (3 August 2010), [COMP/M.5901 Montagu/GIP/Greenstar](#), paragraph 20.

<sup>680</sup> At the end of its phase 1 investigation into the Merger, the CMA did not receive evidence of significant competition between OWC and IVC facilities and therefore it considered these facilities separately. With regard to IVC, the CMA found at Phase 1 that both Parties operate such facilities but it found no local areas of concern (no local catchment areas where the Merged Entity's combined weighted share of supply would exceed 25% with a significant increment). As such, the Phase 1 assessment focused only on the supply of organic waste composting services at OWC facilities. Source: [Phase 1 Decision](#), paragraph 473 and footnote 574.

and temperature-controlled.<sup>681</sup> In contrast, OWC technology is used to process garden waste.<sup>682</sup>

### *Parties' views*

10.12 Veolia submitted that [REDACTED].<sup>683</sup>

10.13 Veolia submitted that garden waste collected separately was normally treated in an OWC facility, whilst food waste and comingled food and garden waste is treated at IVC facilities.<sup>684</sup>

10.14 Veolia submitted that OWC technology was used to process garden waste in an open environment in which the material breaks down in the presence of oxygen, whereas IVC technology was used to process both garden waste and food waste in an enclosed, monitored and temperature-controlled environment.<sup>685</sup> OWC treatment is [REDACTED] cheaper than IVC treatment, [REDACTED].<sup>686</sup>

10.15 Veolia submitted that [REDACTED]. [REDACTED]. Suez submitted that despite IVC treatment being more expensive than OWC, some cost savings can be made through efficient collection planning and [REDACTED].<sup>687</sup> However, Suez said it expected the share of garden waste in IVC facilities to fall in the future as government policy encouraged separate collection and treatment of food and garden waste.<sup>688</sup>

### *Third party views*

10.16 We sent questionnaires to the Parties' customers in the Midlands, which is the only region in which the Parties' OWC facilities overlap.<sup>689</sup> We asked customers whether they considered IVC was an adequate substitute for OWC and received six responses.<sup>690</sup> Five customers said they currently processed garden waste at OWCs (one customer did not provide a clear response).<sup>691</sup> These customers said they would either not consider processing garden

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<sup>681</sup> FMN, [REDACTED]

<sup>682</sup> FMN, [REDACTED]

<sup>683</sup> Veolia's response [REDACTED]

<sup>684</sup> FMN, [REDACTED]

<sup>685</sup> FMN, [REDACTED]

<sup>686</sup> Veolia's OWC gate fees are [REDACTED]

<sup>687</sup> Suez response [REDACTED]

<sup>688</sup> Suez response [REDACTED]

<sup>689</sup> [Phase 1 Decision](#), para 500.

<sup>690</sup> Question wording: *Please indicate if you consider in-vessel composting (IVC) facilities to be an adequate substitute for any open-windrow composting (OWC) facilities that you procure. In doing so, please: (a) indicate which of your composting material is processed at (i) an OWC facility; (ii) an IVC facility; and (iii) at both. (b) If your garden waste is currently processed at an OWC, please explain if you have considered processing your waste at an IVC instead; (c) Please explain what factors you consider when choosing between a OWC facility and a IVC facility.*

<sup>691</sup> CMA Phase 2 Customer questionnaire for composting, [REDACTED].

waste at an IVC due to the cost, or would undertake a review considering cost and location as the driving factors.<sup>692</sup> Specifically:

- (a) Solihull said it would not consider sending garden waste to be processed at an IVC as it is more expensive and not necessary when processing garden waste alone with no food waste content.<sup>693</sup>
- (b) Nottingham said it has considered processing garden waste at an IVC in 2004 but found it unaffordable.<sup>694</sup>
- (c) Shropshire said unit costs for IVC are higher than OWC so would not expect to move more waste to IVC unless this was necessary (ie if garden waste was combined with food waste).<sup>695</sup>
- (d) Newcastle-under-Lyme said it would not consider IVC for processing garden waste on its own, as IVC is not a good technology as it is more costly than OWC.<sup>696</sup>
- (e) West Northamptonshire Council said that it will review disposal as part of its forthcoming waste strategy and will consider cost and location.<sup>697</sup>

10.17 We also asked competitors whether they considered IVC to be an adequate substitute for OWC. Two competitors submitted views broadly consistent with those provided by customers.<sup>698</sup>

- (a) Biffa said that operating costs are typically higher at an IVC due to 'high capital cost' in setting up IVC infrastructure versus an OWC operation.<sup>699</sup>
- (b) Urbaser said OWC would normally be the preferred option for garden waste because of its 'lower investment and operational cost'.<sup>700</sup>

### *Our assessment*

10.18 We consider OWC composting services to be separate from IVC composting services for the following reasons:

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<sup>692</sup> CMA Phase 2 Customer questionnaire for composting, [3<].

<sup>693</sup> Solihull Metropolitan Borough Council [3<]

<sup>694</sup> Nottinghamshire County Council [3<].

<sup>695</sup> Shropshire Council [3<]

<sup>696</sup> Newcastle-under-Lyme Borough Council [3<]

<sup>697</sup> West Northamptonshire Council [3<]

<sup>698</sup> Three further competitors told us that did not process garden waste at an OWC (Amey, Viridor and FCC). Beauparc did not provide a clear response.

<sup>699</sup> Biffa's [3<]

<sup>700</sup> Urbaser's [3<]

- (a) On the demand-side, if composting services are required for comingled food and garden waste, only IVCs can be used and OWCs are not a substitute for IVCs.
- (b) If composting services are required for garden waste, while IVC and OWC facilities can be used, the evidence available to us consistently shows that processing garden waste at IVCs is more expensive than doing so at OWCs. Although [REDACTED], this will depend on the local authority and current government policy encourages separate collection and treatment of garden waste. Thus, there may be many areas where it is not cost effective to use an IVC for garden waste.

10.19 With regard to IVC facilities, both Parties operate such facilities but at Phase 1 the CMA found no local areas of concern.<sup>701</sup> As such, we focused our investigation on the supply of organic waste composting services at OWC facilities.

#### *Provisional conclusion on product market*

10.20 On the basis of the above evidence, we provisionally find that the relevant product market is OWC composting services.

#### **Geographic market**

10.21 The CMA had not previously considered the geographic frame of reference in this market.<sup>702</sup>

#### *Parties' views*

10.22 Veolia submitted that [REDACTED].<sup>703</sup> [REDACTED]. Suez submitted that waste brought onto its biological treatment facilities was [REDACTED] sourced from the region where the facility is located.<sup>704</sup>

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<sup>701</sup> [Phase 1 Decision](#), paragraph 473 and footnote 574. In IVCs, at the end of its Phase 1 investigation, the CMA found no local catchment areas where the Merged Entity's combined distance weighted share of supply would exceed 25% with a significant increment.

<sup>702</sup> [Phase 1 Decision](#), paragraph 481

<sup>703</sup> FMN, [REDACTED], [Phase 1 Decision](#), paragraph 480

<sup>704</sup> Suez response [REDACTED]

## *Our assessment*

### *Third party views*

- 10.23 We asked all of the Parties' customers in the Midlands about whether it was important for a waste management company to have a composting facility in the local area. Out of the five that responded to our question, four highlighted the importance of having local composting facilities for reasons including reduced cost, reduced environmental impact and issues with odour.<sup>705</sup>
- 10.24 We asked 26 OWC suppliers in the Midlands about the importance of transport costs and how these affect the area over which they compete. Of six that responded, two indicated that either transport costs were important for customers or that transport costs restricted the distance over which waste is transported. Four further suppliers indicated the question was not applicable to them.<sup>706</sup>
- 10.25 Overall, evidence from third parties indicates that distance is an important factor in determining which OWC facility is used, and that distance affects the competitiveness of OWCs. The responses indicate that the transport costs are likely to be borne by the customer and those facilities that are less far away were preferable to customers, as it reduces transport costs for those customers.

### *Catchment area analysis*

- 10.26 To calculate the catchment area in this case, we analysed evidence on the distance over which waste is transported to the Parties' OWCs, by using the Parties' data on the distances from each of the Parties' sites to its customers.<sup>707</sup> We then ordered customers by distance and identified the shortest travel time that would capture 80% of volumes processed (called a national 80th percentile catchment area).<sup>708</sup>
- 10.27 This analysis showed that 80% of the Parties' customers' waste travelled 46 minutes' drive-time. Our analysis of the distances over which waste is transported showed that the large majority of waste does not travel widely

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<sup>705</sup> The other customer's response was not clear.

<sup>706</sup> Presumably because they do little collection of waste (ie it is typically dropped off).

<sup>707</sup> We used the total waste processed instead of merchant capacity as Suez was unable to provide a breakdown of only merchant capacity.

<sup>708</sup> In this case, we calculated a national catchment area using drive-time and volume of waste travelled. This was preferred to alternative measures, such as individual catchment areas for each site; or driving distance or straight line distance as the measure of distance; or number of customers.



across the UK, and only a minority of waste is transported beyond 46 minutes' drive time.

*Provisional conclusion on geographic market*

10.28 On the basis of the evidence summarised above, we provisionally consider that demand is local in nature (in particular because of the importance of proximity to customers because of factors such as transportation costs). On this basis, we have used catchment areas to identify the most significant competitive alternatives available to customers of the merger firms. We estimated the catchment size for disposal by composting is a 46-minute drive time and therefore use this as the basis for our competitive assessment.

*Provisional conclusion on market definition*

10.29 We provisionally conclude the market definition to be the supply of OWC composting services in the local area.

## **Local area analysis**

10.30 In order to identify overlaps between the Parties' OWC sites, we drew isochrones around each of the Parties' OWCs. On this basis, we identified four overlaps between the Parties' facilities.

10.31 Evidence from the Parties and third parties indicates that price and distance are the only key parameters of competition in this market (as discussed at paragraph 10.23 to 10.25 above) and did not point to any other significant aspects differentiating the offering of different OWCs or suppliers. In a relatively undifferentiated market such as this, the merged entity may have a greater incentive to restrict volumes where it has a large share of supply, as the benefits of a higher price would apply to a greater volume than would be the case for a smaller firm.<sup>709</sup> Also, where the market is concentrated among few rivals, price increases may be more likely.<sup>710</sup> Finally our assessment is based on the change in competitive constraints as a result of the merger, and therefore a higher increment is likely to indicate a higher level of concern.<sup>711</sup>

10.32 In this case, we assess the effect of the Merger on competition by calculating the Parties' combined market shares by capacity in each of the local areas in which their facilities overlap. The higher the Parties' combined share, the greater the Parties' incentive to restrict volumes and increase price levels is

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<sup>709</sup> [CMA129](#) paragraph 4.38(b).

<sup>710</sup> [CMA129](#), paragraph 4.38(a).

<sup>711</sup> See for instance [Breedon/Cemex](#), paragraph 178.

likely to be. For the reason stated in paragraph 10.31 above, we have also considered the increment and number of competitors.

10.33 Given that we adopted the same methodological approach for this local area assessment as for disposal by incineration analysis (see chapter 9), we have not set our methodological approach in detail in this chapter. In the remainder of this section, we set out below the results and conclusions.

### ***Concentration measure***

10.34 For the reasons set out in paragraphs 9.191 to 9.195, we consider that it is appropriate to use linear distance-weighted shares of supply by capacity, as the measure of concentration for our assessment.

### ***Results of our local area assessment***

10.35 In this section, we set out the results of our local area assessment for the four overlaps.

10.36 We used supplier merchant capacity data for Parties and third parties to estimate linear distance-weighted shares of supply, by capacity within each catchment area.

### ***Weighted shares of supply results***

10.37 Table 10.1 below shows the linear distance-weighted shares of supply for all four overlaps.<sup>712</sup>

**Table 10.1: Parties' local area shares of supply for composting services (OWCs), overlaps, 2020**

<i>Entity</i>	<i>Veolia or Suez facility</i>	<i>Catchment area size</i>	<i>Combined share of supply</i>	<i>Increment</i>
Ling Hall	Veolia	46 mins	[30-40%]	[5-10%]
Packington	Suez	46 mins	[30-40%]	[10-20%]
Telford	Veolia	46 mins	[30-40%]	[0-5%]
Coven	Veolia	46 mins	[30-40%]	[0-5%]

Source: Analysis of Parties customer and supplier data

10.38 As noted in paragraphs 10.31 and 10.32, in relatively undifferentiated markets such as this, shares of supply and the concentration of rivals are the key factors in assessing whether an SLC is likely. As such we do not consider the Parties are closer than the distance weighted shares of supply suggest. Therefore, in assessing whether the merger will provisionally result in an SLC in any of these local areas we have considered the weighted combined share,

<sup>712</sup> [3<]. However, this does not impact the local area shares in the overlap areas. Note of call [3<]. [3<].

the increment and number of competitors operating in the local area. Our starting point is that we would be concerned if the combined share is particularly high, unless the increment is very low and there are a number of competitors in the local area. We consider each of the four areas in turn.

- 10.39 While the weighted share in Coven is [30-40%], the increment arising from the merger is only [0-5%]. There are 8 competitors other than the Parties. Taking into account the number of competitors in the market, and Veolia's relatively modest share (suggesting customers have a choice of other suppliers in the area), and the low increment, we therefore consider that the Merger will not result in an SLC in this area.<sup>713</sup>
- 10.40 In Telford the weighted share is [30-40%] and the increment is less than [0-5%]. There are 6 competitors other than the Parties. As with Coven, given the modest share, low increment, and the number of competitors we consider that the Merger will not result in an SLC in this area.
- 10.41 The combined weighted share in Packington is [30-40%], while the increment is [10-20%]. There are 12 competitors other than the Parties operating in the catchment of Packington. Taking both the modest level of the shares and the number of competitors in the area, we consider that the Merger will not result in an SLC in this area.
- 10.42 The combined weighted share in Ling Hall is [30-40%] and the increment is [5-10%]. There are 10 competitors other than the Parties operating in the catchment of Ling Hall. As for Packington, taking both the modest level of the shares and the number of competitors in the area, we consider that the Merger will not result in an SLC in this area.

## **Provisional conclusion**

- 10.43 Based on the above evidence we provisionally find that the Merger is not likely to give rise to horizontal unilateral effects in the supply of OWC services.

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<sup>713</sup> While the CMA can be concerned with mergers involving small increments, this is typically where the combined market share is high (ie the acquirer has market power), and/or the overall concentration is high.

## 11. Supply of non-hazardous commercial and industrial waste collection services

### Introduction

- 11.1 This chapter considers the supply of non-hazardous commercial and industrial (**C&I**) waste collection services. This service involves the collection of mixed and specific waste from C&I customers (including offices and shops).
- 11.2 C&I customers can range from local SME businesses, to large national multi-site businesses such as supermarkets. Suppliers in this market also vary in their size and scope. On the one hand, some suppliers are small and operate in a specific local area or region, while other suppliers are large and operate across the UK. We recognise that some C&I customers use intermediaries such as brokers facilities management (**FM**) companies for their C&I services. These intermediaries then subcontract services to waste management companies. We consider the constraint that brokers and FM companies provide in our assessment.
- 11.3 As set out in market definition, we consider that the conditions of competition may vary depending on customers' and suppliers' geographic coverage. In the CMA's Phase 1 Decision<sup>714</sup>, the CMA considered that the competition concerns related primarily to larger customers that operated in multiple parts of the UK. In this chapter, we focus our assessment on these customers. Veolia categorises customers as 'national accounts' where [X]. Other suppliers such as Suez and Biffa also have a national customer category but have not defined this customer type in a precise manner. For the purposes of our analysis, we proxy a national customer to be one that operates in two or more regions of the UK. In what follows our assessment is focused on the effect of this Merger on national C&I customers, as defined above.
- 11.4 The chapter is structured as follows:
- (a) Market definition;
  - (b) Indicators of competition;
  - (c) Assessment;
  - (d) Provisional conclusion; and

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<sup>714</sup> CMA's [Phase 1 Decision](#) , page 65

- (e) Entry and expansion.

## Market definition

### *Product market definition*

- 11.5 The Parties overlap in the supply of non-hazardous C&I waste collection services.
- 11.6 For the reasons set out in chapter 7, we consider that C&I waste collection services should be considered separately from municipal waste collection.
- 11.7 Below, we consider whether:
- (a) there are differences in the competitive conditions according to customers' and suppliers' geographic scope;
  - (b) it is appropriate to segment the product market by type of waste collected; and
  - (c) brokers and facilities management companies should be included within the same product market definition as waste management companies supplying C&I services.

### *Customers' and suppliers' geographic coverage*

#### *Parties' views*

- 11.8 Veolia submitted that many suppliers can and do compete for national customers and neither Veolia nor Suez has national coverage.<sup>715</sup>

#### *Third party views*

- 11.9 Evidence gathered from the 21 national customers which responded to our investigation indicates that geographical reach is an important consideration when deciding which supplier to use for their waste collection services.<sup>716</sup> Reasons for this include:

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<sup>715</sup> Veolia response [3<]

<sup>716</sup> The evidence from these 21 customers has been gathered across the CMA's Phase 1 and Phase 2 investigations.

(a) customers want a consistent service across their business sites, including a consistent approach to tracking and compliance with environmental regulations;<sup>717</sup>

(b) they want to minimise the distance that their waste travels<sup>718</sup>; and

(c) they want to keep subcontracting to a minimum.<sup>719</sup>

11.10 A majority of national customers that responded (nine out of 13) considered it important to have a single supplier to provide waste collection services across all their sites.<sup>720</sup> Reasons for this included because:

(a) it was easier to manage a single supplier rather than multiple suppliers from an administrative perspective;<sup>721</sup>

(b) having a single supplier had cost benefits or economies of scale;<sup>722</sup> and

(c) having a single supplier ensured consistency across their business sites.

11.11 Further evidence gathered from competitors during our investigation indicates that the competitor set differs depending on the geographic scope of the customer, and suggests that the number of competitors decreases as the geographic scope of the customer increases:

(a) Only one competitor ([X]) said it was able to compete directly for customers, using its own facilities, covering all or a large part of the UK,<sup>723</sup> and that the choice of suppliers available to national customers is more limited.<sup>724</sup> All other respondents said they do not compete for national customers or only do so via a broker.

(b) A competitor ([X]) told us that competition for smaller customers, ie SMEs, tends to be regional.<sup>725</sup>

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<sup>717</sup> [X] and [X] responses to CMA C&I customer questionnaire.

<sup>718</sup> [X] and [X] response to CMA C&I customer questionnaire.

<sup>719</sup> [X], [X], [X] responses to C&I customer questionnaire.

<sup>720</sup> Four of the thirteen national customers which answered this question did not consider it important to have a single supplier across all their business sites. One customer ([X]) said that while it is important to reduce the number of service providers, no company offers full national coverage. The remaining three customers stated that having a single supplier is not as important as other factors including meeting environmental and sustainability credentials, providing good value, and providing the best service in the local area.

<sup>721</sup> [X], [X], [X], [X], [X], [X], [X] responses to CMA's C&I customer questionnaire.

<sup>722</sup> [X], [X], [X] responses to CMA's C&I customer questionnaire.

<sup>723</sup> [X] response to Phase 1 CMA Collection competitors questionnaire.

<sup>724</sup> Note of call [X]

<sup>725</sup> Note of call [X]

- (c) [X] stated its main competitors for national customers are Veolia, followed by brokers, while Suez competes for ‘multi-regional’ customers.<sup>726</sup>

#### *Provisional conclusion*

11.12 Based on the evidence above, we consider that there are differences in competitive conditions for non-hazardous C&I waste collection depending on a customers’ or suppliers’ geographic reach. As a result, we consider that it is appropriate to take into account customers’ and suppliers’ geographic reach in our assessment in this chapter. For the reasons set out in paragraph 11.3, we have focused our analysis on national customers that operate in two or more regions.

#### *Type of waste*

##### *Parties’ views]*

11.13 Veolia submitted that the appropriate product market is the supply of non-hazardous C&I waste collection services without any further segmentation by type of waste.<sup>727</sup> Further, Veolia submitted that:

- (a) the logistics of collection were broadly similar regardless of the type of waste collected; and
- (b) C&I customers organise calls for tenders in relation to all their waste without distinguishing between types of waste.

11.14 Veolia, however, also submitted that national C&I customers tended to be large companies with sophisticated procurement teams and could split the collection services into lots by the different waste streams.<sup>728</sup> Veolia provided the examples of [X], [X], and [X] of customers which split their contracts into lots by different waste streams.

11.15 Veolia also submitted, on 13 May 2022 an analysis that identified the C&I suppliers for the 10 largest grocery chains, the 20 largest restaurant chains, and the five largest pub chains operating in the UK.<sup>729</sup> According to Veolia, some of these businesses frequently split contracts between several different waste management providers, by waste stream and geography. It is not clear from Veolia’s submission whether the customers have split tenders into lots

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<sup>726</sup> Note of call [X]

<sup>727</sup> FMN, [X]

<sup>728</sup> Veolia response [X]

<sup>729</sup> Veolia supplemental response [X]

(by waste stream and region) or whether the suppliers were subcontracted for parts of a larger contract. As it was not possible to verify the sources underpinning Veolia's submission before the publication of this provisional findings report, it does not form part of our assessment in this Chapter.

### *Review of Parties' contracts*

11.16 We asked the Parties to provide contract data for all of their current C&I waste that had an annual contract value in excess of £250,000.<sup>730</sup> Our analysis found that the majority C&I customers procure several waste streams together:

- (a) Veolia collects, on average, [X] different waste streams.<sup>731 732</sup> Overall, [X] out of [X] of Veolia's national customer contracts ([X]) included the collection of at least four waste streams.<sup>733</sup>
- (b) Suez collects, on average [X] different waste streams from its national customers.<sup>734</sup> Overall, [X] of Suez's national customer contracts included at least [X] waste streams.

### *Third party views*

11.17 The majority of the national customers that responded to the CMA's questionnaire (eight out of 14) indicated that having a single supplier collecting all of their waste streams was preferable to having multiple suppliers.<sup>735</sup>

### *Provisional conclusion*

11.18 On the basis of the above evidence, our provisional view is that it is not appropriate to segment the product market definition by waste type.

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<sup>730</sup> We chose the £250,000 annual contract value as a materiality threshold to reduce the administrative burden on the Parties. As explained in the introduction to this chapter, the focus of our analysis is on the larger C&I customers and the £250,000 threshold is a proxy for these customers.

<sup>731</sup> [X] of Veolia's [X] national customer contracts analysed included the collection of only one waste stream and [X] contract included the collection of two waste streams.

<sup>732</sup> As explained above, in this chapter, we have focused our analysis customers with a wider geographic reach, referred to as national customers. Although we consider that there is not a bright line distinction between national, regional, and local customers, for the purposes of this particular analysis, we have considered national customers to be any customer which is active in more than one region of the UK, in line with the Parties' datasets.

