VEOLIA/SUEZ REMEDIES NOTICE

RESPONSE OF [COMPANY X] TO THE CMA'S INVITATION TO COMMENT

1 JUNE 2022

1. INTRODUCTION

1.1 On 19 May 2022, the CMA issued a notice of possible remedies (**Remedies Notice**) relating to the acquisition by Veolia Environnement S.A (**Veolia**) of Suez S.A (**Suez**) (the **Parties**). This document constitutes the response of [Company X] to the CMA's invitation for views contained in the Remedies Notice.

1.2 [Company X] [✂] is a large and well-established waste management company, [✂].

1.3 [Company X] sets out its responses to the questions raised by the Remedies Notice below. If the CMA were to require the divestiture of the UK waste and/or water businesses of one of the Parties, [✂], [Company X] considers that it would be a suitable purchaser on the basis of the CMA's assessment criteria.

2. PARAGRAPH 54. INVITATION FOR VIEWS ON THE SCOPE OF THE DIVESTITURE PACKAGE NEEDED TO ADDRESS THE PROVISIONAL WASTE SLCS:

(a) The CMA invites views on whether a full divestiture of either Veolia's or Suez's UK Waste Business would represent an effective remedy to the Provisional Waste SLCs and/or any resulting adverse effects, and the reasons why.

2.1 [Company X] considers that a full divestment of either Veolia or Suez's UK Waste Business would represent an effective remedy to the Provisional Waste SLCs and any resulting adverse effects.

(b) Given that Suez's UK Waste Business no longer owns the 'Suez' brand (see paragraph 17 above) and therefore, that brand cannot be divested alongside any divestiture of Suez's UK Waste Business, the CMA invites views on:

(i) what impact no longer being permitted to use the 'Suez' brand would have on the ability of Suez's UK Waste Business to compete effectively in the relevant markets where the CMA has found the Provisional Waste SLCs; and

2.2 [Company X] considers that not being permitted to use the 'Suez' brand would not have a material impact on the ability of the UK Waste Divestment Business to compete effectively if it were acquired by a purchaser with an established reputation and expertise in the sector.

2.3 In [Company X]'s view, expertise, research and development capability, together with an experienced management team, are more important to the ability to compete effectively in the relevant UK waste markets, and it is in this context, that any new brand for the business should signify known expertise, reliability, and commitment to the sector as well as innovation.

2.4 It is therefore important that a suitable purchaser is able to leverage an established brand to enhance the divestment offering. A purchaser that has no existing brand or presence in waste markets would likely struggle to convince customers of its expertise, reliability and commitment to the sector, which may inhibit its ability to compete. This is particularly true with regard to municipal customers and complex contracts (e.g. those including EfW O&M amongst other activities) for which it is essential to be able to demonstrate expertise, reliability, commitment and innovation.

(ii) how the risk of this impact may be appropriately mitigated (eg by requiring the divestiture to a purchaser with an equally strong brand in the relevant

markets or requiring the divestiture of Veolia's UK Waste Business, together with the 'Veolia' brand).

2.5 For the reasons set out above, in [Company X]'s view, it is important that a purchaser has an established reputation in the sector, including in relation to R&D and complex contracts, rather than an "equally strong brand" to Suez or Veolia in the UK. In such circumstances, any perceived short term branding risk could be adequately dealt with by a transitional services agreement for a 3-6 month period to facilitate the rebranding of assets such as vehicles and facilities.

2.6 [Company X] does not consider that divesting the Veolia UK Waste Business, together with the Veolia brand in the UK, would solve the risk identified by the CMA as this would introduce additional complexities around the purchaser using the Veolia brand in the UK distinct from the remainder of the global Veolia business.

(c) The CMA invites views on whether Veolia should be given the choice of whether to divest the UK Waste Business of Veolia or Suez, in the event one of those remedies is required.

2.7 [Company X] considers that Veolia should be given the choice of whether to divest the UK Waste Business of either Veolia or Suez.

(d) The CMA invites views on whether a broader divestiture package than the UK Waste Business (eg the need to include assets outside the UK) would be necessary to ensure an effective remedy, and if so, what the appropriate scope of the package of assets to be divested should be, and why.

2.8 [Company X] does not consider that a broader divestiture package would be necessary to ensure an effective remedy, and that the divestment of the UK Waste Business would be sufficient.