<sup>733</sup> As explained above, our analysis in this Chapter is focused on national customers. Although we consider that there is not a bright line distinction between national, regional, and local customers, for the purposes of this analysis, we have considered national customers to be any customers which is active in more than one region of the UK.

<sup>734</sup> [X]

<sup>735</sup> Responses to the CMA's C&I waste customer questionnaire.



## *Competition from brokers and facilities management companies*

### *Parties' views*

- 11.19 Veolia submitted that suppliers could compete for national accounts customers by subcontracting to other providers and that brokers and FM companies are strong competitors for national customers.<sup>736</sup> In particular, Veolia submitted that:
- (a) brokers and FM companies are particularly well-placed to serve national customers by subcontracting regional and local suppliers while allowing customers to deal with a single supplier (the broker or FM company);
  - (b) brokers and FM companies exert strong competitive pressure on waste management companies. This is evidenced by Veolia's tender data which shows that brokers participate in tenders against Veolia more often than any single competitor other than Biffa (see paragraphs 11.93 to 11.95 for Veolia's tender data submissions). Veolia faced brokers in [%] of tenders for national accounts customers according to Veolia's tender data; and
  - (c) brokers have advantages over Veolia and other waste management companies because they can utilise the most efficient supplier in each area.
- 11.20 In the same submission detailed in paragraph 11.15, Veolia indicated that some of the businesses included in its analysis procured their C&I services from brokers.<sup>737</sup>
- 11.21 Veolia submitted that the only supplier that has close to full national coverage is Biffa which covers 95% of UK postcodes. All other suppliers vary in their geographic coverage and rely on subcontracting to provide services to customers with a large geographic footprint.
- 11.22 Veolia submitted that around [%] of its C&I revenues for national accounts are subcontracted to other suppliers. Further, as regards Suez, Veolia submitted that [%] (by revenue) of Suez's customers that are active in [%] or more regions are served by Suez with some element of subcontracting.<sup>738</sup> Veolia submitted that in its experience, [%].<sup>739</sup> Therefore, Veolia submitted that it is irrational for the CMA to suggest that some customers have a

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<sup>736</sup> Veolia response [%]

<sup>737</sup> Veolia supplemental response [%]

<sup>738</sup> [Overview submission](#) by Veolia, 7 March 2022, paragraph 82.

<sup>739</sup> Veolia response [%]

preference for a single supplier nationwide and that Suez is only one of three (alongside Veolia and Biffa) that can do this.<sup>740</sup>

11.23 Suez, however, submitted that the more subcontracting a supplier does, [redacted].<sup>741</sup> This is because some customers have a preference for minimising the amount of subcontracting that a supplier undertakes. In particular, some customers request reassurances about how and where their waste will be disposed. Suez stated it can provide these reassurances to customers since it is active across the waste management supply chain, whereas brokers [redacted]. Suez further submitted that this is likely to become increasingly important with the introduction of the new Environment Act 2021 which is seeking to increase the UK's recycling rate up to 65 percent.<sup>742</sup> This means that it will be more important for waste management companies and their customers to understand and control where their waste is treated.

11.24 In the following sub-section, we assess the extent to which brokers and FM companies are able to compete for national customers in three ways: (i) the extent to which customers prefer their C&I waste collection supplier to undertake the services (i.e. self-performance rather than sub-contracting) and whether these preferences reduce the ability of brokers and FM companies to compete for national customers; (ii) third party views on the credibility of brokers and FM companies; and (iii) evidence on whether brokers and FM companies actually compete for national customer contracts.

#### *Subcontracting and self-performance*

- *Third party views*

11.25 In paragraph 11.10, we explained that customers typically prefer to have a single supplier. Evidence from national customers indicated that the Parties – where they were the sole supplier of C&I services – have subcontracted part of the service to other waste management companies.<sup>743</sup> For example [redacted] told us that suppliers can subcontract to areas where they require additional strength.

11.26 However, some national customers indicated that they have a preference for their supplier to self-perform the contract, or by corollary, sub-contract less of the services to other waste management companies. [redacted] explained that a single supplier brought benefits from a simplicity perspective, for example

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<sup>740</sup> Veolia response [redacted].

<sup>741</sup> Suez main party hearing [redacted].

<sup>742</sup> [Environment Act 2021 - Parliamentary Bills - UK Parliament](#)

<sup>743</sup> [redacted], [redacted], [redacted], and [redacted] response to CMA's C&I customer questionnaire.

when implementing changes in their [X] service centres. [X] said that it would want a 'single provider that can manage all of our waste requirements' and for only a 'small proportion of services' to be provided by subcontractors. [X] also told us that it was important to use a single supplier, as it enabled a 'single, clear strategic direction' with the supplier. It made it 'easier to negotiate one single arrangement' and liaise with one single supplier. In [X] view, it ensured consistency of service across its estate when working with only one supplier.

11.27 Evidence from C&I suppliers indicate that some customers prefer suppliers that self-perform contracts rather than sub-contract. For example:

- (a) [X] submitted that it sells itself to customers on its ability to self-perform its collection service.<sup>744</sup> [X] further submitted that some customers have more confidence in a service which is self-delivered. [X] noted that customer concerns over health & safety would be addressed by contracting to a national supplier. However, [X] also stated that as data and technology improves, the broker model can be more effective. This is because local operators can provide real time confirmation of jobs, provide weight data, etc, meaning the experience of using a broker may not be so different from using a supplier which self-performs.
- (b) [X] similarly submitted that four or five years ago, many customers had reservations about brokers because they do not operate their own collection trucks.<sup>745</sup> However, [X] also noted that the use of real time data allows it to demonstrate to customers that it can monitor service levels which has helped to alleviate the concerns of some customers.

11.28 The above evidence indicates that some customers have a preference for suppliers that have the ability to self-perform or substantially self-perform, for various reasons including concerns about the level of performance of the supplier and the traceability of waste. However, data and technology is potentially helping to alleviate the concerns of some customers. Even so, suppliers that self-perform, such as [X], market themselves to customers on their ability to self-perform.

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<sup>744</sup> Note of call [X]

<sup>745</sup> Note of call [X]

- *Parties' Internal Documents*

11.29 The Parties' internal documents suggest that some customers mainly prefer suppliers that self-perform or substantially self-perform contracts rather than subcontract. For example:

- (a) The importance of self-supply is also reflected in a Veolia internal document from February 2022 which discusses [X] as a potential new client.<sup>746</sup> Veolia notes Suez as being the current supplier and that Suez subcontracts more than [X]. [X]. Veolia's internal document also stated that it has a self-performance level of [X]%, meaning it has the internal capability to self-perform the contract.
- (b) Another Veolia internal document contains a SWOT analysis of the competitors it is facing in an upcoming tender for [X].<sup>747</sup> When discussing its strengths, Veolia states that its self-delivery model increases its reliability. It identified [X] and [X] as national competitors.

- *Assessment of contract data*

11.30 As set out in the 'Share of supply' section, our analysis of the contract data from the Parties and their competitors supports the view that waste management firms subcontract a proportion of their services to other waste management companies. For national customers, we found that Veolia subcontracts [20-30%] of the total value of its C&I waste collection operations, with the equivalent figures for Suez and Biffa being [30-40%] and [5-10%] respectively. By contrast, brokers and FM companies act as intermediaries and subcontract 100% of the C&I waste collection services that they provide to their customers.

11.31 While the evidence indicates that subcontracting is commonly utilised by the Parties and Biffa when serving national customers, it also illustrates that the large waste management companies (that self-perform most of the services) operate a different business model from intermediaries such as brokers and FM companies that subcontract all. This distinction between waste management companies and the intermediaries is relevant to the competitive constraint that they place on one another. As set out above, the Parties and third parties have indicated that customers have different preferences, including some that require or prefer self-performance by, or substantially by,

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<sup>746</sup> Veolia internal document, [X]

<sup>747</sup> Veolia internal document, [X]

a single supplier. A broker model is unlikely to cater for customers that have a preference for self-performance.

- *Provisional view*

11.32 Evidence from third parties and the Parties' internal documents indicates that some national customers have a preference for a single supplier that self-performs, or substantially self-performs the C&I services. Our assessment of the contract data indicates that the Parties and Biffa self-perform most of the contract, while intermediaries sub-contract all of their services. Intermediaries therefore will not be able to cater for those national customers that have a preference for a single supplier that self-performs most or all of the services.

*Third party views on the credibility of brokers and FM companies*

11.33 We asked customers whether they would consider using a broker and/or FM company in the future to manage their waste collection services. A large majority of customers (eight out of twelve) that responded to this question said that they would consider using a broker or FM company.<sup>748</sup> However, four of these eight customers said they would only consider using a broker or FM company if it made commercial sense<sup>749</sup> and two of the customers said they would be happy if service levels could be guaranteed by the broker or FM company.<sup>750</sup>

11.34 Four of the customers said they would not consider using a broker or FM company. One customer ([redacted]) stated this was because they had often found brokers to be more expensive than dealing directly with a waste contractor. Similarly, [redacted] told us that it is unlikely to consider using a broker because it is more commercially and environmentally beneficial for it to deal with waste management providers directly. The other two customers ([redacted] and [redacted]) have not found it necessary to consider the use of a broker or FM company. [redacted] told us that while there were possible benefits to working via a broker, it did not outweigh the benefits of using a single-supplier model.<sup>751</sup>

11.35 Further, we asked customers which suppliers they consider to be credible if they were to re-tender their current C&I waste collection contracts in the near

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<sup>748</sup> [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] responses to CMA's C&I customer questionnaire.

<sup>749</sup> [redacted], [redacted], [redacted], [redacted] responses to CMA's C&I customer questionnaire.

<sup>750</sup> [redacted] and [redacted] responses to CMA's C&I customer questionnaire.

<sup>751</sup> See paragraph 11.23 for more detail on the benefits of using a single self-performing supplier.

future.<sup>752</sup> Only one broker was listed more than once by the nine national customers that answered this question: Novati which was listed by two customers.<sup>753</sup> One customer gave a lower rating to Novati than Suez and Biffa and noted that Novati, as a waste broker, placed an additional barrier between the customer and the contractor. This led to a lack of control and longer response times if any issues arise.<sup>754</sup> The other customer ranked Novati ahead of Biffa and Suez but behind Veolia, but did not provide an explanation for these rankings.<sup>755</sup>

- 11.36 Overall, responses from customers indicate that they had mixed views on brokers. A third of respondents indicated a preference to not use brokers, a third said they would consider using them if it was commercially beneficial, and a third said they would without explanation.

*Evidence on whether brokers and FM companies compete for and win national contracts*

- 11.37 As set out in the shares of supply section (see paragraph 11.84 below), we asked the Parties' C&I competitors (as identified by them) to provide data on the contracts they currently hold that have an annual value of more than £250,000. Out of the 10 competitors that responded, one was a broker ([X]) and the other two were FM companies ([X] and [X]). Out of those three, only [X] and [X] had C&I contracts above £250,000.
- 11.38 [X] currently has seven customers that are active in more than one region of the UK.<sup>756</sup> In total, these contracts generated revenues of £[X] million per annum for [X], with its largest contract being with [X] (£[X] million per annum). [X] told us that it was the leading broker in the UK and that no other waste broker was anywhere near its size. [X] also told us that it does not compete for large national tenders such as [X] and [X] because it does not believe it will win because Biffa or Veolia are the only suppliers likely to win

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<sup>752</sup> The question asked was: *Using the table below, please list the suppliers you would consider as credible if you were to re-tender the services listed in question 2 in the near future (please pick up to three contracts that need to be re-tendered soonest). In doing so, please:*

a. *List the type of waste that would need to be collected as part of the tender;*  
b. *List the criteria you would use to assess the bidders;*  
c. *Rank the suppliers in order of preference;*  
d. *Indicate on a scale from one to five (where one is not very strong and five is very strong);*  
e. *Provide an explanation for your rating. In doing so, please refer to the selection criteria you would consider to be important in such a tender.*

<sup>753</sup> We asked a similar question to customers during the CMA's Phase 1 Investigation and only one broker was listed by more than one customer (out of seven responses): Reconomy received three mentions.

<sup>754</sup> [X] response to CMA's C&I customer questionnaire.

<sup>755</sup> [X] response to CMA's C&I customer questionnaire.

<sup>756</sup> [X] response to CMA's C&I customer questionnaire.

<sup>757</sup> As explained below, for the purposes of our analysis, we have adopted a materiality threshold of £250,000 to ensure the largest contracts are captured in our analysis.

those contracts.<sup>758</sup> We also note that [X] subcontracts to Veolia and Suez in all of the national customer contracts it holds. On average, it sub-contracts [X]% of the value of its national customer contracts to Veolia, Suez, and Biffa meaning that [X] is not a fully independent constraint on the Parties and Biffa.

11.39 [X] told us that it has [X] customers that are active in more than one region of the UK and which are worth more than £250,000 per annum.<sup>759</sup> These contracts generated £[X] million per annum in revenue for [X].

11.40 Veolia identified SWRNewstar and Simply Waste as credible bidders, but we note that Biffa acquired both, in March 2019 and October 2020.<sup>760,761,762</sup> Therefore, we do not consider that these brokers will be independent from the constraint that Biffa imposes on the Parties.

11.41 Overall, the evidence indicates that only a few brokers and FM companies compete for and win contracts for national C&I customers, and those brokers/FM companies win far fewer contracts than the Parties and Biffa. Further, the brokers themselves also subcontract the Parties for collection services for some contracts.

#### *Provisional conclusion on brokers and FM companies*

11.42 The evidence indicates that subcontracting is a feature of this market and that all suppliers utilise subcontracting to some degree. However, we consider that there should be a distinction drawn between those firms that subcontract a proportion of their services (waste management firms such as the Parties) from those that subcontract all of their services (brokers and FMs). In particular, evidence from competitors and internal documents indicates that some customers have a preference for suppliers which mainly self-perform; and suppliers that self-perform market themselves on this basis. This indicates that competitors that subcontract less may have an advantage over those suppliers that subcontract most or all of their services.

11.43 Customers provided mixed views on whether they would consider using brokers. Of the customers that said that they would not use brokers, they

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<sup>758</sup> Note of call [X]

<sup>759</sup> [X] response to CMA's C&I customer questionnaire.

<sup>760</sup> Biffa's website: [Acquisition of Simply Waste](#), 9 October 2020, accessed by the CMA on 18 May 2022

<sup>761</sup> letsrecycle.com website: [Biffa ties up £25m SWRNewstar acquisition](#), 23 March 2019, accessed by the CMA on 18 May 2022

<sup>762</sup> Biffa has also recently acquired: Shanks, Wards, Company Shop, and Green Circle Polymers. Therefore, these suppliers will also not be considered independent constraints on the Parties.

identified concerns about the tracking of performance and the traceability of waste.

11.44 We also considered the degree to which brokers and FM companies compete for national customers. The evidence collected indicates that only a few brokers and FM companies win national C&I contracts, namely Reconomy and Mitie. Veolia identified several other brokers as strong competitors, but these have either been acquired by Biffa and therefore do not represent an independent constraint; or we have received limited evidence that these brokers win national contracts. Based on the above evidence, we exclude brokers and FM companies from the relevant competitor set except for Reconomy and Mitie. We consider the significance of the constraint from Reconomy and Mitie in our competitive assessment.

#### *Provisional conclusion on product market definition*

11.45 On the basis of the above evidence, we provisionally conclude that the appropriate product market definition is the supply of non-hazardous C&I waste collection services. Further, we have provisionally conclude that all waste types should be included in the market definition.

11.46 For the reasons set out in paragraphs 2.43–2.45, we provisionally conclude that brokers and FM companies, except for Reconomy and Mitie, will likely pose limited or no constraint on the Parties. We take account of the significance of the constraint exerted by Reconomy and Mitie in our competitive assessment.

#### **Geographic market definition**

11.47 Previous merger investigations considered the supply of non-hazardous C&I waste collection services on a national basis, although ultimately left the geographic scope open.<sup>763</sup>

#### *Parties' views*

11.48 Veolia initially submitted that it was not appropriate to consider segmentation on a regional basis and that the appropriate market definition is national.<sup>764</sup> In particular, Veolia initially submitted that:

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<sup>763</sup> OFT's decision of 4 June 2013 in case [ME/6040/13](#), anticipated acquisition by Kier Group plc of May Gurney Integrated Services plc, paragraph 21.

<sup>764</sup> FMN, [3<]



- (a) Waste collection vehicles are mobile assets and that sites that can be used as vehicle depots are easy to find;<sup>765</sup>
- (b) Brokers can assist a supplier in delivering a national contract by finding subcontractors to provide collection services in geographic areas where the supplier has insufficient assets or coverage; and
- (c) Barriers to entry in the market are low and suppliers active in one part of the country can therefore easily expand into other parts.<sup>766</sup>

11.49 Veolia subsequently submitted that customers with a large geographic footprint can choose to procure nationally or split contracts into lots by region. Veolia provided two examples of national customers which have split their waste collection contracts into regional lots:<sup>767</sup>

- (a) [X] has separate waste collection suppliers for sites within the London M25 ring road and for those sites in the rest of the country; and
- (b) [X] has recently tendered its waste collection contract in regional lots.

11.50 Suez submitted that it may be appropriate for the CMA to consider separate national and regional market definitions.<sup>768</sup>

### *Third party views*

11.51 As set out in paragraphs 11.8 and 11.9, the majority of national customers that responded to our questionnaire considered it important to have a single supplier across all their sites. One of Veolia's customers stated that it did not have the appetite to divide its waste collection contracts into regional lots as it would be costly to manage multiple contracts and deliver the services (eg extra staff).<sup>769</sup> None of the national customers which responded to our questionnaire indicated that they procure their services in regional lots.

11.52 Further, as discussed in paragraph 11.11 above, only one competitor ([X]) said it was able to compete directly for national customers.<sup>770</sup> All other respondents said they do not compete for national customers or only do so via a broker.

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<sup>765</sup> FMN, [X]

<sup>766</sup> FMN, [X]

<sup>767</sup> Veolia response [X]

<sup>768</sup> Suez response [X]

<sup>769</sup> Note of call [X]

<sup>770</sup> [X] response to Phase 1 CMA Collection competitors questionnaire.

### *Provisional conclusion on geographic market definition*

11.53 Overall, the evidence indicates that national customers have a preference for procuring waste collection services at a national level rather than at a regional level. Further, the evidence indicates that Biffa is the only supplier other than the Parties that is able to compete for national customers without the use of a broker.

11.54 Therefore, we have provisionally concluded that the appropriate geographic frame of reference is national.

### ***Provisional conclusion on market definition***

11.55 We have provisionally concluded that the appropriate product market definition is the supply of non-hazardous C&I waste collection services, at a national level.

## **Indicators of competition**

### ***How competition works***

11.56 Veolia submitted that there are over 100,000 C&I customers in the UK who need their waste collected. Veolia itself has around [REDACTED] commercial customers and it estimated that Biffa has around [REDACTED] commercial customers.<sup>771</sup> Suez told us that it has 27,500 commercial customers.<sup>772</sup>

11.57 Veolia submitted that C&I waste collection contracts were negotiated either through tenders or through bilateral contract negotiations.<sup>773</sup> Whereas municipal waste collection contracts are typically for a long duration, C&I waste collection contracts are for a much shorter duration.<sup>774</sup> Veolia submitted that prices were usually determined [REDACTED] and were meant to cover the costs of [REDACTED].<sup>775</sup> The evidence received from third parties corroborated Veolia's submissions that contracts are negotiated bilaterally [REDACTED] and that prices cover the cost of [REDACTED].<sup>776,777</sup>

11.58 To understand the key factors that drive customer choice of supplier, we asked the Parties' national C&I customers the factors they believe were most important when deciding which supplier should provide their company's waste

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<sup>771</sup> FMN, [REDACTED]

<sup>772</sup> Suez site visit [REDACTED]

<sup>773</sup> FMN, [REDACTED]

<sup>774</sup> FMN, [REDACTED]

<sup>775</sup> FMN, [REDACTED].

<sup>776</sup> Note of call [REDACTED]

<sup>777</sup> Note of call [REDACTED]

collection service.<sup>778</sup> We provided customers with a list of factors and asked them to indicate how important each factor was on a scale from one to five (where one is not very important and five is very important) and to provide an explanation for their rating. Fourteen national customers responded to this question and the results are presented below in Table 11.1.<sup>779</sup>

**Table 11.1: Selection criteria considered important by customers when deciding which supplier to use**

<i>Selection criteria</i>	<i>Average score</i>
Reliability of service	4.9
Quality of service	4.6
Geographical reach	4.6
Access to disposal infrastructure	4.3
Price	4.3
Track record	4.3
More environmentally friendly / sustainable	4.2
Financial standing	4.1
Innovation capabilities	3.8
Provider's size	3.8

Source: CMA analysis of customer responses.

11.59 The results show that all of the average ratings from customers are high, therefore, customers consider that all of these factors are important. However, the results also suggest that reliability of service is the most important factor, followed by quality of service and geographic reach. Innovation capabilities and provider's size are seen as the least important factors but are considered important nonetheless.

11.60 We considered the evidence on the Parties' relative strengths with regard to 'Reliability of service' and 'Quality of service' as part of our overall assessment.

11.61 We considered the evidence with respect to 'Geographical reach' criterion in our market definition analysis and found that national customers have a preference for a single supplier. As the analysis in our competitive assessment indicates, the Parties are two of a limited number of C&I suppliers that have the geographical coverage to service national customers.

11.62 Access to disposal infrastructure was considered important by 13 of the 14 customers that responded to our questionnaire, and on average these 14 customers rated access to disposal infrastructure to be 4.3 out of 5 in terms of importance. Of the 13 customers which considered this important, seven said

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<sup>778</sup> The question asked was: *Using the table below, please list factors you believe are most important when deciding which supplier(s) should provide your company's waste collection service. To the extent that the factors already listed in the table are relevant, please: a. Indicate on a scale from one to five (where one is not very important and five is very important), how important you believe each factor is; and b. Provide an explanation for your rating. In doing so, please refer to any specific criteria and weighting you use when assessing bids*

<sup>779</sup> We asked a similar question to customers during the CMA's Phase 1 Investigation. This also showed that reliability of service, quality of service, and geographical reach were important factors for customers.

it was because of their environmental commitments.<sup>780</sup> Specifically, customers wanted transparency over the disposal process as they wanted to ensure that waste was not sent to landfill.

11.63 In the next sub-section, we consider the importance of access to disposal infrastructure, after which we present the evidence from shares of supply, tender analysis, the Parties' internal documents, and third party evidence.

### ***Access to disposal infrastructure***

11.64 In this section, we assess the extent to which access to disposal infrastructure plays a role in competition for national customers between suppliers.