(e) The CMA invites views on whether a smaller divestiture package (eg a partial divestiture of some, but not all, of the assets of either Party's UK Waste Business) could also be an effective remedy, and if so:

(i) what the appropriate scope of the package of assets to be divested should be, and which assets should be excluded from the scope of the divestiture package and why;

(ii) whether there are any risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the relevant markets where Provisional Waste SLCs have been found; and

(iii) what the possible carve-out and separation risks could be of divesting the smaller divestiture package.

2.9 [Company X] believes it is possible that a smaller divestiture package could potentially be an effective remedy (e.g. where a very limited number of Suez assets are retained by Veolia). However, any assets retained by Veolia would need to be limited in scope for the following reasons:

(a) Management expertise is particularly important to be able to manage large and complex waste management contracts. Therefore all such management should be part of the divestiture package. This is particularly important in relation to the Suez business which has a "top-down" approach to management and as a result relatively little expertise exists at the individual site level. If the UK waste business of either Party was split up and sold to separate purchasers, it is unlikely that the separate

purchasers would each have the management expertise to be an effective competitor for complex contracts across the waste management chain on a national basis.

(b) As identified in the Provisional Findings, customers assess bidders for waste contracts across a range of factors including innovation. To the extent that significant Suez assets are retained by Veolia or the assets are split up, there is a significant risk that the purchaser(s) would have less ability and incentive to innovate compared with a purchaser of the whole UK business.

(c) Given the scale and scope of the competition concerns identified by the CMA, [Company X] considers that there would be significant implementation and carve out risks if either Party's UK waste businesses were split into multiple divestiture packages.

(f) The CMA invites views on whether it would be necessary for either Party's UK Waste Business, the O&M Water Divestment Business and the Mobile Water Divestment Business to be sold to a single purchaser in order to ensure that the remedy effectively addresses the Provisional Waste SLCs and the Provisional Water SLCs. If so, why would this be necessary to ensure remedy effectiveness?

2.10 Based on publicly available information, [Company X] does not have a strong view on whether it is necessary for either Party's UK Waste Business, the O&M Water Divestment Business and the Mobile Water Divestment Business to be sold to a single purchaser. On the one hand [Company X] understands that Suez largely operates the businesses separately at present. On the other hand, in [Company X]'s experience of operating similar businesses in an integrated manner, there is scope for synergies.

2.11 In order to assess whether splitting the businesses would inhibit the purchaser's ability to compete, [Company X] considers it would be important to assess the following:

(a) the extent to which there is significant overlap in customers between the different businesses. To the extent that there is significant overlap in customers, this may place any purchasers of the individual businesses at a disadvantage relative to an integrated competitor such as Veolia, e.g. as a result of reduced opportunities for cross selling; and

(b) the extent to which there are operational synergies between the businesses. For example, the operation of landfill sites creates leachate which needs to treated, therefore operating both landfill sites and water treatment services can lead to operational synergies.

3. **55. INVITATION FOR VIEWS ON THE SCOPE OF THE DIVESTITURE PACKAGE NEEDED TO ADDRESS THE PROVISIONAL WATER SLCS:**

(a) The CMA invites views on the scope of the divestiture package that would be necessary to address comprehensively the Provisional Water SLCs, and in particular, the assets and attributes that would be needed in order for the divested business to be fully stand-alone and to restore fully the competition in the relevant markets between Suez and Veolia that could be expected in the absence of the Merger, by:

(i) the O&M Water Divestment Business; and

(ii) the Mobile Water Divestment Business.

3.1 [Company X] considers that the divestment of either Party's UK Water Divestment Business would be sufficient to comprehensively address the Provisional Water SLCs.

(b) The CMA invites views on whether the CMA should specify which Party's Water Divestment Businesses should be divested (in the event remedies are required) or whether Veolia should be given the choice of divesting either Veolia's or Suez's Water Divestment Businesses.

3.2 [Company X] considers that Veolia should be given the choice of whether to divest the UK Water Business of either Veolia or Suez.

(c) The CMA invites views on whether:

(i) the O&M Divestment Business and the Mobile Water Divestment Business should be sold to a single purchaser or to separate purchasers, in the event a divestiture is required, and why;

(ii) (unless covered in your response above), there are any synergies arising from a single purchaser operating both the O&M Divestment Business and the Mobile Water Divestment Business; and

(iii) (unless covered in your response above), there are any synergies between each Party's Water Divestment Businesses (eg its O&M Divestment Business and Mobile Water Divestment Business) and its wider, global business (eg Suez Global WTS Business for Suez and the VWT business and Veolia's non-UK operations for Veolia), which should be preserved under a possible divestiture remedy.