#### ***Parties' views***

11.65 Veolia submitted that the Parties' controlled merchant capacity at disposal facilities does not give them any significant advantage when competing for C&I waste collection contracts.<sup>781</sup> In particular, Veolia submitted that:

- (a) Customers do not specify any particular facility for the treatment or disposal of waste or, in many cases, even the means of treatment or disposal;
- (b) Suppliers have a number of alternatives to owning or operating their own facilities, such as subcontracting, spot contracts, and fuel supply agreements; and
- (c) Suppliers, including the Parties, make frequent use of treatment and disposal facilities owned and operated by third parties.

11.66 Suez, however, submitted that some customers want to be comfortable about where their waste is disposed.<sup>782</sup> For example, some customers have 'zero waste to landfill' objectives. If a supplier has its own disposal facilities, it can provide assurances over where and how the customer's waste will be disposed of. Suez further stated this differentiates its business from brokers, as brokers cannot provide the same degree of certainty around where and how a customer's waste will be disposed.

11.67 We have considered these submissions in the context of other evidence provided by customers and the Parties' internal documents.

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<sup>780</sup> [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] responses to CMA C&I customers questionnaire.

<sup>781</sup> Veolia supplemental response on [REDACTED]

<sup>782</sup> Suez main party hearing [REDACTED]

11.68 We have assessed access to disposal infrastructure in two ways. First, we have assessed whether suppliers can access their own infrastructure to dispose of their C&I waste; and second, we have assessed whether suppliers can access third party infrastructure to dispose of their C&I waste.

#### *Access to own disposal infrastructure*

11.69 The Parties' internal documents indicate that access to disposal capacity is an important consideration in this market. For example:

- (a) A Veolia internal document discusses the development of a new ERF in [REDACTED].<sup>783</sup> In the document, Veolia states that [REDACTED]. The document indicates that [REDACTED]. This therefore provides evidence of a link between competitiveness in C&I waste collection and access to disposal infrastructure.
- (b) Another Veolia internal document discusses a potential new client and conducts a SWOT analysis of its competitors for the contract.<sup>784</sup> [REDACTED].
- (c) In its bid document for a contract with [REDACTED].<sup>785</sup>
- (d) A Veolia internal [REDACTED] document lists [REDACTED].<sup>786</sup>
- (e) A Veolia internal document lists the strengths, weaknesses, opportunities, and threats of [REDACTED], [REDACTED], and [REDACTED].<sup>787</sup> On the one hand, one of Veolia's strengths is said to be its infrastructure, while one of [REDACTED] weaknesses is that it uses third party infrastructure, and it doesn't have any of its own disposal sites

11.70 As set out in chapters 8 and 9, the Parties in combination will operate the largest network of MRFs and ERFs in the UK. We note that Biffa, the largest C&I supplier in the UK, has a considerable network of MRFs in the UK, similar in size to the Parties. While it does not currently own and operate its own ERFs, we note that Biffa is currently constructing two facilities that are due to be operational in 2024–2025. Around two-thirds of the capacity of the two facilities will be used to dispose of Biffa's C&I waste.<sup>788</sup> No other C&I supplier has the same degree of access to disposal infrastructure as the Parties or Biffa.

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<sup>783</sup> Veolia internal document, [REDACTED]

<sup>784</sup> Veolia internal document, [REDACTED]

<sup>785</sup> Veolia internal document, [REDACTED]

<sup>786</sup> Veolia internal document, [REDACTED]

<sup>787</sup> Veolia internal document, [REDACTED]

<sup>788</sup> Note of call [REDACTED]

11.71 Overall, the evidence from internal documents indicates that access to infrastructure is an important factor in how suppliers compete in this market. This is because suppliers with their own disposal infrastructure have a greater ability to control disposal costs, which is part of the cost of supplying C&I collection services to customers. Veolia's internal documents also indicate that it markets the access it has to its own disposal infrastructure, suggesting this is an important competitive dynamic. The Parties and Biffa currently have or will have access to a considerable network of assets by which to recycle and dispose of residual waste. No other C&I supplier has the same degree of access to disposal infrastructure as the Parties or Biffa.

#### *Access to third party infrastructure*

11.72 C&I suppliers that do not have access to their own infrastructure will have to purchase recycling and waste disposal capacity from third parties. As explained, evidence from competitors indicated that having access to their own disposal infrastructure, such as ERFs, MRFs, and landfill sites, may confer a competitive advantage compared to those suppliers which do not.

11.73 We asked competitors to explain whether they have been denied access to treatment or disposal services by other waste management companies. [X] told us that 'In a region where an EfW operator also operates a C&I collections fleet, it may be selective of which collection competitors are allocated capacity, or only offer capacity if gate fee was above market'.<sup>789</sup> [X] told us that it 'does not always receive competitive rates from other waste management companies, meaning our local C&I collection prices to customers are higher'.<sup>790</sup> Similarly, [X] told us that 'we [[X]] are frequently given disposal costs which are commercially unviable'.<sup>791</sup>

11.74 Overall, the evidence received from competitors indicates that third party waste disposal capacity is not always accessible; and the cost of access might be offered at prices above the competitive level. Taken together, this might restrict the ability of some C&I suppliers from being able to compete strongly with other suppliers that have access to their own infrastructure.

#### *Provisional conclusion on importance of access to disposal infrastructure*

11.75 Most (13 out of 14) national customers told us that access to disposal infrastructure is an important consideration. This is corroborated by the evidence from Parties' internal documents. The Parties, and Biffa, have

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<sup>789</sup> [X] response to CMA's waste competitor questionnaire.

<sup>790</sup> [X] response to CMA's waste competitor questionnaire.

<sup>791</sup> [X] response to CMA's waste competitor questionnaire.

access to their own infrastructure and can recycle and dispose of their C&I waste using their network of assets. Smaller C&I suppliers that do not have access to their own infrastructure have to purchase third party waste disposal capacity. Competitors indicated that access is not always available, and the price of access is typically higher than the competitive price. Taken together, having access to their own infrastructure confers a competitive advantage, giving those suppliers a greater control of disposal costs.

11.76 The Parties and Biffa are likely to be stronger competitors in this regard than the smaller C&I suppliers. The Merger increases the volume of disposal infrastructure that the Parties have access to, and this is likely to give the Parties a further competitive advantage.

### ***Shares of supply***

#### ***Parties' submissions***

11.77 Both Parties submitted that there is very limited public data on which to base share of supply estimates.<sup>792</sup> However, Veolia submitted several share of supply estimates using different bases and market size estimates. These all show that the Parties' combined share of supply is below [20-30%] on any basis, with the increment resulting from the Merger being no higher than [5-10%].<sup>793</sup> Veolia further submitted that the different estimates of shares of supply provided have evidential value in that they consistently show low shares.<sup>794</sup>

11.78 Veolia's share of supply estimates relate to the C&I market as a whole. However, as explained in the introduction to this chapter, our concerns relate to national C&I customers; and Veolia's estimates do not provide shares for this part of the market.

11.79 Therefore, we have sought to calculate shares of supply that assess the Parties' and rivals' strengths in winning national customers contracts. We describe our methodological approach to calculating our shares of supply in the next sub-section.

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<sup>792</sup> FMN, [3<]; and Suez's response [3<]

<sup>793</sup> FMN, [3<]; Veolia's response to [3<]

<sup>794</sup> Veolia's response to [3<]

## Methodology

11.80 We requested data<sup>795</sup> from the Parties and other C&I suppliers on the contracts they held that had an annual contract value in excess of £250,000.<sup>796</sup> We chose this materiality threshold to ease the administrative burden on the Parties and third parties; and to focus our analysis on the larger national customers that we considered were most likely to be harmed by the Merger. 13 C&I suppliers, including the Parties, responded to our data request. 6 indicated that they did not hold any contracts that had a value in excess of £250,000;<sup>797</sup> and 7 customers provided data on their customers.<sup>798</sup>

11.81 We note that not all C&I suppliers responded to our request for data. However, based on the other evidence gathered during our investigation (third party submissions, Parties' Internal Document, Parties' bid data), we consider that our dataset is sufficiently complete from which to calculate reliable and robust market shares estimates. Most importantly, we received responses from the major national waste management firms – including Biffa that was identified as the largest player in the market – and from the significant broker and FM company, as identified by the Parties and third parties.

11.82 Using this dataset, we estimated our shares of supply for national customers (ie those customers that operate in more than region) on two bases:

(a) Value of work performed, by annual revenue;<sup>799</sup> and

(b) Value of contracts won, by annual revenue.

11.83 We present the results of our shares of supply analysis in the following sub-section.

### *Shares of supply estimates*

11.84 Table 11.2 below presents our share of supply estimates for national customers based upon the value of work performed by the supplier.

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<sup>795</sup> The data variables included the value of the contract, the start and end dates of the contract, the number of regions from which the supplier collects waste from the customer, and the value of services that the supplier subcontracts for each contract, including the proportion that is subcontracted to Veolia, Suez and Biffa.

<sup>796</sup> We chose the £250,000 annual contract value as a materiality threshold to reduce the administrative burden on the Parties. As explained previously, the focus of our analysis is on the larger C&I customers and the £250,000 threshold is a proxy for these customers. Veolia submitted that circa 70 percent of its multiregional C&I contracts, by value, lie above this threshold. Therefore, by adopting the thresholds mentioned above when calculating our shares of supply, we believe we are capturing any concerns which may arise among national customers.

<sup>797</sup> [X], [X], [X], [X], [X], and [X]

<sup>798</sup> [X], [X], [X], [X], [X], [X], [X], and [X] responses to CMA's waste competitor questionnaire.

<sup>799</sup> This has been calculated by taking the total contract value and netting off the revenue which is subcontracted to other waste management companies.



**Table 11.2: Share of supply estimates for C&I waste collection for national customers (value of work performed by the supplier)**

<i>Entity</i>	<i>Revenue (£m)</i>	<i>Share of supply (%)</i>
Veolia	[<]	[20-30%]
Suez	[<]	[5-10%]
<i>Merged Entity</i>	[<]	[20-30%]
Biffa	[<]	[60-70%]
First Mile	[<]	[0-5%]
Beauparc	[<]	[0-5%]
Grundon	[<]	[0-5%]
DS Smith	[<]	[0-5%]
Total	[<]	

Source: CMA calculations

11.85 These share of supply estimates demonstrate that the market for C&I waste collection services when considering only national customers is highly concentrated. The Parties and Biffa collectively account for [90-100%] of the shares of supply in the market and other suppliers such as First Mile, Beauparc, Grundon and DS Smith have very low shares.

11.86 On the basis of the above shares of supply, the HHI will increase from 5,101 pre-Merger, up to 5,364 post-Merger which means that an already very concentrated market will become more concentrated.<sup>800</sup> The Merger will combine the second and third largest competitors in the market, although Suez is significantly smaller than either Veolia or Biffa.

11.87 The above shares of supply reflect suppliers' ability to win work, either directly or through subcontracting. However, this does not reflect suppliers' ability to win contracts directly (whether the supplier performs the contract or not). Table 11.3 sets out the shares of supply on the basis of value of contracts won.

**Table 11.3: Share of supply estimates for C&I waste collection for national customers (total value of contract won)**

<i>Entity</i>	<i>Revenue (£m)</i>	<i>Share of supply (%)</i>
Veolia	[<]	[20-30%]
Suez	[<]	[5-10%]
<i>Merged Entity</i>	[<]	[30 – 40%]
Biffa	[<]	[50-60%]
Mitie	[<]	[5-10%]
Reconomy	[<]	[0-5%]
First Mile	[<]	[0-5%]
DS Smith	[<]	[0-5%]
Grundon	[<]	[0-5%]
Total	[<]	100%

Source: CMA analysis

<sup>800</sup> The HHI is a measure of market concentration that takes account of the differences in the sizes of market participants, as well as their number. The HHI is calculated by adding together the squared values of the percentage market shares of all firms in the market. The change in the HHI can be calculated by subtracting the market's pre-merger HHI from its expected post-merger HHI (CMA129, paragraph 4.4).

- 11.88 Similar to the shares of supply estimate on work performed, the market for C&I waste collection services on the value of national customer contracts won is highly concentrated. The Parties' combined share of [30-40%] incorporates an increment of [0-10%] and would result in the top two firms accounting for [85-95%] of the market, post-Merger. Mitie is the only other company that has a market share exceeding 5%, with Reconomy, First Mile, DS Smith and Grundon in combination accounting for less than 10%. The Merger increases concentration – as measured by HHI – by over 328 points, from 3,841 pre-Merger, to 4,169 post-Merger. This is a very significant increase in concentration in a market that is already highly concentrated.
- 11.89 As explained in paragraph 11.81, we were not able to collect data from every C&I supplier that might have won a national customer. It is possible that there may be some C&I suppliers that might have won national customer contracts but have not been included in our dataset. Our market shares might therefore be overstated. However, the evidence from third party responses, the Parties' Internal documents and the Parties' bid data indicate that our dataset is sufficiently complete from which to calculate reliable and robust market share estimates.

*Provisional conclusion on the shares of supply*

- 11.90 Overall, the analysis shows that the market is highly concentrated with Biffa and Veolia being the two largest suppliers accounting for [80-90] of the market. Suez is the third largest supplier in the market, but it is significantly smaller than Biffa and Veolia with a [5-10%] share of supply. When considering value of contracts won, Mitie is of a similar size to Suez while Reconomy is around half the size of Suez. All other suppliers have very low market shares. When considering the value of work performed, neither Mitie nor Reconomy appear in the share estimates, as they perform no work. On that basis, Suez is three times the size of the next closest competitor, Beauparc.
- 11.91 Although Mitie and Reconomy collectively account for [5-15%] market share on the contracts won basis, we note that they subcontract a significant proportion of that contract value to Veolia, Suez, and Biffa. For the seven national contracts that Reconomy holds, [X] of the work by value was subcontracted to either [X], [X], or [X]; and [X] for [X]. Therefore, it appears that the Merger will lead to a reduction in choice not only for the national C&I customers, but also for intermediaries that need to subcontract their services to other waste management companies. This could lead to higher prices being charged to brokers which may subsequently be passed on to the end customer.

11.92 The evidence indicates that while Veolia and Suez are not each other's closest competitors, the Merger will result in further consolidation of an already highly concentrated market; and will result in the loss of a constraint from the third largest supplier in the market.<sup>801</sup>

## ***Tender analysis***

### ***Parties' submissions***

11.93 Veolia submitted tender analysis for all the contracts ([X] in total) that had a total contract value above £250,000 that Veolia bid for the period between 2016 and 2020.

11.94 Veolia submitted that, when considering tenders for 'national' customers, ie customers which operate in more than one UK region, the bidding demonstrates that Suez are a weak competitive constraint, winning [X] percent of tenders won, and [X]% by value.<sup>802</sup> In addition, Veolia submitted that it faces a number of similar or stronger constraints, including from brokers, with Biffa being the strongest constraint. Veolia also undertook tender analysis by considering customers which operate in more than six, eight, and ten regions of the UK. In all these cases, the results confirm that Suez is not a strong competitor to Veolia.

11.95 Suez also submitted a dataset containing [X] tenders of which [X] were for national customers, each with an expected value greater than £250,000 in which Suez competed between 2016-2020.

### ***Assessment***

11.96 Veolia's tender data showed that for the [X] national customers where the contract winner is known, Veolia won [X] contracts, Biffa won [X], Suez won [X], Reconomy won [X], and Mitie won [X].

11.97 Suez's tender data did not provide any information on which supplier won, other than for [X] tenders where Suez won. However, Suez did provide data on who it competed with in [X] national customer tenders. Of these [X] national customer tenders, Suez faced Veolia in [X]% ([X] out of [X]) of tenders and Biffa in [X]% of tenders ([X] out of [X] tenders). Suez's tender

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<sup>801</sup> The CMA MAGs state that 'While the focus of the CMA's assessment is on the change in the competitive constraints on the merger firms arising from the merger, where one merger firm has a strong position in the market, even small increments in market power may give rise to competition concerns'. [CMA129](#), paragraph 4.12(a).

<sup>802</sup> Veolia supplemental response, [X].

data also showed it did not face Reconomy in any of the [X] tenders and only faced Mitie in [X]% ([X] out of [X]) of its tenders.

11.98 Both sets of tender data indicate that Biffa is a strong competitor to both of the Parties for national contracts. Veolia's tender data suggested that Biffa is a stronger constraint than Suez for national contracts and that Suez provides a similar level of constraint as brokers and FM companies, such as Reconomy and Mitie. Suez's tender data showed that both Veolia and Biffa are strong constraints on Suez when competing for national contracts. However, Suez did not face strong competition from other suppliers, including brokers and FM companies, when competing for national customers.

11.99 We note that in the case of both Parties, the tender data presents competition from the perspective of the Party that submitted the data. That is, Veolia's tender data presents Veolia's perception of competition in the market and the same with Suez.

11.100 We also note that the tender data contains many missing data points in terms of which suppliers competed for contracts and which suppliers ultimately won contracts. For example, of the [X] national contracts listed in Veolia's tender data, [X] contained no information on which supplier won the contract. Similarly for Suez, of the [X] national contracts listed in the tender data, [X] contained no data on which supplier won the contract.

11.101 The data collected from Suez shows that it currently holds [X] national customer contracts with a value greater than £250,000 which it has won directly (ie it has not been sub-contracted by a broker) since 2017. However, Veolia's tender data shows that Suez won only [X] national customer contracts since 2017. Therefore, the Veolia tender data is likely to miss several Suez wins.

#### *Provisional conclusion on Parties' tender data*

11.102 Overall, the tender data suggests that:

- (a) Biffa is a strong constraint on both of the Parties;
- (b) Suez imposes a limited competitive constraint on Veolia, but Veolia imposes a strong competitive constraint on Suez;
- (c) Other suppliers in the market, including Reconomy and Mitie, impose a limited competitive constraint on both Parties.

11.103 The tender data submitted by the Parties is subject to significant limitations. The Veolia tender data fails to identify the winning supplier in a

significant proportion of tenders. The limitations within the Suez tender data are even more extensive, as the vast majority of tenders contain no information on which supplier ultimately won the contract. Notwithstanding these limitations, which generally limit the weight that can be placed on these data, we have considered the tender data in the round along with the other evidence collected during the investigation.

### ***Internal documents***

- 11.104 The Parties' internal documents provide some insight on which suppliers the Parties consider to be their strongest competitors in the market.
- 11.105 A Suez internal document on sales and retention strategy for C&I customers in the [REDACTED].<sup>803</sup> [REDACTED]. This suggests that Veolia and Biffa are stronger competitors in the market than Suez.
- 11.106 In another Suez internal strategy document, [REDACTED].<sup>804</sup> This suggests that Suez believes Biffa and Veolia are strong competitors for national customer contracts.
- 11.107 Overall, the internal documents indicate that Biffa is a strong competitor to the Parties when competing for national customers as it has a strong national presence and market share. In addition, the internal documents indicate that Suez competes for national customers, but it is not possible to say what degree of constraint it presents in the market.

### ***Credible suppliers***

- 11.108 We asked national customers to list which suppliers they consider to be credible if they were to re-tender their current C&I waste contracts and we asked competitors who they would consider to be their strongest competitors for C&I customers. The results of this analysis are presented in this section.

### ***Parties' views***

- 11.109 Veolia noted in its submissions that Suez receives few mentions by customers relative to Veolia and Biffa, and that the number of mentions that Suez receives is similar to brokers.<sup>805</sup> Veolia noted the discrepancy between the position that brokers do not compete for national customers, while at the same time some brokers receiving a similar number of mentions from

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<sup>803</sup> Suez internal document, [REDACTED]

<sup>804</sup> Suez internal document, [REDACTED]

<sup>805</sup> Veolia response to [REDACTED]

customers to Suez. Veolia also submitted that the proxy that the CMA has used for national customers may be inappropriate given that several regional suppliers are mentioned.

11.110 Veolia similarly submitted that competitors also listed regional suppliers their responses suggest that the questions we asked competitors do not correspond to the theory of harm.<sup>805</sup>

11.111 Finally, Veolia submitted that it is inappropriate to treat non-responses as zero when calculating average scores as it has a disproportionate impact on the scores.

#### *National C&I customers views on credible suppliers*

11.112 We asked the Parties' 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 and to indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong).<sup>806</sup> In total, nine national customers responded to our questionnaire. Table 11.4 summarises the results.

**Table 11.4: Average strength rating of the Parties and competitors according to customers**

<i>Entity</i>	<i>Number of mentions</i>	<i>Average rating</i>	<i>Average rating (non-mentions=0)</i>
Veolia	7	4.4	3.4
Biffa	8	3.7	3.3
Suez	2	5.0	1.1
DS Smith	2	3.0	0.7
Viridor	2	2.5	0.6
Reconomy	1	2.0	0.2

Source: CMA calculations

Notes: We note that Viridor's C&I waste collection business has recently been acquired by Biffa (in September 2021) and is no longer active in the market.

11.113 Veolia and Biffa were identified most frequently and given the highest average ratings when adjusted for non-mentions as zero. Customers

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<sup>806</sup> The question asked was:

*Using the table below, please list the suppliers you would consider as credible if you were to re-tender the services listed in question 2 in the near future (please pick up to three contracts that need to be re-tendered soonest). In doing so, please:*

- a. List the type of waste that would need to be collected as part of the tender;*
- b. List the criteria you would use to assess the bidders;*
- c. Rank the suppliers in order of preference;*
- d. Indicate on a scale from one to five (where one is not very strong and five is very strong);*
- e. Provide an explanation for your rating. In doing so, please refer to the selection criteria you would consider to be important in such a tender.*

submitted that Veolia prices competitively, provides a good quality service, has strong infrastructure, and good sustainability credentials.<sup>807,808</sup>

11.114 Biffa received the most mentions by customers, and similar to Veolia, customers noted that Biffa has good national coverage, as well as having a strong track record, strong infrastructure, and good pricing.<sup>809</sup>

11.115 Two of the nine respondents listed Suez as a credible supplier and Suez's average strength rating is 1.1. This is considerably lower than Veolia and Biffa. Suez's customers provided a range of views on its strengths including that Suez is a national provider, provides large coverage, is known for its performance, and provides strong service delivery.<sup>810</sup> However, Suez was also said to be strong in England, but less so in Scotland and Wales and one customer said it has had performance issues.<sup>811</sup>

11.116 DS Smith was listed twice by customers. DS Smith received an average rating of 0.7. Customers stated that DS Smith is competitively priced and that it is a large, strong company.<sup>812</sup> However, customers also noted it will subcontract a greater proportion of its contracts compared to other suppliers and that it is less competitive and has been impacted by the refuse derived export tax.<sup>813</sup>

11.117 Viridor was also listed twice by customers, but has withdrawn from the market after its collection business was acquired by Biffa.<sup>814</sup> Novati (a broker) was also listed twice by customers and received an average score of 0.7. However, as noted in the product market definition, we do not consider that brokers such as Novati compete for national customers.

11.118 Nine suppliers were each listed once by national customers.<sup>815</sup> Reconomy was listed by one customer which responded to our questionnaire and received an average rating of 0.6. Customers more broadly stated that Reconomy provided national coverage and access to additional consultancy services; and, as a broker, can access many local suppliers through a cost

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<sup>807</sup> [redacted], [redacted], [redacted], and [redacted] responses to CMA's C&I customer questionnaire.

<sup>808</sup> We asked a similar question to customers during the CMA's Phase 1 Investigation. The results of this showed Biffa was the strongest competitor, followed by Veolia, Suez, Reconomy, then DS Smith. We have not combined the scoring from the Phase 1 questions with the responses to the questionnaire, as the questions asked were not exactly the same.

<sup>809</sup> [redacted], [redacted], [redacted], [redacted], and [redacted] responses to the CMA's customer questionnaire.

<sup>810</sup> [redacted], [redacted], [redacted], and [redacted] responses to CMA's C&I customer questionnaire.

<sup>811</sup> [redacted] and [redacted] responses to the CMA's C&I customer questionnaire

<sup>812</sup> [redacted] and [redacted] responses to CMA's C&I customer questionnaire.

<sup>813</sup> [redacted] and [redacted] responses to CMA's C&I customer questionnaire.

<sup>814</sup> Biffa's website: [Biffa acquires Viridor collections business and certain recycling locations](#), accessed by the CMA on 18 May 2022

<sup>815</sup> [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

efficiency aggregated model.<sup>816</sup> One customer said that Reconomy's costs were 'prohibitive'.<sup>817</sup>

11.119 Overall, the evidence from customers indicates that Veolia and Biffa are the two strongest suppliers in the market. Suez, DS Smith, and Reconomy received far fewer mentions than top two, indicating customers' views on their relative strengths. Customers indicated that while Suez has a large coverage across the UK, it may be stronger in some regions than others and overall, provided mixed feedback on Suez's strengths. Similarly, the responses from customers were mixed as to the strength of Reconomy and DS Smith.

11.120 Therefore, the evidence suggests that Veolia and Biffa are each other's closest competitors. Veolia will likely exert a strong constraint on Suez. The other C&I suppliers, including Suez, are considered to be significantly weaker than Biffa and Veolia, and will likely exert a weak constraint on Veolia.

#### *Suppliers' view on strength of C&I competitors*

11.121 We asked the Parties' competitors to list which suppliers they would consider to be their strongest competitors for C&I customers and to rank suppliers in order of overall strength, indicate the strength of each supplier on a scale from one to five (where one is not very strong and five is very strong).<sup>818</sup> In total, nine competitors provided ratings for competitors in the market.

**Table 11.5: Average strength rating of the Parties and competitors according to competitors**

<i>Entity</i>	<i>Number of mentions</i>	<i>Average rating</i>	<i>Average rating (non-mentions=0)</i>
Veolia	8	5.0	4.4
Suez	7	4.6	3.6
Biffa	6	4.5	3.0
FCC	2	3.5	0.8

Source: CMA calculations

11.122 From the nine competitor responses, Veolia was listed most often by eight competitors and it received an average strength rating of 4.4 when treating non-mentions as zero. Suez was listed by seven competitors and it received an average strength rating of 3.6 across these seven competitors

<sup>816</sup> [X] and [X] responses to the CMA's Phase 1 C&I customer questionnaire.

<sup>817</sup> [X] response to the CMA's C&I customer questionnaire.

<sup>818</sup> The question asked was:

*Using the table below, please list the suppliers you would consider to be your strongest competitors for integrated contracts (ie contracts that include several services) of C&I customers across the waste management supply chain. In doing so, please:*

- Rank the suppliers in order of overall competitive strength (including yourself);*
- Indicate the strength of each competitor on a scale from one to five (where one is not very strong and five is very strong); and*
- Provide an explanation for your rating and how the competitors differ from each other.*



when treating non-mentions as zero. Biffa was listed by six competitors and it received an average strength rating of 3.0 when treating non-mentions as zero. After the Parties and Biffa, FCC was listed by two competitors, followed by a tail of nineteen competitors which each received one mention with average strength scores below one.

11.123 Overall, competitor responses indicate that Veolia and Biffa are the strongest competitors. [X] rated Veolia as a strong competitor and scored it 5 out of 5 for strength and said that apart from itself, Veolia had the widest national and breadth of service coverage across the UK'.<sup>819</sup> [X] listed Biffa and Veolia as its two strongest competitors, giving both a strength rating of 5 out of 5.<sup>820</sup> [X] said that Veolia and Biffa are 'true national businesses' while [X] said that Veolia is its strongest competitor.<sup>821 822</sup>

11.124 Competitors' responses indicated that Suez was slightly weaker than Veolia and Biffa. While [X] gave Suez a rating of five in its scoring,<sup>823</sup> is also said that that Suez are a 'non-event in terms of national C&I' and it has 'withered on the vine over a decade'.<sup>824</sup> [X] also stated that 'Suez's national presence is less than that of Biffa and Veolia, that Suez is a multi-regional business, and that it is not as strong when competing for national customers, but it still has significant capabilities across the UK'.<sup>825</sup> [X] similarly stated that that while Suez, Veolia and Biffa are the only suppliers capable of competing for national contracts, Suez does not have the same level of national coverage compared to Veolia and Biffa, and it relies more on subcontracting for national customer contracts.<sup>826</sup> [X] therefore rated Suez as a weaker competitor compared to Veolia and Biffa.<sup>827</sup> [X] said that Suez is also a 'true national business' alongside Veolia and Biffa, but to a lesser extent.

11.125 [X] rated brokers collectively 5 out of 5 for strength<sup>828</sup> and said its main competitors for customers that want to procure their services on a national scale are Veolia followed by brokers.<sup>829</sup> However, [X] also told us that brokers are not as credible because some customers prefer suppliers which self-deliver as they have more confidence in the service.<sup>830</sup> As explained in paragraph 11.38, [X] considers itself to be the largest broker in

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<sup>819</sup> [X] response to the CMA's waste competitor questionnaire.

<sup>820</sup> [X] response to the CMA's waste competitor questionnaire.

<sup>821</sup> Note of call [X]

<sup>822</sup> [X] response to the CMA's waste competitor questionnaire.

<sup>823</sup> [X] response to the CMA's waste competitor questionnaire.

<sup>824</sup> Note of call [X]

<sup>825</sup> [X] response to the CMA's waste competitor questionnaire. Note of call [X].

<sup>826</sup> Note of call [X].

<sup>827</sup> [X] response to the CMA's waste competitor questionnaire.

<sup>828</sup> [X] response to the CMA's waste competitor questionnaire.

<sup>829</sup> Note of call [X]

<sup>830</sup> Note of call [X]

the UK but indicated that it would not be able to win large national contracts. Our shares of supply indicate that [X] currently holds [X] national C&I customer contracts and is at least half the size of Suez.

### *Third party views on the Merger*

11.126 We asked customers whether they had any concerns about the impact of competition of this Merger. Four national customers expressed concerns about the Merger at a national level.<sup>831</sup>

- (a) [X] told us that ‘the industry feels very monopolistic with few suppliers in the market with national coverage’;<sup>832</sup>
- (b) [X] told us that the Merger would ‘reduce the number of players at a national level’;<sup>833</sup>
- (c) [X] said that the Merger is ‘a slight concern that it limits our options when it comes to a national service provider, but can also see the potential benefits of one service provider with more coverage and less reliance on subcontracts’;<sup>834</sup> and
- (d) [X] said the Merger limits the number of suppliers it could approach to deliver services, which may mean it has to utilise brokers more frequently which could increase its service costs.<sup>835</sup>

11.127 The majority of customers did not express concerns about the Merger. Two customers believe the Merger could lead to efficiencies and drive down costs<sup>836</sup> and four customers believe that there will still be a sufficient choice of suppliers in the market post-Merger.<sup>837</sup> [X] told us that it currently receives good service from Veolia and thus has no concerns about the Merger<sup>838</sup> and [X] said that the Merger may potentially offer opportunities in the form of more innovative waste management solutions as well as stronger national

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<sup>831</sup> There were also four non-national customers which raised concerns about the Merger ([X], [X], [X], and [X]). [X] told us that Veolia are dominant in their local area and the Merger will mean another supplier is removed from the market. The other three customers noted a general concern that there will be one less supplier in the market available to them which will reduce competition.

<sup>832</sup> [X] response to CMA’s C&I customer questionnaire.

<sup>833</sup> [X] response to CMA’s C&I customer questionnaire.

<sup>834</sup> [X] response to CMA’s Phase 1 C&I customer questionnaire.

<sup>835</sup> [X] response to CMA’s Phase 1 C&I customer questionnaire.

<sup>836</sup> [X] and [X] responses to CMA’s C&I customer questionnaire.

<sup>837</sup> [X], [X], [X] responses to CMA’s C&I customer questionnaire. [X] response to CMA’s Phase 1 C&I customer questionnaire.

<sup>838</sup> [X] response to CMA’s C&I customer questionnaire.

coverage.<sup>839</sup> The remainder of customers expressed no concerns about the Merger without providing an explanation.

#### *Provisional conclusion on credible suppliers*

11.128 Overall, the evidence shows that Veolia and Biffa are the two strongest suppliers in the market. The evidence also indicates that while Suez competes for national customers, it is not as strong as Veolia and Biffa. Competitors indicated that Suez's coverage is not as broad as Veolia and Biffa's and it therefore may need to rely more on subcontracting. As we set out above, some customers may have a preference for minimising subcontracting by suppliers.

11.129 We also heard mixed evidence around the strength of brokers. Biffa stated that brokers are the next strongest competitors after itself and Veolia, but Reconomy, which identified itself as the largest national broker, said that while it does compete for national customers, it does not believe it is competitive for the largest national customers. Reconomy's current share of the national C&I market is significantly smaller than Veolia and is half the size of Suez.

### **Assessment**

11.130 We have assessed the effect of the Merger on the supply of non-hazardous waste collection services to national C&I customers at the national level, that is customers that require collection services in at least two regions in the UK.

11.131 We found that subcontracting is a common feature of the market; almost all C&I suppliers subcontract a proportion of their services. However, some national customers indicated a preference for suppliers that have the ability to self-perform or substantially self-perform, for various reasons including concerns about the level of performance of the supplier and the traceability of waste. Large national C&I suppliers often market their services to customers on the basis of self-performance. The Parties are two national C&I suppliers that self-perform the majority of their service. For those national customers that have a preference for a self-performing supplier, the competitor set is effectively reduced to three: Veolia, Suez and Biffa. Brokers and FM companies that subcontract all of their services will not be able cater for these national customers.

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<sup>839</sup> [3<] response to CMA's Phase 1 C&I customer questionnaire.

- 11.132 Access to disposal infrastructure was considered an important factor for national customers. Suppliers with their own disposal infrastructure have a greater ability to control disposal costs which likely confers a competitive advantage over smaller C&I suppliers that have to access third party capacity. Post-Merger, the Parties will control more ERF capacity than any other supplier in the market and will have the second largest network of MRFs in the UK, after Biffa.
- 11.133 Shares of supply analysis shows that Biffa and Veolia are by some distance the largest suppliers for national customers and collectively account for over [80-90%] of the share of supply. Suez is the third largest supplier in the market for national customers, with an estimated share of [5-10%]. It is a little larger than one other supplier ([X]) and almost twice the size of the next largest supplier ([X]). All other competitors have very low shares of supply. Therefore, while Veolia and Suez are not each other's closest competitors, the Merger will result in further consolidation of an already highly concentrated market; and will result in the loss of a material constraint from the third largest supplier in the market.
- 11.134 The tender data submitted by the Parties show that Biffa is a strong constraint on both Parties for national customer contracts. The tender data also that Suez imposes a more limited competitive constraint on Veolia, but also that other suppliers in the market, including Reconomy and Mitie, only impose a limited competitive constraint on either of the Parties.
- 11.135 We asked national customers to list the suppliers that they would consider to be most 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 while Suez was mentioned less frequently and received a similar strength score to other smaller waste management companies and brokers. This indicates that Suez imposes a weaker constraint on Veolia than Veolia places on Suez.
- 11.136 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.
- 11.137 Overall, 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 considerable degree of competitive interaction between the Parties, and the Merger will remove a material competitive constraint on Suez;
- (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 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 only faces 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).

11.138 Therefore, 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 C&I waste collection services.

## Competitor entry and expansion plans

11.139 We asked competitors whether they have any plans to expand their C&I business in the UK over the next two years. The competitors' expansion plans are summarised below; these were provided in written responses to the CMA's questionnaires.

11.140 [X] told us that a key pillar of its strategy is [X].<sup>840</sup> [X] went on to explain that [X]. It further explained that [X].

11.141 [X] and [X] both told us that they plan to [X].<sup>841</sup> [X] and [X] told us that they intend to [X].<sup>842</sup> [X] specifically told us that it is seeking to [X]. [X] told us that it has [X].<sup>843</sup>

11.142 There were some competitors who specifically stated that [X]. For example, [X] told us that it is not seeking to expand its C&I collection business and [X] similarly told us that it [X] (Viridor has recently sold its C&I

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<sup>840</sup> [X] response to the CMA's waste competitor questionnaire.

<sup>841</sup> [X] and [X] responses to the CMA's waste competitor questionnaire.

<sup>842</sup> [X] and [X] response to the CMA's waste competitor questionnaire.

<sup>843</sup> [X] response to the CMA's waste competitor questionnaire.

collection business to Biffa (the **Biffa/Viridor transaction**)).<sup>844</sup> [3<], an FM company, told us that [3<].<sup>845</sup>

11.143 The above evidence suggests that the expansion plans of competitors are unlikely to materially change the competitive dynamics of the market over the next few years.

### ***The Biffa/Viridor transaction***

11.144 The CMA has also considered Veolia's submission that the CMA's concerns in this theory of harm are inconsistent with its approach to the Biffa/Viridor transaction.<sup>846</sup> The CMA believes that this submission is incorrect and misunderstands the CMA's approach to merger control under the Act:

- (a) In assessing whether the Biffa/Viridor transaction would meet the reasonable chance test,<sup>847</sup> the CMA's mergers intelligence committee (**MIC**) considered the facts and market conditions as they stood at the time of that assessment. It would not be reasonable for MIC to establish a complex and speculative counterfactual that included the Merger completing (this is particularly the case given that the Merger was at that time, and still is, under review by the CMA and, also, at that time was an anticipated transaction).
- (b) Each transaction considered by the CMA is examined based on the specific characteristics of the merger parties in the market and market dynamics at the relevant time. Accordingly, following completion of the Biffa/Viridor transaction there is a greater level of concentration in the market, and the Merger is being assessed in a context where that greater level of concentration exists.

### **Provisional conclusion**

11.145 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 C&I waste collection services.

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<sup>844</sup> [3<] and [3<] responses to the CMA's waste competitor questionnaire.

<sup>845</sup> [3<] response to the CMA's waste competitor questionnaire.

<sup>846</sup> FMN, [3<]; Veolia supplemental response [3<].

<sup>847</sup> [Guidance on the CMA's mergers intelligence function](#) (CMA56), December 2020, paragraph 1.2. Where the CMA is assessing whether to investigate a merger, it considers whether there is a reasonable chance that the test for a reference to an in-depth phase 2 investigation will be met.

## **12. Operation and maintenance of water and wastewater treatment facilities**

### **Introduction**

- 12.1 In this chapter we assess the effect of the Merger on the supply of operation and maintenance (O&M) services for water and wastewater treatment facilities to industrial customers. In our assessment, we have considered how closely the Parties compete with one another and whether the removal of the constraint the Parties place on each other is likely to lead to an SLC in the supply of O&M services to industrial customers. As part of this assessment, we have also considered the competitive constraints placed on the Parties by other O&M operators.
- 12.2 The chapter is structured as follows:
- (a) Description of services
  - (b) Market definition
  - (c) Indicators of competition
  - (d) Our assessment
  - (e) Entry and expansion
  - (f) Provisional conclusion
- 12.3 During the course of our investigation, we contacted all 35 of the Parties' customers and all 17 competitors for which the Parties provided contact details.

### **Description of services**

- 12.4 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.
- 12.5 Businesses that use water as part of their processes and/or which generate wastewater may require water management services. In particular, businesses may require water treatment services if they use water for industrial purposes (including for cooling or in boilers).<sup>848</sup> This water must be

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<sup>848</sup> Suez response [3<]

of suitable quality and may therefore need to be treated to meet the requirements of the industrial customer, both in terms of quality (degree of water purity required) and quantity (volume of water required).<sup>849</sup> Similarly, businesses may produce wastewater in the course of their industrial process that would need to be either reused in its process or discharged into the natural environment or public water mains.<sup>850</sup> The wastewater typically must be treated to a suitable quality to meet regulatory requirements.

- 12.6 O&M services for water and wastewater treatment facilities may be carried out by the owner of the facility (ie the industrial business) or contracted out to a third party, such as Veolia or Suez. Veolia submitted that approximately [X] of all industrial water O&M activities are carried out in-house.<sup>851</sup>
- 12.7 O&M contracts that are outsourced often include: (i) specialist, routine and reactive maintenance; (ii) biosolids treatments and recycling; (iii) network management activities; (iv) optimisation and lifecycle programmes; and (v) capital delivery programmes.<sup>852</sup> O&M contracts may require [X],<sup>853</sup> which may be called in case of any issues with the facility.
- 12.8 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.<sup>854</sup>
- 12.9 There is a wide range of businesses that require such services, including businesses active in food and beverage, pharmaceuticals and manufacturing. Moreover, as discussed in the section on ‘How Competition Works’, customers have heterogeneous requirements. The annual value of the Parties’ O&M contracts range from approximately £[X] to approximately £[X].
- 12.10 The Parties also provide services for the design and construction (D&C) of equipment and solutions used in water and wastewater treatment facilities. Once such facilities have been constructed, the customer may require such services to be operated and managed. The O&M services could be provided by the original D&C provider, if that provider also offers O&M services. The CMA considered these D&C services as part of its phase 1 investigation, but these D&C services are not considered further in these provisional findings

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<sup>849</sup> EC’s decision of 14 December 2021 in case M.9969, [Veolia/Suez](#), paragraph 238.

<sup>850</sup> Suez response [X]

<sup>851</sup> Veolia site visit, [X]

<sup>852</sup> FMN, [X]

<sup>853</sup> FMN, [X].

<sup>854</sup> FMN, [X]



except so far as relevant to consideration of the supply of O&M services for water and wastewater treatment facilities to industrial customers.<sup>855</sup>

## Market definition

12.11 Previous European Commission merger investigations that have considered the O&M of water and wastewater treatment facilities have left the market definition open.<sup>856</sup> The European Commission considered segmentation by customer type (industrial customers vs municipalities), facility type (water treatment vs wastewater treatment), customer industry and between O&M and D&C of water and wastewater treatment facilities.

## Product market

12.12 The Parties overlap in the supply of O&M services for water and wastewater treatment facilities to industrial customers.<sup>857</sup>

12.13 In order to identify what other significant competitive alternatives should be included in the relevant market, or whether the relevant market should be segmented or narrower in scope, we considered:

- (a) the extent to which customers are able to switch to self-supplying O&M services;
- (b) whether it is appropriate to segment the market on the basis of the type of water treated; and
- (c) whether it is appropriate to segment the market on the basis of the nature of the contract (ie the customer industry or size of contract).

## Self-supply

### *Parties' views*

12.14 Veolia submitted that customers could switch to self-supply and, in fact, estimated that approximately [X]% of all business requiring water or

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<sup>855</sup> The CMA's Phase 1 Investigation concluded that 'the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the D&C of technological solutions and equipment for water and wastewater treatment systems in the UK'. [CMA's Phase 1 Decision](#), para 713.

<sup>856</sup> EC's decision of 27 April 2010 in case COMP/M.5724, *Suez Environnement/Agbar*; EC's decision of 28 October 2010 in case COMP/M.5934, *Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group*; EC's decision of 19 July 2017 in case COMP/M.8452, *Suez/GE Water And Process Technologies*; EC's decision of 14 December 2021 in case M.9969, [Veolia/Suez](#).

<sup>857</sup> [CMA129](#), paragraph 9.6 states that 'Product market definition starts with the relevant products of the merger firms'.

wastewater treatment facilities for industrial activities self-supply their O&M services.<sup>858</sup> Veolia submitted that industrial customers, regardless of whether they had self-supplied in the past, would have engineering capability and technical expertise to self-supply. In Veolia's view, the increased degree of automation and digitisation and the support available from external consultants strengthens the ability of customers to self-supply.<sup>859</sup>

12.15 Veolia submitted that while self-supply was not possible for all industrial customers, it placed a significant constraint on the Parties' competitive position.<sup>860</sup> Veolia submitted that this was shown in [redacted], as [redacted], and because [redacted]. Veolia submitted that the [redacted]<sup>861</sup> which shows that self-supply is an alternative for both large and small industrial customers.<sup>862</sup>

12.16 Veolia submitted that the requirements of industrial customers that insource and those that outsource their O&M services were often the same, and [redacted].<sup>863</sup> Veolia further submitted that it could not at the time of competing for a tender identify which industrial customers could not or would not self-supply and therefore the possibility of self-supply is a strong constraint for all industrial customers.<sup>864</sup>

### *Third party views*

12.17 We asked customers whether they had considered switching from outsourcing to self-supplying the O&M of their water and wastewater facilities. Out of the eight customers that responded, five indicated that they had not considered switching from outsourcing to self-supply.<sup>865</sup> Two of the three customers that had considered switching referred to previous experience of self-supply, though one of these noted that it chose to outsource due to their O&M supplier's greater level of management and support on a day to day basis.<sup>866</sup> The other customer that considered switching submitted that labour costs could be prohibitive and noted the difficulties of self-supply in a potentially dangerous environment.<sup>867</sup>

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<sup>858</sup> Veolia site visit, [redacted]

<sup>859</sup> Veolia's response [redacted]

<sup>860</sup> Veolia's response [redacted]

<sup>861</sup> [redacted].

<sup>862</sup> Veolia's response [redacted]

<sup>863</sup> Veolia's response [redacted].

<sup>864</sup> Veolia's response [redacted].

<sup>865</sup> [redacted], [redacted], [redacted], [redacted], [redacted] responses to the CMA's O&M customer questionnaire.

<sup>866</sup> [redacted] and [redacted] responses to the CMA's O&M customer questionnaire. These customers did not explain whether they had positive or negative experiences of self-supply.

<sup>867</sup> [redacted] response to the CMA's O&M customer questionnaire, [redacted].

12.18 During the phase 1 inquiry, the CMA asked the Parties' customers how easy it would be for them to switch to self-supplying their O&M requirements:<sup>868</sup>

- (a) Three out of five customers indicated that it was difficult to self-supply O&M services.<sup>869</sup> While two of these customers submitted that self-supply may be possible if staff would transfer under TUPE from their current supplier, both noted they would lack the technical expertise and the ability to innovate if these services were brought in-house. Both customers noted that there would be additional costs associated with self-supply. Further, both submitted that outsourcing allowed them to focus on their core business.<sup>870</sup>
- (b) The other two customers were positive regarding their ability to switch to self-supply. One customer told us that self-supply would be very easy because it had previously self-supplied;<sup>871</sup> and the other customer stated that if it could TUPE staff from its current supplier, self-supply would be fairly straightforward.<sup>872</sup>

12.19 While some customers considered that it would be possible to self-supply if staff were transferred under TUPE,<sup>873</sup> it may be the case that only the onsite staff would be captured under TUPE rather than the management or technical staff of a supplier, who may support more than one industrial customer.<sup>874</sup> As discussed in paragraph 12.60 below, some customers place particular value on access to their O&M supplier's management and technical staff. Therefore, self-supply may not be a viable option for these customers.

12.20 We also held calls with customers as part of our phase 2 inquiry. We asked customers whether they would be able and willing to self-supply (as discussed in more detail in paragraph 12.58 below). All five customers we spoke to told us that they would be unwilling or unable to self-supply their O&M services because they did not have the technical expertise and it was not part of their core business.<sup>875</sup> One of these customers told us that while it would have been able to self-supply at a cheaper CAPEX cost, it had decided to outsource due to [REDACTED].<sup>876</sup>

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<sup>868</sup> In particular, we asked customers to indicate on a scale of 1-5 (1 being very difficult and 5 being very easy), how easy it would be for the customer to switch its O&M requirements in-house.

<sup>869</sup> [REDACTED], [REDACTED], and [REDACTED] responses to the CMA's [Phase 1] O&M customer questionnaire. Note: we excluded customer responses where it was unclear if the responses were referring to the industrial O&M market.

<sup>870</sup> [REDACTED] and [REDACTED] responses to the CMA's O&M customer questionnaire; note of call [REDACTED].

<sup>871</sup> [REDACTED], [REDACTED] and [REDACTED] response to the CMA's O&M customer questionnaire.

<sup>872</sup> [REDACTED] response to the CMA's O&M customer questionnaire.

<sup>873</sup> [REDACTED] response to the CMA's O&M customer questionnaire.

<sup>874</sup> Suez, Main Party Hearing, [REDACTED]

<sup>875</sup> Notes of calls [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED].

<sup>876</sup> Note of call [REDACTED].

12.21 Overall, customers provided varied views on their ability and willingness to self-supply. This is indicative of heterogeneity among industrial customers procuring O&M services for water and wastewater facilities.

*Provisional conclusion*

12.22 Overall, we consider that even if, as submitted by Veolia, [X<]% of all industrial water O&M activities are carried out in-house, this does not in itself mean that self-supply is a demand side substitute for all customers. The willingness and ability of some customers to self-supply does not mean that the remaining set of customers would be similarly willing and able to do so. Rather, the decision of the remaining customers to outsource the O&M of water and wastewater treatment facilities may reflect customer specific requirements or a strong preference to outsource O&M services. Indeed, some customers expressed a preference to outsource the O&M services in order to focus on their core business. For these customers, we consider that self-supply is unlikely to be a feasible alternative.

12.23 Further, we consider that, given their technical knowledge and expertise, the Parties are typically able to identify other potential constraints in respect of specific tenders (and we consider that the Parties' internal documents indicate that they are generally able to accurately identify the competitor set, including in respect of self-supply). As such, we consider that suppliers can typically recognise the customers that cannot or will not self-supply and therefore the possibility of self-supply is not a strong constraint for all industrial customers.

12.24 On this basis, our provisional view is that, given the heterogeneity of industrial customers and individualised requirements, a subset of customers will not be willing or able to switch to self-supply in response to a small but significant in price.

*Segmentation by type of water treatment facility*

*Parties' views*

12.25 Veolia submitted that the market definition should be left open, but skills and resources required to operate and maintain water and wastewater treatment facilities are essentially the same. Therefore, almost all O&M suppliers offer O&M services for both water and wastewater treatment facilities.<sup>877</sup>

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<sup>877</sup> FMN, [X<]. Veolia stated that it is only aware of [X<] as a supplier that provides services for wastewater treatment facilities only.

12.26 Suez submitted that the relevant market includes O&M services to both water and wastewater treatment facilities for industrial customers.<sup>878</sup>

#### *Third party views*

12.27 We asked customers whether suppliers of O&M services differed on the basis of various factors, including the type of water treated (ie water or wastewater). One out of five customers submitted that suppliers differed on the basis of type of water treated.<sup>879</sup> A different customer submitted that treatments for water and wastewater were fundamentally different and required different types of equipment such as tanks, pumps and filtration systems, but noted that the same suppliers tend to bid for water and wastewater contracts.<sup>880</sup>

12.28 We also asked competitors whether O&M suppliers differed on the basis of type of water treated. Two competitors submitted that suppliers differed on this basis but did not provide examples.<sup>881</sup> One of these competitors stated that the water and wastewater markets have different risks, which ‘could have’ an effect on the bidders. We note that both of these competitors provide both water and wastewater O&M services. During a call, another competitor submitted that O&M suppliers usually offer services to both water and wastewater facilities.<sup>882</sup>

#### *Provisional conclusion*

12.29 The evidence suggests that the same suppliers provide O&M services for both water and wastewater facilities. As such, we consider that the extent of any differences in the technical conditions in the O&M of different types of water is best considered within the competitive assessment.

### *Segmentation by customer industry and size of contracts*

#### *Parties’ views*

12.30 Veolia submitted that there was no segmentation between industrial customers on the basis of controlled, advanced and/or high-risk industries and/or by the size/complexity of contracts. In particular, O&M suppliers were capable of supplying all types of customers and customers had access to a

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<sup>878</sup> Suez response [3<].

<sup>879</sup> [3<] and [3<] responses to the CMA’s O&M customer questionnaire.

<sup>880</sup> [3<] response to the CMA’s O&M customer questionnaire.

<sup>881</sup> [3<] and [3<] responses to the CMA’s O&M competitor questionnaire.

<sup>882</sup> Note of call [3<].

wide range of potential suppliers, irrespective of those customers' specific size, requirements or industry.<sup>883</sup>

### *Third party views*

- 12.31 We asked customers whether suppliers differed on the basis of customer industry. Four out of five customers submitted that there is segmentation on the basis of customer industry.<sup>884</sup> However, one of these customers indicated that some suppliers do not bid for O&M contracts within specific sectors as a matter of preference rather than a decision being based on whether they possess the technical capability to supply customers in those industries.<sup>885</sup>
- 12.32 We also asked customers whether suppliers differed on the basis of size of contract. Three out of five customers submitted there is segmentation on the basis of size of contracts.<sup>886</sup> This was consistent with evidence we have received from two competitors, which was that there was segmentation on the basis of customer industry and size.<sup>887</sup>

### *Provisional conclusion*

- 12.33 Overall, we consider that variation on the basis of customer industry and/or size suggests that there is heterogeneity in the market and conditions of competition may vary accordingly. However, the distinction between these segmentations is not clearly defined, and any differentiation is best considered within the competitive assessment below.

### ***Provisional conclusion on product market***

- 12.34 For the reasons set out above, we provisionally conclude that the appropriate product market is the supply of O&M services for water and wastewater treatment facilities to industrial customers. We do not consider that self-supply is a viable option for all customers and consider that suppliers are typically able to identify which customers are able to self-supply. Therefore, we do not consider that self-supply is likely to pose a strong constraint to the Parties. We will investigate variation in customer requirements and the extent to which the Parties are strong in particular segments within the competitive assessment.

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<sup>883</sup> FMN, [redacted] and Phase 1 Decision, paragraph 565-566.

<sup>884</sup> [redacted], [redacted], [redacted] and [redacted] responses to the CMA's O&M customer questionnaire.

<sup>885</sup> [redacted] response to the CMA's O&M customer questionnaire.

<sup>886</sup> [redacted], [redacted] and [redacted] responses to the CMA's O&M customer questionnaire.

<sup>887</sup> [redacted] and [redacted] responses to the CMA's O&M competitor questionnaire.

## Geographic market

12.35 The European Commission, in previous decisions, considered the geographic market to be at least national.<sup>888</sup>

### *Parties' views*

12.36 Veolia submitted that although there are differences in regulation between England & Wales, Scotland and Northern Ireland, these do not materially affect the ability of suppliers to compete for customers.<sup>889</sup> Suez submitted that it is appropriate to assess market shares on at least a UK-wide, and likely an EEA and UK-wide, basis.<sup>890</sup>

### *Third party views*

12.37 Two competitors told us that companies without a UK physical presence rarely compete in the UK, and that companies without a UK presence would need to sub-contract in order to do so.<sup>891</sup> Nine out of twelve customers also submitted that they would not consider using a non-UK supplier without a local presence.<sup>892</sup> These customers referred to the need for onsite and local support, the need for a rapid response time and the strict regulations in the UK. However, we note that there seems to be a difference between the onsite personnel, who may TUPE across to a new supplier, and back-office technical support, which could in principle be supplied from abroad. Of the remaining three customers, one was undecided on whether it would consider a non-UK supplier and another submitted that it would depend on the scope of the O&M project as support is essential for turnarounds or equipment failures.<sup>893</sup>

### *Provisional view*

12.38 We consider that the evidence shows that most customers have not considered non-UK suppliers and competition from firms operating outside the UK is rare.

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<sup>888</sup> EC's decision of 27 April 2010 in case [COMP/M.5724](#), *Suez Environnement/Agbar*, EC's decision of 28 October 2010 in case [COMP/M.5934](#), *Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group*.

<sup>889</sup> FMN, [3<]

<sup>890</sup> Suez's response [3<]

<sup>891</sup> [3<] and [3<] responses to the CMA's Phase 1 competitor questionnaire.

<sup>892</sup> [3<], [3<], [3<], [3<], [3<], [3<], [3<], [3<] responses to the CMA's customer questionnaire. We asked customers to explain if they would consider suppliers of O&M that do not have a physical presence in the UK, but are active outside the UK to serve their O&M needs. Phase 1 and phase 2 results are combined.

<sup>893</sup> [3<] and [3<] responses to the CMA's O&M customer questionnaire.

### ***Provisional conclusion on geographic market***

12.39 For the reasons set out above, we provisionally conclude that the appropriate geographic market for the supply of O&M services for water and wastewater treatment facilities to industrial customers is the UK.

### **Indicators of competition**

12.40 In this section we consider how closely the Parties compete and the extent to which other suppliers pose a constraint on the Parties. In doing so, we consider the Parties' submissions, evidence from third parties and internal documents.

### ***How competition works***

12.41 In assessing the effect of the Merger, we first sought to understand how competition in the market works.

12.42 We asked customers what factors industrial customers consider important in deciding which supplier to use and to rank each factor from a scale of one to five (where one is not very important and five is very important). Customers identified quality of service and technical expertise / know-how in O&M of water and wastewater facilities, with each of these factors receiving the highest average ratings from customers - an average score of 5.0 each. Other factors included reliability of service, financial standing, track record and a supplier's regulatory certifications also received high scores.

12.43 However, as set out in more detail below, evidence from the Parties and third parties indicates that there is a degree of customer heterogeneity and customers have differentiated requirements. Contracts are individually negotiated, typically through a tender process but, in some instances customers may not run a formal tender process, but will instead conduct market checks.<sup>894,895</sup> We examine the extent to which customers' individualised preferences affects the set of credible suppliers and the impact of the Merger on those customers.

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<sup>894</sup> Note of call [3<].

<sup>895</sup> FMN, [3<]



*Parties' views*

12.44 Veolia submitted that while O&M services are tailored to specific requirements of customers based on the type and nature of facilities, the essential elements of O&M requirements were similar between customer groups, and technical requirements did not differ across industries or size of facility.<sup>896</sup> Veolia stated that risk varies depending on factors including [redacted].<sup>897</sup> Veolia also submitted that all suppliers of O&M services were capable of supplying all types of industrial customers, irrespective of their specific size, requirements or industry and that there was no differentiation between suppliers to large, more complex contracts and small, less complex contracts.<sup>898</sup> In particular, Veolia submitted:

- (a) Smaller competitors could win large contracts and gave the example of Alpheus that won the O&M contract for GSK's antibiotic facility in Scotland. The annual contract value of £[redacted] is [redacted] than [redacted]. Veolia also gave the example of the Qualitech/Plater JV serving Johnson Matthey, which had a contract value of £[redacted].<sup>899</sup>
- (b) Other than servicing MOD or regulated water contracts, there were no onerous legal requirements that suppliers have to adhere to in relation to industrial customers. Veolia submitted that it expected all its competitors hold the requisite ISO and engineering accreditations.<sup>900</sup>
- (c) All competitors could provide 24/7 services with local resources or resources acquired through TUPE. Veolia also submitted that all competitors provided emergency call out services directly, or through specialist suppliers, which were only required in the event of major breakdowns.<sup>901</sup>
- (d) The ability of a wide range of suppliers to compete for existing client-specific contracts was strengthened by the transfer of staff under TUPE to a new operator, ensuring that the necessary technical knowledge was also transferred.<sup>902</sup>

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<sup>896</sup> Veolia's response [redacted]; Veolia's Supplementary Submission, [redacted].

<sup>897</sup> Veolia's response [redacted].

<sup>898</sup> Veolia's response [redacted]; Veolia's Supplementary Submission, [redacted]

<sup>899</sup> Veolia's response [redacted].

<sup>900</sup> Veolia's response [redacted]

<sup>901</sup> Veolia's response [redacted]

<sup>902</sup> Parties' joint response to [redacted]

12.45 Veolia submitted that it provides its customers with [REDACTED] that require pricing to [REDACTED].<sup>903</sup> Similarly, Suez submitted that it negotiates with the customer for its O&M contracts [REDACTED].<sup>904</sup>

#### *Third party views*

12.46 Third party evidence shows that, in the market for the supply of O&M services for water and wastewater treatment facilities, industrial customers have heterogeneous requirements. In particular:

- (a) All five responding customers identified that they considered references / experience in the same sector was an important factor in selecting a provider.<sup>905</sup> For example, [REDACTED] said that while it did not discount a supplier with no experience in its industry, it preferred a supplier with previous knowledge and expertise in its specific industry.<sup>906</sup> [REDACTED] told us that it would look specifically for a supplier with experience of managing the water treatment of [REDACTED] because the requirements of its plant are unique.<sup>907</sup>
- (b) Competitors also indicated that the customer base is heterogeneous, especially in terms of the risk associated with the contract.<sup>908</sup> In particular, [REDACTED] said that the market is broadly segmented into three categories of risk: industries with controlled risk such as food and beverage, advanced risk industries such as pharmaceuticals and high-risk, cutting edge industries such as power generation. However, we were unable to substantiate this categorisation.

12.47 Further, the conditions of competition seem to vary depending on customer requirements. In particular:

- (a) As discussed in paragraphs 12.31 and 12.32 above, most customers that responded to our questionnaire told us that there was a different set of bidders depending on customer industry and/or size of contract. For example, Novartis Grimsby said that the ability of O&M suppliers is 'heavily dependent' on sectors,<sup>909</sup> and [REDACTED] stated that suppliers needed a

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<sup>903</sup> FMN, WMS Chapter, paragraph 15.2.

<sup>904</sup> FMN, WMS Chapter, paragraph 15.6.

<sup>905</sup> [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to the CMA's O&M Phase 1 customer questionnaire. At Phase 1, we asked customers to explain the factor they considered to be most important in deciding which provider to use for the O&M of their water or wastewater facility. Five relevant customers responded to this question. We excluded responses from customers that were not referring to the industrial O&M market.

<sup>906</sup> [REDACTED] response to the CMA's O&M customer questionnaire.

<sup>907</sup> Note of call [REDACTED]. [REDACTED] noted that this is because of the levels of contaminants in the water and the size and scale of their plant means that it is an expensive operation. Therefore, the supplier needs to have experience in the right field to be able to minimise costs and meet performance requirements.

<sup>908</sup> [REDACTED] response to the CMA's RFI, [REDACTED]; and note of call [REDACTED]

<sup>909</sup> [REDACTED] response to the CMA's O&M customer questionnaire

certain scale to provide O&M to its facilities because they require ‘a lot more personnel and technical capability than a small facility’.<sup>910</sup>

- (b) [X] submitted that the O&M market was very fragmented and, while there were smaller players that could provide certain solutions to some customers, a small provider would not work for [X] due to the size and scope of its systems.<sup>911</sup>
- (c) A customer and two competitors ([X], [X] and [X]) submitted that Veolia and Suez are two of a limited number of competitors with the scale and know-how necessary to service large water and wastewater O&M contracts, and that small companies did not have the requisite know-how and insurances for large.<sup>912</sup> [X] submitted that there were strong barriers to suppliers that currently only have lower risk contracts in winning higher risk contracts.<sup>913</sup>

### *The Parties’ internal documents*

12.48 [X]<sup>914</sup>

12.49 A number of the Parties’ internal documents discussed a range of solutions for customers (see ‘Internal documents’ below). Furthermore, a Veolia internal document that provides an overview of opportunities and ongoing contracts for Veolia shows that [X].<sup>915</sup> In addition, the Parties’ internal documents show that O&M contracts are individually negotiated.<sup>916</sup>

### *Provisional view*

12.50 The evidence set out above supports the case that the market is differentiated. The heterogeneity of customers suggests that the effect of the Merger may vary between some customers. Notwithstanding the existence of this heterogeneity, we note that customers have 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, that form the basis of common concerns among the Parties’ customers, however disparate they may be as a group. These factors may from time to time influence decisions of industrial

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<sup>910</sup> [X] response to the CMA’s O&M customer questionnaire.

<sup>911</sup> Note of call [X]

<sup>912</sup> [X] response to the CMA’s O&M customer questionnaire; note of call [X]; note of call [X].

<sup>913</sup> [X] response to the CMA’s RFI, [X]

<sup>914</sup> Veolia response [X]

<sup>915</sup> Veolia Internal Document [X]. This document discusses [X]. These appear to [X]. For example: [X].

<sup>916</sup> See Internal Documents section for more detail.

customers to change their existing preferences and outsource their O&M requirements.

- 12.51 Given that it is has not been possible to draw clear linkages between customers, we have focused on qualitative evidence from customers that self-identify as having complex requirements and consider the impact of the Merger on this subset of customers.

### **Market shares**

- 12.52 In assessing the effect of the Merger, we sought to estimate market shares to help understand the relative strengths of O&M suppliers. We recognise that there is limited data on market size and the relative size of suppliers. We received materially different market share estimates from the Parties, third parties and an industry report, but were unable to verify the accuracy of any of these estimates. Given the issues around reliability of the estimates, we have placed limited weight on market shares.

- 12.53 Nevertheless, we provide a brief overview of the market share estimates:

- (a) **Parties' submissions.** Veolia submitted that the Merged Entity would have a share of supply of no more than [20-30%],<sup>917</sup> with a long tail of competitors. Veolia stated that it had [X] but named [X] other competitors that could have been included in the [X].<sup>918</sup> Veolia estimated market shares on the basis of (i) number of contracts and (ii) revenues. We note that the number of contracts did not take the size of contract into account.<sup>919</sup> With respect to revenues, Veolia applied high-level assumptions and approximations to data from GWI (see below) that we have been unable to verify. Further, Veolia submitted that it cannot verify the accuracy of GWI's data, though stated that the resulting calculated shares [X].<sup>920</sup>
- (b) **Third parties.** Three third party competitors submitted that Veolia and Suez had very strong positions in the O&M of water and wastewater treatment facilities.<sup>921</sup> One competitor estimated that the Parties had a

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<sup>917</sup> Parties' response [X]. Veolia calculated market size by adjusting data from GWI using assumptions based on its market knowledge. Veolia used its and Suez's revenues to estimate their market shares.

<sup>918</sup> Veolia's response [X].

<sup>919</sup> Veolia estimated its share of contracts based on the European Commission's 2010 estimate of market share in Veolia/United and estimated that Suez has a similar share. Case [COMP/M.5934](#), Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group, 28 October 2010, paragraphs 56 and 59-60

<sup>920</sup> Parties' response [X].

<sup>921</sup> Note of call [X], [X] response to the CMA's O&M competitor questionnaire, note of call [X]. In particular: [X] submitted that the Parties had combined share of supply of over 50% in the O&M market and were especially strong in high-risk industries.

combined share of supply of over 50% in the O&M market and were especially strong in high-risk industries.<sup>922</sup>

- (c) **Industry report.** An industry report (GWI) sets out that the Parties had a combined share of supply of 50-60% in the combined UK market for O&M and design-build-operate (**DBO**) in 2015.<sup>923</sup> We received this report as part of Suez's internal document submission. Veolia submitted that it has not been able to verify the accuracy of this industry report, but noted that the report stated that [X] was a prominent player.<sup>924</sup> GWI submitted that Severn Trent was understood to have a lower market share than both Veolia and Suez at the time of publication in 2015.<sup>925</sup>

12.54 The above representations indicate that the Parties' combined share of the O&M and water and wastewater treatment facilities might be somewhere between [20-30%] and 60%. These estimates give very different pictures of the Parties' position in the marketplace. The lack of transparency and reliable data make estimating shares difficult, and we have not received sufficient competitor data to reliably reconstruct market shares. As such, we have placed limited evidential weight on the market share estimates. Notwithstanding this, 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. We also note that a Veolia internal document states that [X].<sup>926</sup>

12.55 In a case, where reliable estimates of shares of supply are not readily available, or where there is a high degree of differentiation, we may rely to a greater extent on other sources of evidence on closeness of competition.<sup>927</sup> As such, we have focused our investigation on evidence from third parties, tender data and internal documents in examining the closeness of the Parties and the constraints from other competitors. We set out this evidence below.

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- [X] submitted that there was a limited number of companies that bid for the provision of O&M services to large customers: Veolia, Suez and Alpheus.
  - [X] submitted that is that Veolia and Suez are the two strongest competitors in the O&M of water and wastewater facilities for industrial customers in the UK.

<sup>922</sup> Response to CMA Phase 1 questionnaire [X] and note of call [X]

<sup>923</sup> Suez's Internal Document, [X]. GWI confirmed that this includes any contract with an O&M component, regardless of whether design and build is included within the scope.

<sup>924</sup> Veolia's response [X]

<sup>925</sup> Response to CMA Phase 2 RFI [X]

<sup>926</sup> Veolia Internal Document [X]

<sup>927</sup> [CMA129](#), paragraph 4.15

## ***Customer views on the Merger***

- 12.56 During our investigation, we held hearings with five of the Parties' industrial customers of O&M services for water and wastewater treatment facilities.<sup>928</sup> These customers operated in a range of sectors (food and beverage, manufacturing, and infrastructure).
- 12.57 Four of these customers raised significant concerns with the Merger and identified that Veolia and Suez were two of a very limited competitor set with the technical expertise necessary to serve their contracts. These four customers had particularly large contracts and are among the largest contracts the Parties hold (by annual contract value). They account for approximately £[X] in aggregate annual contract value, or around 30% of the Parties' total contract value.
- 12.58 We consider the four customers that raised concerns about the Merger below:
- (a) The Parties were the only two bidders for [X] O&M contracts and [X] submitted that it was 'completely reliant on [Suez's] technical expertise'.<sup>929</sup> [X] further highlighted the considerable back-office, wider support network and experience that Suez could lean on to bring the knowledge to the site. For instance, [X] referred to an example of a call that it held with six technical experts from Suez to resolve an issue with their wastewater facility. It explained that the O&M services provided were critical and that any issues with its wastewater facility could cause the plant to shut down for months. [X] would not be willing to absorb the risk associated with self-supplying such a critical service.<sup>930</sup>
  - (b) Similarly, the Parties were the only two bidders for [X] O&M contract for its wastewater facility. [X] submitted that it relied on the technical expertise that comes from Suez's management background staff with technical knowledge and access to lab, not just the on-site operator. It explicitly confirmed that this was part of its O&M contract. [X] also stated that Suez's broader experience across the water management value chain was important to [X] and gave the example of an occurrence where Suez was able to flag a critical issue from a different D&C provider's design proposal that would have led to permit breaches. Further, [X] stated that the structure of its payment contract meant it was limited to large suppliers.<sup>931</sup> [X] submitted that it was not willing or able to self-

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<sup>928</sup> We chose these customers as they had relatively large contracts with the Parties for industrial O&M.

<sup>929</sup> Note of call [X]

<sup>930</sup> Note of call [X]

<sup>931</sup> Note of call [X]

supply because it was unable to provide the 24/7 staff support and the analysis of materials.

- (c) [X] submitted that its research found that only Veolia and Suez had the experience, capabilities, technical compliance and financial size to deliver [X] requirements for its design, build, [X] and operate contract for a new wastewater facility. Further, [X] stated that it only partnered with a limited number of suppliers because it was very risk averse and there were huge risks associated with the O&M contract, so it would not choose an unproven supplier. [X] submitted that it deliberately chose to outsource this contract to focus on its core business.<sup>932</sup>
- (d) [X] submitted that the only four main players in the water treatment market were Nalco, Solenis, Suez and Veolia, but [X] would not use Nalco for effluent treatment due to its lack of proven experience in this area. Further, [X] submitted that Suez was Veolia's 'biggest' competitor in relation to the O&M of water and wastewater treatment facilities and that the Merger would remove 'Veolia's only legitimate competition in effluent treatment'. In addition, [X] stated that unlike smaller suppliers, the Parties were able to provide 24/7 services to its sites.<sup>933</sup>

12.59 The fifth customer we spoke to ([X]) told us that the two final bidders for its contract were Veolia and ACWA and that Veolia was ultimately selected specifically due to their expertise and value add. However, [X] stated that IWJS and Mitie could also provide their O&M services.<sup>934</sup>

12.60 Overall, we consider that the calls with customers described above provide strong evidence that Veolia and Suez are two of a limited competitor set for at least some customers. In particular, the evidence shows that the Parties are strong in terms of their technical expertise and that customers particularly value Veolia and Suez's ability to draw on wider support from their organisations, beyond the on-site operator. Further, three of the above customers were unable to identify any other competitors that they considered credible for their contracts and one customer only identified one other credible supplier. These customers, and customers with similar characteristics and/or requirements, are therefore likely to be harmed directly by the Merger.

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<sup>932</sup> Note of call [X]

<sup>933</sup> [X] response to the CMA's O&M customer questionnaire and note of call [X].

<sup>934</sup> Note of call [X]

## ***Tender analysis***

12.61 Veolia provided data on tenders it competed for in the period 2016 to 2020;<sup>935</sup> and Suez for the period 2015 to 2021.<sup>936</sup> As part of this data, the Parties submitted information on the incumbent, the value of the contract, which competitors they believed also bid for each contract and the ultimate winner. The Parties submitted the data for tenders that had an estimated value greater than £[REDACTED]. This materiality threshold was chosen to reduce the administrative burden on the Parties. We consider this evidence below.

## ***Parties' submissions***

12.62 Veolia submitted that the Parties did not compete closely in the supply of O&M services for water and wastewater treatment facilities to industrial customers.<sup>937</sup>

12.63 In relation to its tender data, Veolia submitted that:

- (a) Self-supply was the primary competitive constraint faced by Veolia; Veolia faced competition from self-supply [REDACTED] and customers shifting to self-supply was [REDACTED]. Veolia stated that the value of tenders lost to self-supply range from £[REDACTED] to £[REDACTED], which shows that self-supply is an alternative for both large and small customers;<sup>938</sup>
- (b) Veolia has bid against Suez in more tenders than any other competitor (after self-supply) and Suez has been a more prominent winner against Veolia in this sample of tenders;<sup>939</sup> and
- (c) There were a significant number of alternative competitors capable of bidding for and winning contracts.<sup>940</sup>

12.64 In relation to Suez's tender data, Veolia submitted that [REDACTED]. In particular, Veolia said that [REDACTED].<sup>941</sup>

12.65 Suez submitted that it extracted information from its internal system. It stated that this system is not a sales management system and, while some information about competitors is present in the system, such information is not

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<sup>935</sup> FMN, [REDACTED]

<sup>936</sup> FMN, [REDACTED]

<sup>937</sup> Veolia's response [REDACTED]

<sup>938</sup> Veolia's response [REDACTED]

<sup>939</sup> FMN, [REDACTED]

<sup>940</sup> FMN, [REDACTED]

<sup>941</sup> Veolia's supplemental submission [REDACTED]



likely to represent a reliable and comprehensive view of the competitive situation in respect to each tender.<sup>942</sup>

### ***Our assessment***

12.66 There are differences between the tender datasets provided by each of the Parties, both in respect to completeness and approach:

(a) With respect to completeness of the dataset, we note that Veolia was able to identify the winner in [REDACTED] contracts; and other bidders in [REDACTED]. Suez was able to identify the winning bidder in [REDACTED] tenders it had identified; and other bidders in [REDACTED] of these tenders.

(b) With respect to approach, Veolia's dataset identifies self-supply as a 'competitor', whereas Suez submitted that [REDACTED].<sup>943</sup>

12.67 We have concerns about the treatment of self-supply in Veolia's dataset because we do not consider that it is the case that self-supply poses the same level or type of constraint on the Parties as another competitor would for certain customers. As discussed in paragraph 12.22 above, some customers are not willing or able to self-supply, and we consider that the Parties are typically able to identify such customers. Therefore, self-supply will not be a significant constraint on the Parties for these customers. As such, treating self-supply as a competitor in tender analysis necessarily overstates its strength as a constraint on the Parties in respect of some customer opportunities.

12.68 In the following sub-sections, we set out our tender analysis based on the Parties' tender data.

### ***Veolia's tender data***

12.69 We conducted both a participation and a loss analysis on Veolia's tender data.<sup>944</sup> We present our analysis in Table 12.1 below:

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<sup>942</sup> Suez's response [REDACTED]

<sup>943</sup> Subsequently, Suez submitted some examples of customers who switched to self-supply over the past five years, but these examples have not been taken into account in the tender analysis, as it was unclear whether switching occurred following a tender process.

<sup>944</sup> Participation and loss analysis are explained in Chapter 7.

**Table 12.1: Participation and loss analysis of Veolia's tenders (2016-2020)**

Supplier	Participation analysis		Loss analysis	
	Number of tenders participated in	Percentage	Number of tenders won	Percentage
Suez	[3]	[20-30%]	[3]	[30-40%]
Self-supply	[3]	[50-60%]	[3]	[20-30%]
Alpheus	[3]	[10-20%]	[3]	[5-10%]
CG Godfrey Limited	[3]	[0-5%]	[3]	[5-10%]
CCEP	[3]	[0-5%]	[3]	[5-10%]
Atana	[3]	[0-5%]	[3]	[5-10%]
John F Hunt Regeneration	[3]	[0-5%]	[3]	[5-10%]
Nijhuis	[3]	[5-10%]	[3]	[5-10%]
Qualitech Environmental Services/Plater	[3]	[0-5%]	[3]	[5-10%]
Severn Trent Services	[3]	[0-5%]	[3]	[0-5%]
ACWA	[3]	[0-5%]	[3]	[0-5%]
Aquabio	[3]	[0-5%]	[3]	[0-5%]
Ecolutia	[3]	[0-5%]	[3]	[0-5%]
Ovivo	[3]	[0-5%]	[3]	[0-5%]
NMCN	[3]	[0-5%]	[3]	[0-5%]
IWS	[3]	[0-5%]	[3]	[0-5%]
Hargreaves	[3]	[0-5%]	[3]	[0-5%]
Siltbuster	[3]	[0-5%]	[3]	[0-5%]
Synergie Environ	[3]	[0-5%]	[3]	[0-5%]
Total	[3]	100%	[3]	100%

Source: CMA analysis of Veolia's tender data.

Note: one tender was won jointly by [3] and self-supply and is counted as a win for both. [3] won the D&B only of the tender it bid for, so it is not recorded as an O&M win.

12.70 Table 12.1 shows that:

- (a) Suez was Veolia's most faced competitor [20-30% of tenders] ([3]), with only self-supply (which we do not consider as equivalent to a competitor) featuring more frequently [50-60% of tenders] ([3]). Only [3] other competitors faced Veolia in two or more tenders ([3]), with a long tail of other suppliers competing in one tender each; and
- (b) When considering the occasions where Veolia was unsuccessful in a bid against other suppliers, Veolia lost most frequently to Suez. In particular, Suez won [30-40% of tenders] [3] Veolia bid for and lost. In addition, no other competitor (other than self-supply) won more than [3] tender.

12.71 As such, the effective diversion from Veolia to Suez is [30-40%]. This diversion rate is high and likely to be problematic. If we consider only tenders where self-supply was not an option, Suez won [3] of the [3] tenders in which Veolia lost and identified the winner.<sup>945</sup> This results in a very high effective diversion of [40-50%]. Overall, Veolia's bid data indicates the Suez is Veolia's closest competitors and will likely exert a strong constraint on Veolia for the contracts that they compete for. In paragraphs 12.72 and 12.73, we

<sup>945</sup> This removes all [3] of the tenders where Veolia listed self-supply as a competitor, regardless of whether self-supply ultimately won. As such, [3] tenders remain. Veolia won [3] of these and identified the winning bidder in [3] of these tenders.

also consider the extent of the constraint Veolia faces from self-supply and other competitors.

- 12.72 For the tenders in which Veolia identified self-supply as a potential competitor, the effective diversion rate from Veolia to self-supply is [20-30%]. However, in our view, the loss analysis may overstate the strength of a constraint that Veolia faced from self-supply. In particular, Veolia cited [X] ([20-30%]) of self-supply wins, with a contract value range of £[X] to £[X]. However, [X] of these 'wins' were part-awarded to third party suppliers. One of these was the contract worth £[X], which was for both D&C and O&M; [X] won the D&C and the customer chose to self-supply the O&M. While the value split between D&C and O&M is unclear, £[X] overstates the value 'won' by self-supply.
- 12.73 With respect to the constraint from the other O&M operators, we note that there is a tail of suppliers that competed three or fewer times and seven other suppliers that each won one contract that Veolia lost. This is consistent with the view that the market is fragmented and heterogenous. As discussed in 'Credible suppliers' section, third parties identified that not all suppliers are able to compete for all types of contracts. As such, these suppliers may not pose a material constraint on certain contracts. We consider this further in paragraph 12.101.
- 12.74 On the basis of the above evidence, we consider that Veolia's tender data shows Suez was Veolia's closest competitor: Suez bid most frequently against Veolia and won the most contracts that Veolia lost. While self-supply may have constrained Veolia on some contracts, we consider that this constraint is overstated in the bidding data and, self-supply is not a relevant constraint for all contracts, for the reasons set out in market definition.

#### *Suez's tender data*

- 12.75 We note Veolia's submissions about the reliability of Suez's bidding data. We also asked the Parties' customers for a list of their O&M contracts, including information on the value of the contract, the bidders for the contract and the ultimate winner. Where possible, we matched this evidence with Suez's dataset.
- 12.76 We present our participation and loss analysis in Table 12.2 below:

**Table 12.2: Participation and loss analysis of Suez's tenders (2015-2021)**

<i>Supplier</i>	<i>Participation analysis</i>		<i>Loss analysis</i>	
	<i>Number of tenders participated in</i>	<i>Percentage</i>	<i>Number of tenders won</i>	<i>Percentage</i>
Veolia	[X]	[80-90%]	[X]	[20-30%]
Nalco	[X]	[10-20%]	[X]	[20-30%]
Aqua	[X]	[5-10%]	[X]	[20-30%]
Mourik	[X]	[5-10%]	[X]	[20-30%]
INEOS	[X]	[5-10%]	[X]	[0-5%]
Anglian Water	[X]	[5-10%]	[X]	[0-5%]
Aquabio	[X]	[5-10%]	[X]	[0-5%]
Total	[X]	100%	[X]	100%

Source: CMA analysis of Suez's tender data.

12.77 Our analysis showed that:

- (a) Veolia competed most frequently against Suez, participating in [X] tenders ([80-90%]). In comparison, the next most frequent bidder ([X]), competed in only two tenders ([10-20%]). Five other suppliers competed in one tender each; and
- (b) Each of the [X] tenders that Suez lost were won by different suppliers: [X].

12.78 We note that the Parties regularly face competition from each other, and significantly more than from any of the other O&M operators. However, as Suez won most of the contracts that it participated in, the loss analysis is restricted to only [X] observations. While we note that Veolia was one of [X] different winners, we exercise some caution in interpreting this bidding data to draw conclusions on the strength of the constraint that Veolia places on Suez, given the small dataset.

### ***Provisional conclusion on the Parties' tender data***

12.79 The Parties' tender data shows that Veolia and Suez frequently bid against each other and won contracts that the other Party lost more frequently, or at least as frequently than other competitors. We believe that this shows that the Parties are close competitors for certain contracts. While Veolia's bidding data showed that it also frequently loses to self-supply, we note that this may overstate the strength of self-supply and, in any case, we consider that not all industrial customers would be willing or able to self-supply O&M services for water and wastewater treatment facilities, as set out in paragraph 12.22 above.

12.80 Overall, this evidence corroborates the evidence from customers (paragraph 12.60) that the Parties are two of a limited competitor set and post-Merger will not face significant constraints from other O&M operators for at least some customers. Further, the tender analysis indicates that the harm

caused by the Merger may affect more than just the customers identified in paragraph 12.58 above as the Parties compete for a significant portion of each other's tenders.

### ***Internal documents***

12.81 We examined a number of the Parties' internal documents, which, in our view, provides evidence on how the Parties viewed the market and their competitors in the ordinary course of their business prior to the Merger.

12.82 Owing to the volume of internal documents received from the Parties, we focused our analysis on specific competitors that had been identified by the Parties and/or by third parties as potentially strong competitors. The competitors were Nijhuis, Alpheus, Severn Trent, Solenis, Aquabio and ACWA. Therefore, the evidence from our internal document review is probative of the competition between Veolia, Suez and these competitors, and less relevant for other competitors that compete for O&M contracts. We present the evidence below.

### ***Parties' submissions***

12.83 We discuss the Parties' submissions in relation to the relevant internal documents below.

### ***Our assessment***

12.84 We have analysed a number of the Parties' internal documents, which, in our view, are informative evidence on how the Parties viewed the market and their competitors in the ordinary course of their business prior to the Merger.

12.85 We consider that Veolia's internal documents indicate that Veolia most frequently identifies Suez as a competitor, appears to be able to identify the competitive set in upcoming tenders and often engages in bespoke negotiations with customers. For example:

- (a) A Veolia Internal Document identifies [REDACTED].<sup>946</sup> [REDACTED]. With regards to self delivery, Veolia states that [REDACTED]. Veolia submitted that [REDACTED]. The document also notes that Veolia had two discussions with [REDACTED] in relation to the tender;<sup>947</sup>

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<sup>946</sup> Veolia's Internal Document, [REDACTED].

<sup>947</sup> Veolia's response to [REDACTED]

- (b) Another Veolia internal document records [REDACTED].<sup>948</sup> Veolia submitted that [REDACTED].<sup>949</sup>
- (c) One Veolia internal document identifies [REDACTED].<sup>950</sup> Veolia submitted that this contract [REDACTED]. Further, Veolia submitted that [REDACTED]. This document also states that [REDACTED].<sup>951</sup>
- (d) One Veolia internal document that discusses [REDACTED]. [REDACTED].<sup>952</sup>
- (e) A Veolia internal document relating to the [REDACTED].<sup>953</sup>

12.86 We found very few Suez documents that discussed its competitors, either in relation to specific tenders or more widely in the O&M market. Those that did identified Veolia as a competitor. Other competitors were rarely mentioned:

- (a) One Suez internal document notes that [REDACTED]. No other competitors were identified.<sup>954</sup>
- (b) Another Suez internal document [REDACTED]. This document [REDACTED]. Further, [REDACTED].<sup>955</sup>

### ***Provisional conclusion***

12.87 Most of the internal documents relate to individual tenders. While we note that our review is not an exhaustive list of all internal documents in which the O&M contracts are mentioned, the documents we found suggest the following:

- (a) Customer requirements vary by each customer and contracts are individually negotiated – the market is differentiated. In particular, the contracts considered in the internal documents listed above had different requirements from each other and indicated that there were discussions between the potential suppliers and customers before the tender process;
- (b) The Parties appear to have a sense of who the likely competitors will be in upcoming tenders. We were able to verify that Veolia correctly identified other bidders for the [REDACTED] tender and that self-supply was a limited constraint; and

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<sup>948</sup> Veolia's Internal Document, [REDACTED].

<sup>949</sup> Veolia's response [REDACTED]

<sup>950</sup> Veolia's Internal Document, [REDACTED]

<sup>951</sup> Veolia's response [REDACTED]

<sup>952</sup> Veolia's Internal Document, [REDACTED]

<sup>953</sup> Veolia's Internal document, [REDACTED]

<sup>954</sup> Suez's Internal Document, [REDACTED].

<sup>955</sup> Suez's Internal Document, [REDACTED]

- (c) Consistent with the tender analysis, in the internal documents we reviewed, Veolia and Suez discuss each other more frequently than they discuss competition with rivals. In the contracts where Veolia and Suez competed, typically only one other, or no other, O&M provider is identified. These customers will face a reduction of choice following the Merger.

12.88 We consider that the internal documents corroborate the evidence from customers in paragraph 12.58 above as well as the evidence from the tender data in paragraphs 12.70 and 12.77.

### ***Credible suppliers***

12.89 In this section, we consider the closeness of competition between the Parties based on third party ratings and consider the extent to which current O&M operators constrain the Parties.

### ***Parties' submissions***

12.90 Veolia submitted that it only competed with Suez on a subset of Veolia's industrial water O&M business. In particular, Veolia's submitted that its contracts [REDACTED] Suez serves only contracts for O&M of water and wastewater treatment facilities for industrial customers.<sup>956</sup> For these contracts, the Merged Entity will continue to face strong competition from self supply and external consultants who help customers to self-deliver services.<sup>957</sup> Further, for the contracts that are outsourced, the Merged Entity will face a significant number of rivals with demonstrated experience for projects of all sizes, volumes and complexities.<sup>958</sup>

12.91 Veolia submitted that the services it provides to its industrial customers [REDACTED]. Veolia further stated that much of the equipment it operates [REDACTED]. Veolia noted that [REDACTED].<sup>959</sup>

### ***Our assessment***

12.92 In order to understand how closely the Parties compete with each other and other rivals, we considered the extent to which the market players are credible suppliers. In particular, we first considered the suppliers that the Parties' customers view as credible, as these are the suppliers that the Parties' customers will choose between when issuing a new contract, and thus the

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<sup>956</sup> [REDACTED] (Veolia's Supplemental Response [REDACTED]).

<sup>957</sup> Veolia response [REDACTED]; FMN, [REDACTED]

<sup>958</sup> Veolia Supplemental Response [REDACTED]; FMN, [REDACTED].

<sup>959</sup> Veolia's response [REDACTED]

potential constraints on the Parties. We then analysed the suppliers that the Parties' rivals view as strong competitors.

### *Evidence from customers*

12.93 We asked customers to list the suppliers that they would consider credible if they were to retender their existing O&M contracts and indicate their strength on a scale from 1-5 (where 1 is not very strong and 5 is very strong). We received responses from four customers about five O&M contracts. Table 12.3 summarises the results.

**Table 12.3: Summary of customer scoring of the strength of suppliers**

<i>Competitor</i>	<i>Average rating unadjusted for non-mentions</i>		<i>Average rating adjusted for non-mentions as a score of zero</i>	
	<i>No of respondents</i>	<i>Average rating (out of 5)</i>	<i>No of respondents</i>	<i>Average rating (out of 5)</i>
Suez	4	5.0	5	4.0
Veolia	4	4.0	5	3.2
Welsh Water	1	3.0	5	0.6
Evoqua	1	3.0	5	0.6
Quaker Houghton	1	2.0	5	0.4
D2O	1	2.0	5	0.4
Kee Processes	1	1.0	5	0.2
FCC				
Environmental	1	1.0	5	0.2
Cory				
Environmental	1	1.0	5	0.2

Source: CMA analysis of response to questionnaire by customers

12.94 The results showed that:

- (a) Customers identified Veolia and Suez most frequently (4 times each), and gave them a very high average rating of 4.0 and 5.0, respectively. Seven other competitors were identified only once, all of which received an average rating of 3.0 or below.
- (b) Treating non-mentions as a score of zero, all competitors other than Veolia or Suez received a rating of less than 1.<sup>960</sup>

<sup>960</sup> Non-mentions of a supplier can be interpreted as meaning either (i) that the supplier is "non-credible", or (ii) that the customer is only familiar with certain bigger names. In the first scenario, this would warrant a low score (essentially a zero, because "non-credible" is weaker than "credible but relatively weak"). In the latter scenario, you would discount the non-mention. We present both ways of scoring, recognising that the proper interpretation is somewhere between the two. We should put more weight on the scores that treat non-mentions as a zero if you think the average customer knows who's out there. As this market is differentiated and customers do not necessarily contract through formal tender processes, it is less clear to us that customers will have a good understanding of all the suppliers in the market because they will only consider the suppliers that are credible for their type of contracts. Therefore, we are inclined to put less weight on the scoring that treats non-mentions as zero. In any case, the Parties score highly on both measures and are frequently described as market leaders.



12.95 The results indicate that the Parties were among the strongest suppliers with a long tail of other competitors.<sup>961</sup> Customers also explained the strengths/weaknesses of the suppliers they considered credible. Below, we consider the qualitative customer submissions from phase 1 and 2:

- (a) Three customers referred to their previous experience with Suez; one of these noted Suez had ‘excellent performance’ and another also highlighted their positive experience.<sup>962</sup> A further customer stated Suez offered the most innovation and investment.<sup>963</sup>
- (b) Six customers referred to their previous experience with Veolia. One customer referred to Veolia’s D&C experience,<sup>964</sup> another stated Veolia was able to service a range of requirements,<sup>965</sup> and another noted Veolia has ‘outstanding service across key sectors delivering on quality with the capabilities to match’.<sup>966</sup> However, two customers stated that Veolia was more expensive,<sup>967</sup> another stated that Veolia’s O&M performance was ‘not brilliant’,<sup>968</sup> and another identified it scored lower than the other bidder for its contract.<sup>969</sup>
- (c) Other suppliers were also assessed with reference to the customers’ relationships with those suppliers and the supplier’s experience.

12.96 Overall, the results show that the Parties are identified as strong and credible suppliers, with a long tail of other suppliers. This is consistent with the qualitative customer views described in paragraph 12.58 above, and the tender data.

12.97 We note Veolia’s submissions that its O&M services are [redacted] and [redacted] the onsite personnel, which TUPE to the new operator. However, we consider that qualitative evidence shows that customers value Veolia and Suez’s ability to draw on wider support from their organisations. In particular, as discussed

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<sup>961</sup> [redacted], [redacted], [redacted], [redacted] and [redacted] responses to the CMA’s phase 1 O&M customer questionnaire. In particular, at phase 1 we asked customers to list the companies which they considered to be the strongest suppliers of O&M in the UK (in terms of their ability to meet the customer’s needs if they were issuing a tender for O&M in the UK today). Five customers responded to this question. All of these customers were different than those in the phase 2 analysis above. Four customers identified Veolia, giving it an average rating of 4.0; two customers identified Suez, giving it an average rating of 5.0 and five suppliers were identified once. Two of these received a score of 4.0 and the remaining three received a score of 3.0. Note: during the Phase 1 investigation the CMA contacted all of the Parties’ O&M customers, including RWCs. The answers from RWCs have been excluded from the analysis (throughout the Provisional Findings).

<sup>962</sup> [redacted], [redacted] and [redacted] responses to the CMA’s O&M customer questionnaire.

<sup>963</sup> [redacted] response to the CMA’s O&M customer questionnaire.

<sup>964</sup> [redacted] response to the CMA’s O&M customer questionnaire.

<sup>965</sup> [redacted] response to the CMA’s O&M customer questionnaire.

<sup>966</sup> [redacted] response to the CMA’s O&M customer questionnaire.

<sup>967</sup> [redacted] response to the CMA’s O&M customer questionnaire.

<sup>968</sup> [redacted] response to the CMA’s O&M customer questionnaire.

<sup>969</sup> [redacted] response to the CMA’s O&M customer questionnaire.

in paragraph 12.60 above, customers submitted that they relied on Veolia or Suez due to their back-office staff with technical knowledge, especially in the case of any issues. The back-office technical staff can bring knowledge and learnings from experience with other contracts (in the UK and globally). We understand that the back-office technical staff may not TUPE across to the new operator. As such, we are of the view that customers consider Veolia and Suez are strong suppliers at least in part due to their organisational support and technical expertise, rather than the relatively simple onsite operations.

#### *Evidence from competitors*

12.98 Similarly, competitors were asked to list the suppliers they would consider as their strongest competitors in O&M in the UK and indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong).<sup>970</sup> In summary, we found that:

- (a) Competitors considered Veolia and Suez as the strongest suppliers and gave them the highest average ratings (5.0 and 4.5, respectively), and identified three and two times, respectively. Alpheus was also identified twice, receiving an average score of 2.5.
- (b) All other competitors were identified only once and received an average rating of below 3.
- (c) In their free text explanations, competitors submitted that both Veolia and Suez had a strong D&C and process track record. Other competitors were assessed with regards to their current presence in the UK.

12.99 Overall, the results from competitors are consistent with customer results, showing that these competitors considered the Parties to be strong suppliers in the market. However, we have placed limited weight on quantitative results from the competitor questionnaire, given that there were three respondents.

12.100 Competitors' qualitative responses indicated that the Parties were two of a limited competitor set with the technical expertise necessary to provide O&M services to certain customers:

- (a) [X] submitted that only Veolia, Suez and Alpheus had the technical knowledge, expertise, certifications, quality systems and insurances required by large customers. [X] stated that [X] of winning a contract previously serviced by Veolia or Suez, [X].<sup>971</sup>

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<sup>970</sup> Phase 1 and phase 2 results have been combined.

<sup>971</sup> Note of call [X].

- (b) [X] submitted that Veolia and Suez were two of a limited field of competitors that were able to compete for large contracts with higher risks, and that it was difficult for O&M suppliers currently supplying lower risk contracts to win high risk contracts due to their lack of expertise and experience.<sup>972</sup> [X] submitted that Veolia and Suez's closest competitors in O&M were Nijhuis, Alpheus, Envirochemie and Aquabio.<sup>973</sup>
- (c) [X] further submitted that 'the combined engineering and innovation capabilities of Veolia and Suez will create a very significant distance between the merged entity and its most immediate competitors, whereas before the proposed transaction, Veolia and Suez could be considered as very close competitors, in direct competition for the same projects for the same customers'.<sup>974</sup>
- (d) [X] submitted that it considered Veolia and Suez were the strongest competitors in the O&M market.<sup>975</sup>
- (e) [X] submitted that it considered Veolia and Suez were seen as the leading companies in O&M.<sup>976</sup>

#### *Provisional conclusion*

12.101 We note that the evidence from third parties identified Veolia and Suez as two of the strongest three or four players in the market. However, the other player(s) identified as strong varied by third party. We also recognise that third parties identified a long tail of suppliers as potential rivals for O&M contracts for water and wastewater facilities. We believe this is consistent with the view that the market is differentiated and fragmented. Given this, it is likely that not all of the Parties' customers will consider all of the Parties' competitors as credible suppliers. Therefore, customers may only mention (and rate) a subset of competitors.

12.102 We consider the quantitative ratings discussed above are consistent with qualitative evidence that for, for some of the Parties' customers, Veolia and Suez are two of a very limited set of credible suppliers. Overall, we consider the evidence consistent with the concerns raised in paragraph 12.58 above.

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<sup>972</sup> Note of call [X]; [X] response to [X]

<sup>973</sup> Note of call [X]

<sup>974</sup> [X] response to [X]

<sup>975</sup> [X] response to the CMA's O&M competitor questionnaire.

<sup>976</sup> Note of call [X]

## Assessment

- 12.103 We have reviewed a range of evidence on the nature of competition, including third party views, shares of supply, the Parties' bid data and internal documents, in assessing competition and the strength of competitive constraints.
- 12.104 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. The Parties rank highly on the criteria that customers identified as important.
- 12.105 The lack of transparency in this market makes estimating shares 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.
- 12.106 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 ([X], [X] and [X]). [X] said that only Veolia and Suez had the experience, capabilities, technical compliance and financial size to meet its requirements. The two other customers ([X] and [X]) told us that they needed the Parties' technical expertise and it would be too risky to self-supply. A fourth large customer ([X]) told us that it views its credible suppliers as being Veolia, Suez and Solenis and that Suez was Veolia's strongest competitor.
- 12.107 Veolia's tender data shows Suez was Veolia's closest competitor. It bid most frequently against Veolia and won the most contracts that Veolia lost. While Veolia's bidding data showed that it also frequently loses to self-supply, we note that this may overstate the strength of self-supply and, in any case, 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 only won one of these contracts.
- 12.108 When we asked customers and competitors about who they considered credible suppliers to be, customers identified Veolia and Suez

most frequently. Five customers responded and four identified Veolia and Suez as the most credible suppliers. Although collectively customers were able to name 12 other suppliers, each of these suppliers were 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.

12.109 We consider that Veolia's internal documents indicate that Veolia most frequently identifies Suez as a competitor, appears to be able to identify the competitive set in upcoming tenders and often engages in bespoke negotiations with customers. Suez's relevant internal documents were more limited but identify Veolia as a competitor with other competitors rarely mentioned.

12.110 We are particularly concerned about the impact of the Merger on a subset of customers who currently have limited options, and whose options would be further reduced as a result of the Merger. As explained above, customers in this market are heterogenous and we have not identified clear segmentation within this market. However, we observe that the customers we spoke to that raised concerns about the Merger had particular concerns about 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 from non-core activities.

12.111 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 and collectively, impart only a weak constraint on the Parties.

12.112 Based on our assessment, we provisionally find that the Merger will result in the removal of a direct and significant constraint on each of the Parties and that overall, the remaining constraints post-Merger will not be sufficient to prevent an SLC.

## Entry and expansion

12.113 In this section, we consider whether the entry of new firms or the expansion of operations by existing firms would mitigate the initial effect of the Merger on competition, such that no SLC would arise. In assessing whether entry or expansion might prevent an SLC, we consider whether it would be timely, likely and sufficient. This also involves a consideration of any barriers to entry which may give incumbent firms advantages over potential competitors.<sup>977</sup>

### ***Parties' submissions***

12.114 Veolia submitted that barriers to entry are low because there are no legal barriers and low capital requirements.<sup>978</sup> Further, the operating personnel at that site will transfer automatically to the new provider under TUPE.<sup>979</sup>

12.115 Veolia submitted that Regulated Water Companies ('RWCs'), D&C suppliers and non-UK suppliers could easily expand into the UK market. In particular:

- (a) Several RWCs, such as [redacted], already provide O&M services to third parties.<sup>980</sup> Other RWCs can easily expand purely in-house O&M services as the expertise necessary is readily transferable.
- (b) D&C companies such as [redacted] could easily expand into the O&M market given their pre-existing expertise. They already possess the skills and expertise needed to do so, and are particularly well-placed to offer O&M services on the facilities they have constructed. This is evidenced by the fact that D&C providers often provide post-installation support services to their customers.<sup>981</sup>
- (c) Non-UK competitors can enter the UK market, including initially by establishing a joint venture.<sup>982</sup> For example, the Qualitech/Plater JV is carrying out O&M work for Johnson Matthey. This tender was worth £[redacted],

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<sup>977</sup> CMA129, paragraphs 5.8.1 to 5.8.15.

<sup>978</sup> Veolia's response [redacted].

<sup>979</sup> FMN, [redacted]

<sup>980</sup> Some RWCs provide O&M services to industrial customers through subsidiaries rather than through its licensed business.

<sup>981</sup> FMN, [redacted]

<sup>982</sup> Veolia's response [redacted]

which is significantly larger than the average tender value of £[REDACTED] in Veolia's tender dataset.<sup>983</sup>

12.116 Suez initially submitted that [REDACTED].<sup>984</sup> Suez later submitted that, in respect of the O&M market, [REDACTED].<sup>985</sup>

12.117 In relation to the O&M of water and wastewater treatment facilities in particular, [REDACTED].<sup>986</sup>

### ***Our assessment***

12.118 The available evidence suggests that barriers to entry are high and that most customers would not switch to a new entrant. Most customers rated their likelihood of switching to a new entrant as very low, explaining that they required proven experience of reliable service.<sup>987</sup> Some competitors noted that it would take a significant period of time (in excess of five years) for a new entrant to become competitive, especially in high-risk industries such as power generation.<sup>988</sup>

12.119 Further, evidence from third parties shows that none of the potential entrants presented by Veolia will sufficiently constrain the Merged Entity. We consider the three potential types of entrant below.

12.120 First, entry by RWCs is unlikely to constrain the Parties.<sup>989</sup> In particular:

- (a) Severn Trent Water considers RWCs cannot offer O&M to industrial customers because it is not a regulated activity in their licences. RWCs can enter the market through a commercial subsidiary and some have done in the past. Severn Trent Water understands that RWCs have moved back to focusing on their core services in recent years.<sup>990</sup>
- (b) Four out of eight responding customers submitted that they would not consider using an RWC for their O&M needs. These customers noted their lack of industry specific know-how.

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<sup>983</sup> Veolia's response [REDACTED]

<sup>984</sup> Suez's response [REDACTED]

<sup>985</sup> Veolia's response [REDACTED]

<sup>986</sup> Suez's response [REDACTED]

<sup>987</sup> [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] responses to the CMA's O&M customer questionnaire.

<sup>988</sup> [REDACTED] response to the CMA's RFI, [REDACTED]; [REDACTED] and [REDACTED] responses to the CMA's O&M competitor questionnaire.

<sup>989</sup> The constraint imposed by the commercial subsidiaries of RWCs that are already in the market have already taken into account in the competitive assessment.

<sup>990</sup> Note of call [REDACTED]

- (c) No third party identified RWCs such as Anglian Water or Severn Trent as competitors to the Parties.
- (d) The three other RWCs that responded to our questionnaire indicated they do not currently have a strategic plan to enter the market,<sup>991</sup> though one noted they may explore the possibility in the future.<sup>992</sup>

12.121 Second, evidence from third parties indicates that D&C suppliers are unlikely to constrain the Parties in O&M contracts:

- (a) Seven out of eight responding customers submitted that they would not consider a D&C supplier with no experience in O&M. These customers noted the need for a track record and operational know-how.
- (b) [X] (a D&C supplier) submitted that it is interested in participating in the O&M market, but finds it challenging due to barriers to entry.<sup>993</sup>

12.122 Third, as discussed in paragraph X above, non-UK suppliers are not strong competitors in the UK market. Further, there is limited evidence of suppliers competing through using joint ventures, and, in any case, customers have not considered the possibility of using joint ventures. In particular:

- (a) Most customers that responded indicated that they have not considered using a joint venture for their O&M needs.<sup>994</sup> Two customers submitted that they may consider using a joint venture depending on the performance guarantees, costs, contract size and control of the Parties.<sup>995</sup>
- (b) While Severn Trent Services submitted it has considered and been involved in forming a JV to service O&M contracts, it noted that forming a JV can be time consuming and costly. This cost is ultimately borne by the customer.<sup>996</sup>

12.123 [X]. However, we note that even with ten times the revenue from industrial customers that it currently has, Severn Trent Services' industrial O&M services would still lag significantly behind the Merged Entity ([X]). Further, Severn Trent Services identified that winning industrial contracts is helped through professional relationships arising from provision of other services, which can act as a barrier to expansion.<sup>997</sup>

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<sup>991</sup> [X], [X], [X] responses to the CMA's O&M RWC questionnaire.

<sup>992</sup> [X] response to the CMA's O&M RWC questionnaire.

<sup>993</sup> Note of call [X].

<sup>994</sup> [X], [X], [X], [X] and [X] responses to the CMA's O&M customer questionnaire.

<sup>995</sup> [X] and [X] responses to the CMA's O&M customer questionnaire.

<sup>996</sup> [X] response to the CMA's O&M competitor questionnaire.

<sup>997</sup> Note of call [X]



12.124        On the basis of the above information, we provisionally conclude that entry and/or expansion would not be timely, likely and sufficient to prevent an SLC from arising as a result of the Merger.

### **Provisional conclusion**

12.125        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 facilities to industrial customers.

## 13. Mobile water services

- 13.1 In this chapter we assess the effect of the Merger on the supply of Mobile Water Services. In our assessment, we have considered how closely the Parties compete with one another and whether the removal of the constraint the Parties place on each other is likely to lead to an SLC in the supply of MWS. As part of this assessment, we have also considered the competitive constraints placed on the Parties by other suppliers of MWS.
- 13.2 The chapter is structured as follows:
- (a) Description of services
  - (b) Market definition
  - (c) Indicators of competition
  - (d) Our assessment
  - (e) Entry and expansion
  - (f) Provisional conclusion.
- 13.3 In making our assessment we have drawn extensively on evidence gathered during the CMA's Phase 1 investigation whilst also seeking further evidence from third parties during the course of our Phase 2 inquiry. We consider that the evidence base is sufficient in order for the inquiry group to reach a properly informed decision on the phase 2 statutory questions to the balance of probabilities standard.<sup>998</sup> We note that neither Veolia nor Suez provided to us any comments on MWS in response to the MWS working paper that we have shared with them and MWS was not included in Veolia's Overview Submission to us (other than to note that Veolia has committed to divest its MWS business as a part of its commitments given to the European Commission).<sup>999</sup>

### Description of services

- 13.4 MWS involves the provision of moveable water treatment units that are trailer-mounted so that they can be sent to customers in response to emergency shutdowns or planned outages of a customer's water or wastewater treatment

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<sup>998</sup> CMA guidance states that in its phase 2 investigations the CMA will use evidence and information gathered in phase 1. It also notes that the CMA's 'starting point' will be the evidence base obtained at phase 1 and, in some cases, it may not be necessary to significantly expand this evidence base in order to reach a properly informed decision on the phase 2 statutory competition questions. [CMA2 revised](#), paragraphs 11.2 and 11.6

<sup>999</sup> Veolia [Overview Submission](#)

facility.<sup>1000</sup> MWS allows some customers to meet their medium-term needs by providing a stop-gap solution if, for example, they do not have a water treatment facility or that their facility is not yet ready. MWS can be used for industrial water treatment, municipal water treatment or wastewater treatment.

## Market definition

### *Product market*

#### *Parties' submissions*

- 13.5 Veolia submitted that the relevant product market is the supply of MWS.
- 13.6 Mobile water units can employ two different technologies in order to carry out water treatment: membrane-based technology or resin-based technology. The Parties disagreed on this question. Veolia said that it was not relevant to distinguish between the technology used as all existing technologies can generally deal with all customer needs.<sup>1001</sup> Suez submitted that it considers that (i) membrane-based MWS; and (ii) resin-based MWS are distinct product markets.<sup>1002</sup>

#### *Our assessment*

- 13.7 We have considered segmenting the product market by technology (ie whether membrane-based MWS is distinct from resin-based MWS). In its assessment of *Veolia/Suez*, the European Commission considered the product market to be the supply of MWS.<sup>1003</sup>
- 13.8 Veolia submitted that the decision on which technology to use depends on [REDACTED]. Veolia submitted that [REDACTED].<sup>1004</sup> Suez submitted that Suez WTS divides its fleet on the basis of [REDACTED].<sup>1005</sup>
- 13.9 One competitor confirmed that the membrane-based and resin-based technologies are not always substitutable from the demand-side but on the supply-side a supplier must have the capability to offer both types of solutions.<sup>1006</sup> Evidence from customers indicates that most significant suppliers can provide both resin-based and membrane-based technologies,

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<sup>1000</sup> FMN, [REDACTED]

<sup>1001</sup> FMN, [REDACTED]

<sup>1002</sup> Suez response [REDACTED]

<sup>1003</sup> European Commission, [Veolia/Suez](#)

<sup>1004</sup> FMN, [REDACTED]

<sup>1005</sup> Suez response [REDACTED]

<sup>1006</sup> Response to the CMA's phase 1 questionnaire from [REDACTED]

and that competitive conditions do not vary significantly based on technology.<sup>1007</sup>

### *Provisional conclusion on product scope*

13.10 Evidence from customers and competitors indicates that from the supply-side perspective, suppliers can generally supply both membrane-based MWS and resin-based MWS. We consider that if necessary, any differences on the basis of these technologies can be taken into account in our competitive assessment. We provisionally find that the product market is the supply of MWS.

### **Geographic market**

#### *Parties' submissions*

13.11 Veolia submitted that suppliers [X] ship mobile water units throughout the EEA as [X]. Further, Veolia submitted that [X] MWS suppliers offer [X] services, and that the [X] allowed for very dynamic competition throughout the EEA and the UK.<sup>1008</sup> Suez submitted that the geographic market is at least UK-wide, and likely EEA and UK-wide.<sup>1009</sup>

#### *Our assessment*

13.12 In its assessment of *Veolia/Suez*, the European Commission considered MWS on an EEA-wide basis.<sup>1010</sup>

13.13 In its Phase 1 investigation the CMA received evidence that most customers stated that they would be unlikely to select a MWS supplier that does not have a UK presence because customers value a quick response time.<sup>1011</sup> Most competitors also submitted that local representation is important in supplying MWS, particularly in emergency situations.<sup>1012</sup> One competitor also referred to the importance of having UK operations post-EU exit.<sup>1013</sup>

13.14 The Parties' internal documents also suggest that the appropriate geographic market is narrower than EEA-wide:

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<sup>1007</sup> Responses to the CMA's phase 1 questionnaire from [X]; [X]; [X]; [X].

<sup>1008</sup> FMN, [X]

<sup>1009</sup> Suez response [X]

<sup>1010</sup> European Commission, [Veolia/Suez](#)

<sup>1011</sup> Responses to the CMA's phase 1 questionnaire from [X]; [X]; [X]; [X]. Note of call [X].

<sup>1012</sup> Responses to the CMA's phase 1 questionnaire [X] and [X]

<sup>1013</sup> Response to the CMA's phase 1 questionnaire [X]

- (a) A Suez internal document shows that the footprint of Suez's [REDACTED]. [REDACTED];<sup>1014</sup>
- (b) A Veolia internal document lists '[REDACTED]' as the first '[REDACTED]' in relation to MWS;<sup>1015</sup>
- (c) A Veolia internal document suggests that [REDACTED];<sup>1016</sup> and
- (d) A Veolia internal document states that [REDACTED].<sup>1017</sup>

#### *Provisional conclusion on geographic scope*

13.15 We have found that customers prefer a quick response time, particularly in emergency situations. The Parties' internal documents corroborate this. Therefore, we have provisionally concluded that the geographic market is national.

### **Indicators of competition**

13.16 In this section we consider the evidence on competition between the Parties and the competitive constraints offered by their rivals and 'out of market' options involving alternative technologies. We assess:

- (a) Estimated market shares
- (b) The Parties' submissions
- (c) Customer views
- (d) Competitor views
- (e) Evidence from the Parties' internal documents
- (f) Evidence on alternative technologies.

#### ***Estimated market shares***

13.17 Veolia estimated that the Merged Entity's market share would be [REDACTED%] for MWS in the UK.<sup>1018</sup> By contrast, Suez initially submitted that the Parties would

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<sup>1014</sup> Suez's Internal Document, [REDACTED]. In particular, the document notes the new facility will increase the customer base by 135% in the target regions of South East France, North East Spain and North Italy.

<sup>1015</sup> Veolia's Internal Document, [REDACTED]

<sup>1016</sup> Veolia's Internal Document, [REDACTED]

<sup>1017</sup> Veolia's Internal Document, [REDACTED]

<sup>1018</sup> FMN, [REDACTED]

have a combined share of [50-60%] in relation to process water MWS supplied to industrial customers in the UK.<sup>1019</sup>

- 13.18 We have calculated market shares on the basis of revenue provided by Veolia, Suez and other market participants (listed in Table 13.1). Although this approach may omit some smaller suppliers, we consider that there is little evidence of such smaller suppliers exercising a meaningful constraint (see the competitive constraints section below).

**Table 13.1: Shares of supply for MWS in 2020, based on revenues**

Entity	Share of supply
	%
Veolia	[50-60]
Suez	[30-40]
Merged Entity	[80-90]
Ecolutia	[10-20]
Pall	[0-5]
Nijhuis	[0-5]
Nalco	[0-5]
Total	100

Source: CMA calculations [§<].

- 13.19 We have estimated that the Parties have a combined share of [80-90%], with an increment as a result of the Merger of [30-40%]. We have found that Ecolutia is the only rival with a share of any significance ([10-20%]).
- 13.20 The figures in Table 13.1 above indicate that the Merger brings together the two leading suppliers of MWS in the UK who are each far and away larger than any other supplier. There are therefore strong structural presumptions that the Merger will lead to an SLC.<sup>1020</sup>
- 13.21 In addition to the above, we note that in its decision on this merger, the European Commission said that whilst estimating market shares for MWS is difficult given the lack of transparency,<sup>1021</sup> it considered that Veolia had significantly underestimated the Parties' true competitive position in the market.
- 13.22 Another means of considering the Parties' position in the market is to look at their mobile unit fleet sizes relative to the Parties' rivals. The Parties' post-Merger combined fleet size (of around [§<] mobile units)<sup>1022</sup> will vastly outnumber that of any of its rivals. Indeed, the Parties' combined fleet size easily outnumbers the aggregate fleet size of its rivals. Ecolutia has [§<]. [§<] has a fleet size of [§<] mobile units with plans to grow this to [§<]; Nalco told

<sup>1019</sup> Suez response [§<]

<sup>1020</sup> See [CMA129](#), paragraphs 4.12 and 4.14

<sup>1021</sup> European Commission, [Veolia/Suez](#), paragraph 345

<sup>1022</sup> Suez response [§<]; Veolia's response [§<].

us that it has no in-house fleet and [X] told us that it has 14 mobile units across Europe but none of these is permanently allocated to the UK (and therefore none can be available for emergency situations).<sup>1023</sup> Fleet size is a relevant indicator of market power in this market because it is a measure of capacity. Moreover, customers submitted that fleet size is an important consideration when deciding on a MWS supplier.<sup>1024</sup>

- 13.23 The evidence from our market share estimates and comparative fleet sizes indicates that the Parties are clearly the two largest MWS suppliers in the UK. On the basis of our market share estimates, the Parties are over 6 times larger than the next largest supplier, and by fleet size they are over 10 times larger than the next largest supplier (and would remain so [X]).

### ***Parties' submissions on competition in MWS***

- 13.24 Veolia submitted that the Parties are [X] and that their activities are [X]. In particular, Veolia noted that [X]% of its activities in MWS relates to emergency situations and its planned activities tend to be short-term (ranging from a day to a year), with [X]% of its activities being multi-year.<sup>1025</sup> In comparison, Suez is more active in [X].<sup>1026</sup> Veolia noted that this difference in focus was purely a matter of strategic choice by Suez.<sup>1027</sup> Further, Suez [X], whereas Veolia only offered rental services.<sup>1028</sup>

- 13.25 Veolia submitted that it faces strong competition from MWS suppliers with offices and facilities in the UK, including from [X]. In addition, Veolia stated that it competes with European suppliers such as [X], which can easily compete in the UK as customers contact suppliers regardless of their location in the EEA, and that this was acknowledged by the EC in Suez / GE Water.<sup>1029</sup>

- 13.26 Suez submitted that [X] are its primary MWS competitors in the UK. Further, Suez also stated that it competes with other suppliers that are [X] such as [X].<sup>1030</sup>

- 13.27 Veolia submitted that its competitors include new entrants that are innovating by using alternative technologies such as activated carbon treatment, giving

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<sup>1023</sup> Responses to the CMA's phase 1 questionnaire from [X]; [X]; [X]. [X].

<sup>1024</sup> Responses to the CMA's phase 1 questionnaire from [X]; [X]; [X].

<sup>1025</sup> Veolia's Initial Phase 1 Submission, [X]

<sup>1026</sup> FMN, [X]

<sup>1027</sup> Parties' joint submission [X]

<sup>1028</sup> FMN, [X]

<sup>1029</sup> FMN, [X]; EC's decision of 19 July 2017 in case [COMP/M.8452](#), *Suez / GE Water and Process Technologies*.

<sup>1030</sup> Suez response [X]

[redacted] as examples.<sup>1031</sup> These technologies are challenging mature mobile water technologies such as membrane and resin.<sup>1032</sup>

13.28 Veolia further submitted it faces regular competition from alternatives to MWS including water tankering services. This is a method of providing treated water to sites and/or of removing wastewater for controlled disposal or treatment elsewhere. Veolia submitted that customers purchase tankering services either for emergency or short-term supply or disposal, although longer term agreements may exist for wastewater solutions. Suppliers include Tardis Environmental and Universal Tankers.<sup>1033</sup>

13.29 Finally, Veolia submitted that customers are [redacted] and change suppliers [redacted].<sup>1034</sup> In particular, customers are [redacted].<sup>1035</sup> Veolia stated that the cost to customers of switching is [redacted].<sup>1036</sup>

### **Customer views**

13.30 Customer views are summarised below.

- (a) One large customer (whose contract is worth £[redacted] million in total) said to us during our Phase 2 inquiry that Veolia and Suez are, as far as it is aware, the only two suppliers it can use. Both have quick response times and the scale in terms of number of mobile units that it needs.<sup>1037</sup> Indeed, it told us that it could not identify any other options to the Parties and it has not considered any supplier other than Veolia and Suez in the past.<sup>1038</sup> It told us that switching to another supplier would involve a relatively long (6 to 9 months) and costly process of supplier testing and certification before it could award a contract. This large customer told us that it is concerned that following the Merger prices will go up.
- (b) One customer noted in the CMA's Phase 1 investigation that Veolia and Suez were the two companies that usually participated in its tenders and that there were not many local companies that could offer the services it requires.<sup>1039</sup> This customer also submitted that it prefers to use large

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<sup>1031</sup> Veolia's response, [redacted]

<sup>1032</sup> Veolia's response, [redacted]

<sup>1033</sup> FMN, [redacted]

<sup>1034</sup> Veolia's response, [redacted]

<sup>1035</sup> Veolia's response, [redacted]

<sup>1036</sup> Veolia's response, [redacted]

<sup>1037</sup> This is consistent with some customer views given to the CMA's Phase 1 investigation – some customers responded that they prefer or require large suppliers. Source: responses to the CMA's phase 1 questionnaire from [redacted] and [redacted]. Note of call [redacted]

<sup>1038</sup> Note of call [redacted] and [redacted] questionnaire response.

<sup>1039</sup> The customer also identified Ecolochem, but the CMA understands Ecolochem was acquired by Suez. Note of call [redacted]



suppliers because these have the equipment available in different local areas.

- (c) Most third parties responding to the CMA's Phase 1 investigation raised concerns about the Merger: explanations included the reduction in choice, deterioration of the competitive landscape, stifling of innovation in the market and impact on overall costs/prices.<sup>1040</sup> While one customer submitted that it does not have concerns about the Merger because it believes Suez is more focused on long term solutions/contracts whereas Veolia focuses on emergency solutions, and that these are different markets that do not conflict with each other, Veolia and Suez were the only two bidders for this customer's recent tenders for MWS.<sup>1041</sup>

13.31 Some customers also submitted to the CMA's Phase 1 investigation that they would find it difficult to switch suppliers.<sup>1042</sup> These customers explained that the need to build a relationship with the supplier, the lack of suitable alternatives and the need for the supplier to have experience and resources can make switching difficult. Most customers submitted that they would be unlikely to select a supplier that does not have a physical UK presence for their MWS needs.<sup>1043</sup> One customer told us in our Phase 2 inquiry that both Veolia and Suez can have MWS trailers on its site in under 12 hours and as far as it is aware no other provider is able to match that.<sup>1044</sup>

13.32 However, one customer submitted that in an emergency situation they will easily be able to switch in order to use whichever supplier is able to deliver the services at that time.<sup>1045</sup> However, we note that the nature of emergency supply means that any such supplier must have the available capacity, in terms of trailers, to do so.

### **Competitor views**

13.33 One competitor submitted that it considered Veolia and Suez to be close competitors with a fierce rivalry that offered 'almost a mirror' of each other's products and services, though noting that they have different levels of presence in some industries. Other competitors also submitted that they considered Veolia and Suez to be market leaders and very close competitors in the UK.<sup>1046</sup> Further, all competitors that responded to the CMA's Phase 1

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<sup>1040</sup> Responses to the CMA's phase 1 questionnaire from [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]. Note of call [redacted].

<sup>1041</sup> Response to the CMA's phase 1 questionnaire from [redacted].

<sup>1042</sup> Responses to the CMA's phase 1 questionnaire from [redacted]; [redacted]; [redacted].

<sup>1043</sup> Responses to the CMA's phase 1 questionnaire from [redacted]; [redacted]; [redacted]; [redacted]. Note of call [redacted].

<sup>1044</sup> Note of call [redacted] and [redacted] questionnaire response [redacted]

<sup>1045</sup> Response to the CMA's phase 1 questionnaire [redacted]

<sup>1046</sup> Responses to the CMA's phase 1 questionnaire [redacted]; [redacted].

investigation noted that other competitors trailed behind Veolia and Suez by some margin.<sup>1047</sup>

13.34 Competitors submitted to the CMA's Phase 1 investigation that suppliers must have a large fleet size in order to be competitive.<sup>1048</sup> One competitor noted it would have difficulty supplying a new customer because its fleet size could cause an availability issue, and therefore place it in a less favourable position.<sup>1049</sup> Another competitor submitted that substantial investment in a fleet was a risky investment as there was a likelihood that even after these investments, it may not win any contracts.<sup>1050</sup> This competitor noted that to build a reputation with customers, and being able to win sufficient business could take ten years.

13.35 Generally, competitors stated that there are very few suppliers of MWS in the UK, with the Parties being the two market leaders.<sup>1051</sup> In regard to their ability to compete effectively against Veolia and Suez, competitors told us:

(a) [redacted].<sup>1052</sup> [redacted].

(b) Nalco submitted to the CMA's Phase 1 investigation that it is a weak competitor in MWS because it does not have an in-house fleet.<sup>1053</sup> Nalco stated that it has only provided MWS services approximately one or two times per year for customers within the UK, noting that these occurrences may also just be customer enquiries. It also said that MWS is not part of its core business.<sup>1054</sup> The CMA's Phase 1 decision noted that no third parties identified Nalco as a strong competitor to Veolia and Suez in MWS in the UK.<sup>1055</sup>

(c) [redacted] told the CMA's Phase 1 investigation that Siltbuster was an active competitor.<sup>1056</sup> It said that Siltbuster is a moderate constraint on the Parties and noted that Siltbuster focuses on biological treatments for the wastewater market only, in comparison to the Parties' offerings which use both membrane and resin technologies and serve both the water and wastewater markets.

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<sup>1047</sup> Responses to the CMA's phase 1 questionnaire [redacted]; [redacted]; [redacted].

<sup>1048</sup> Responses to the CMA's phase 1 questionnaire [redacted]; [redacted].

<sup>1049</sup> Response to the CMA's phase 1 questionnaire [redacted].

<sup>1050</sup> Response to the CMA's phase 1 questionnaire [redacted]. Note of call [redacted].

<sup>1051</sup> Responses to the CMA's phase 1 questionnaire [redacted], [redacted]; [redacted].

<sup>1052</sup> Note of call [redacted]

<sup>1053</sup> Response to the CMA's phase 1 questionnaire [redacted]

<sup>1054</sup> Note of call [redacted].

<sup>1055</sup> Response to the CMA's phase 1 questionnaire [redacted]

<sup>1056</sup> Response to the CMA's phase 1 questionnaire [redacted]

- (d) A company in the industry told us during our Phase 2 inquiry that it has no mobile units permanently allocated to the UK and thus would not typically have units available in the UK for emergency supply.<sup>1057</sup> The company also said that [X]. Moreover, it supplies only membrane-based water treatments. It also told us that although it is active in the UK to a small extent it does not have a specific focus on the UK market.<sup>1058</sup> We have estimated that its UK market share is around [X] %.

13.36 Further, some competitors noted that MWS suppliers without a UK presence rarely compete for UK customers.<sup>1059</sup>

### ***Evidence from the Parties' internal documents***

13.37 While few internal documents submitted by the Parties discuss competitive conditions in the MWS market, those that do show that the Parties view each other as close competitors in the UK. For example:

- (a) One Veolia internal document that assesses [X] identifies [X] as Veolia's only competitor with revenues in the UK. This document recommends that [X].<sup>1060</sup> This document therefore suggests that not only does Suez provide a competitive constraint to Veolia, but Veolia actively reflects this constraint in its pricing for MWS in the UK. Veolia submitted that [X].<sup>1061</sup>
- (b) Another internal document discussing a particular bid for the provision of MWS [X] refers to [X].<sup>1062</sup>
- (c) One Suez internal document notes Suez should make a [X] in [X] MWS in the UK. No other competitors are mentioned. This document also sets out Suez's action plan for MWS is [X].<sup>1063</sup>
- (d) Another Suez internal document that [X].<sup>1064</sup>

13.38 We have few internal documents discussing other competitors in MWS. Those that do suggest that the Parties are not significantly constrained by other competitors in MWS. In particular:

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<sup>1057</sup> Response to the CMA's phase 1 questionnaire from [X]

<sup>1058</sup> Response to the CMA's phase 1 questionnaire from [X]

<sup>1059</sup> Responses to the CMA's phase 1 questionnaire [X] and [X]

<sup>1060</sup> Veolia's Internal Document, [X]

<sup>1061</sup> Veolia's Submission, [X]

<sup>1062</sup> Veolia's Internal Document, [X].

<sup>1063</sup> Suez's Internal Document, [X]

<sup>1064</sup> Suez's Internal Document, [X]

- (a) One Veolia internal document notes [redacted] is active in the emergency mobile space in the UK.<sup>1065</sup> However, the same document states [redacted] and another Veolia internal document states that [redacted].<sup>1066</sup>
- (d) One of Veolia's internal documents notes that [redacted]. It also notes that [redacted].<sup>1067</sup>
- (e) However, another Veolia internal document states that [redacted]. This document notes key competitors include [redacted]. This document further states that [redacted].<sup>1068</sup> The context of this document is unclear and the CMA notes that this document was prepared in December 2020, post Veolia's decision to acquire Suez. Further, the geographic scope of this document is unclear.
- (f) [redacted] is also identified as having 'technician and sales' in the UK in a Veolia internal document.<sup>1069</sup>

### ***Evidence on alternative technologies***

13.39 In light of submissions made by Veolia, we have considered whether customers could use technologies other than membrane-based or resin-based technologies.

#### ***Activated carbon***

13.40 Most customers submitted that activated carbon is not an adequate substitute for membrane or resin technologies or that they have not considered using activated carbon.<sup>1070</sup> [redacted].<sup>1071</sup>

13.41 Likewise, most competitors also submitted that activated carbon is not an adequate replacement for resin and membrane technologies.<sup>1072</sup> One competitor said activated carbon is used to remove specific harmful substances.<sup>1073</sup> Similarly, another competitor submitted that activated carbon can be used to remove suspended solids or for carbon absorption, which is a very small component of the treatment process.<sup>1074</sup> This competitor submitted

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<sup>1065</sup> Veolia's Internal Document, [redacted]

<sup>1066</sup> Veolia's Internal Document, [redacted]

<sup>1067</sup> Veolia's Internal Document, [redacted]

<sup>1068</sup> Veolia's Internal Document, [redacted]

<sup>1069</sup> Veolia's Internal Document, [redacted]

<sup>1070</sup> Responses to the CMA's phase 1 questionnaire [redacted]; [redacted]; [redacted] and [redacted]

<sup>1071</sup> Response to the CMA's phase 2 questionnaire [redacted]

<sup>1072</sup> Responses to the CMA's phase 1 questionnaire [redacted] and [redacted].

<sup>1073</sup> Response to the CMA's phase 1 questionnaire [redacted]

<sup>1074</sup> Response to the CMA's phase 1 questionnaire [redacted]

that on its own, activated carbon is ‘woefully unsuitable’ for production of higher quality waters.

### *Water tankering*

13.42 Most customers that responded to the CMA’s merger investigation stated that water tankering is an unsuitable substitute to MWS or that they had not considered water tankering.<sup>1075</sup> The customers noted that water tankering was not an option because the large volumes of water that needed to be treated meant it was impractical.<sup>1076</sup> One customer noted that while water tankering was an adequate substitute in an emergency, tankering was expensive and it is therefore not a long-term solution.<sup>1077</sup>

13.43 Similarly, one competitor submitted that water tankering was unsuitable for projects requiring larger flow rates, longer-term or permanent projects.<sup>1078</sup> This competitor noted that it would require seven tankers every hour to match one of its mobile water units. Further, water tankering was in most cases more expensive to the end user.

### ***Our assessment***

13.44 The evidence strongly suggests that the Parties are close competitors in the supply of MWS in the UK and that they face few competitive constraints:

- (a) We have estimated that they have a combined market share of [80-90%], and an increment arising from the Merger of [30-40%]. By size of fleet of mobile units, a measure of capacity in the market, the Parties together are more than 10 times bigger than the next largest supplier.
- (b) We are mindful that for many customers the use of MWS is an emergency purchase. The Merger all but completely removes competition for these customers.
- (c) Some customers have submitted that Veolia and Suez are the only two suppliers able to meet their requirements. In particular, customers have drawn attention to the Parties’ scale (in terms of number of mobile units) and, related to this, their swift response times. Customers have said that they would find it difficult to switch to another supplier because it would be

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<sup>1075</sup> Responses to the CMA’s phase 1 questionnaire [3<]; [3<]; [3<].

<sup>1076</sup> Responses to the CMA’s phase 1 questionnaire [3<] and [3<]

<sup>1077</sup> Response to the CMA’s phase 1 questionnaire [3<]

<sup>1078</sup> Response to the CMA’s phase 1 questionnaire [3<]

costly and/or because they do not view other suppliers as having the same capabilities as the Parties.

- (d) Competitors have said that the Parties are close competitors and no competitor considered itself to be a strong competitor to either Veolia or Suez or could identify another competitor who was.
- (e) We have found that Ecolutia is the only competitor with a share of any significance [10-20%] but Ecolutia submitted that [X<]. We consider that Ecolutia will continue to provide some competitive constraint against the Parties but would not be able to restore the market to its pre-Merger competitive conditions.
- (f) Internal documents indicate that the Parties view each other as competitors and, generally, the internal documents do not suggest that the Parties are significantly constrained by competitors.

13.45 Veolia submitted that the Parties are not close competitors and that their activities are largely complementary given a greater proportion of Veolia's activities relate to emergency situations than Suez's, and a greater proportion of Suez's activities relate to long-term contracts than Veolia's. We have considered this and are of the view that this does not prevent the Parties from competing closely. The evidence from customers shows that the Parties compete head-to-head for customer contracts and although Veolia told us that only [X<]% of its business is focused on long-term contracts it is nevertheless competing against Suez for these.

13.46 Veolia also submitted that it faces competition from alternative technologies such as activated carbon treatment and water tankering services. We have considered the evidence on this and found that customers and competitors do not consider either activated carbon treatment or water tankering services to be effective substitutes for MWS.

13.47 We have addressed the Parties' other submissions above.

13.48 The evidence that we have assessed strongly indicates that, subject to any countervailing measures such as entry and expansion by rivals (which we assess next), the Merger is likely to lead to an SLC in the provision of MWS.

## Entry and expansion

13.49 Veolia submitted that barriers to entry and expansion are low.<sup>1079</sup> In particular:

- (a) Legal barriers to entry are low because there is [redacted].<sup>1080</sup>
- (b) Financial and technical barriers are low because [redacted].<sup>1081</sup>
- (c) Suppliers already active in water management can easily expand into [redacted].<sup>1082</sup>
- (d) The tender process (especially for medium and long-term solutions) allows entry and expansion because [redacted].<sup>1083</sup>

13.50 Suez submitted that:

- (a) entry requires significant upfront capital expenditure and that a supplier would require a [redacted] to meet different customers' needs and would need [redacted] to have the capacity to respond to short notice emergency situations.<sup>1084</sup>
- (b) the tender process [redacted].<sup>1085</sup>

13.51 Third party evidence also suggests that it is difficult for new suppliers to enter the market. In particular:

- (a) Most customers submitted that they are unlikely or very unlikely to choose a new entrant to serve their MWS needs. Further, most customers noted that references / experience in the same sector are an important factor when deciding which supplier to choose and they would prefer or require a large fleet. One customer told us that a new supplier would need to go through a long testing process (of around 6 to 9 months) before it could be approved to supply its MWS requirements.<sup>1086</sup>
- (b) Some competitors submitted that starting to supply membrane or resin technologies requires a significant investment and the cost of building membrane-based solutions is particularly high.<sup>1087</sup> Further, one

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<sup>1079</sup> FMN, [redacted]

<sup>1080</sup> FMN, [redacted]

<sup>1081</sup> FMN, [redacted]

<sup>1082</sup> FMN, [redacted]

<sup>1083</sup> FMN, [redacted]

<sup>1084</sup> Suez response [redacted]

<sup>1085</sup> Suez response [redacted]

<sup>1086</sup> Note of call [redacted]

<sup>1087</sup> Responses to the CMA's phase 1 questionnaire [redacted] and [redacted]

competitor noted that it is difficult to obtain sufficient expertise to build, operate and maintain membrane-based systems.<sup>1088</sup>

- (c) A competitor submitted that an entrant may take between three and five years to become competitive because the supplier needs a local presence, know-how, capacity, access to customers and a large number of references for all the technologies in combination with the industry it aims to serve.<sup>1089</sup>

13.52 We are not aware of any planned entry into MWS in the UK. Although [X] has plans to grow its UK fleet size from [X] to [X],<sup>1090</sup> this remains very small relative to both Veolia and Suez and would not be sufficient to offset the competition lost as a result of the Merger.

13.53 We have noted that a supplier wishing to provide MWS services in the UK must have a large fleet size to be able to effectively serve customers and that suppliers need to have requisite experience and resources, which can all make entry into this market difficult. Further, most customers submitted that they are unlikely to consider a non-UK based supplier of MWS.

13.54 We consider that entry or expansion would not be sufficient to prevent an SLC from arising in the supply of MWS in the UK as a result of the Merger.

### **Provisional conclusion on unilateral effects in the supply of MWS**

13.55 For the reasons given in our assessment above, 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.

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<sup>1088</sup> Response to the CMA's phase 1 questionnaire [X]

<sup>1089</sup> Response to the CMA's phase 1 questionnaire [X]

<sup>1090</sup> Response to the CMA's phase 1 questionnaire [X].