3.3 [Company X] considers that the businesses could potentially be sold to separate purchasers, but it would be important to understand any potential synergies that exist between the two businesses. Whilst [Company X] understands that Suez currently operates the businesses separately, Veolia operates its water services as a single business and [Company X] [✂].

3.4 In terms of assessing potential synergies, [Company X] would consider the following factors:

(a) the extent of customer overlap between the O&M Divestment Business and the Mobile Water Divestment Business. [Company X] would expect there to be significant customer overlap which could create cross selling opportunities; and

(b) the extent to which there are operational synergies between the two businesses. For example, the O&M business may manage/facilitate an upgrade project for a customer that requires mobile water treatment facilities.

(d) Unless covered in your response above, the CMA invites views on each of the possible divestiture options set out in paragraph 42 above, and which options are likely to be effective in addressing the Provisional Water SLCs and why. The CMA also invites views on the potential carve-out and separation risks associated with the implementation of each of these possible divestiture options.

3.5 Please refer to the responses above.

(e) Given that Suez no longer owns the 'Suez' brand (see paragraph 17 above) and therefore, that brand cannot be divested alongside any divestiture of Suez's Water Divestment Businesses, the CMA invites views on:

(i) what impact no longer being permitted to use the 'Suez' brand would have on the ability of Suez's O&M Divestment Business or Suez's Mobile Water Divestment Business to compete effectively in the relevant markets where the CMA has found the Provisional Water SLCs; and

(ii) how the risk of this impact may be appropriately mitigated (eg by requiring the divestiture to a purchaser with an equally strong brand in the relevant

markets or requiring the divestiture of Veolia's Water Divestment Businesses, together with the 'Veolia' brand).

3.6 [Company X] considers that the same considerations in relation to use of the Suez brand would apply in relation to both the waste and water business (see [Company X]'s response to question 54(b) above). [Company X] [✂].

4. **56. INVITATION FOR VIEWS ON THE IDENTIFICATION AND AVAILABILITY OF A SUITABLE PURCHASER FOR: (I) THE UK WASTE BUSINESS; AND (II) THE WATER DIVESTMENT BUSINESSES:**

(a) Unless covered in your responses to the questions above, the CMA invites views on whether it is necessary for a purchaser of the UK Waste Business to also be the purchaser of any Water Divestment Businesses.

4.1 [Company X] considers that it might not be necessary for either Party's UK Waste Business, and the O&M Water Divestment Business/Mobile Water Divestment Business to be sold to a single purchaser. However, it would be important to understand the potential for any synergies between the businesses (see [Company X] response to question 54(f)).

(b) The CMA's normal criteria for a suitable purchaser is set out in paragraph 28 above. The CMA invites views on whether in the particular circumstances of this case or the relevant markets, there are any other specific factors or requirements to which the CMA should pay particular regard in assessing purchaser suitability.

4.2 An additional factor the CMA should consider is the extent to which a purchaser will be acceptable to municipal customers and SPV equity partners. In [Company X]'s experience a significant proportion of municipal and SPV contracts have change of control provisions that would be activated by a divestment.

4.3 It is vital that municipal customers and SPV equity partners would be willing to consent to a change in control in a timely manner because if these contracts are not migrated to the purchaser(s), this could undermine their competitiveness in the market. It is therefore essential that any purchaser clearly exhibits expertise, reliability, commitment to the sector and innovation so as to maximise the chance of consents being granted.

4.4 [Company X] also notes that the existence of change of control provisions in municipal contracts potentially has timing implications for the divestment process. In [Company X]'s experience, municipal customers can be very slow to grant consents as they need to go through a formal approval process.

(c) The CMA invites views on whether there are any specific purchasers or types of purchaser which should be ruled out as potentially suitable purchasers, and if so why.

4.5 [Company X] considers that a private equity investor is unlikely to be a suitable purchaser for the divestment businesses, as it is unlikely to have the management experience, reputation, innovation capabilities, and long term commitment that an existing waste management business would be able to offer.

4.6 In addition, as the Suez brand will not transfer, it is even more important that the purchaser has experience and an existing waste management brand and track record (which a private equity purchaser would not be able to offer).

4.7 Moreover, to the extent that under private equity ownership, the Divestment Business would be active only in the UK, it would not benefit from being part of an existing global business with an experienced management team. This would limit its ability to compete effectively (particularly for complex contracts with municipal customers) as it would not benefit from

international knowledge sharing or the ability to spread R&D costs over a larger customer base.

(d) The CMA invites views on the risks that a suitable purchaser is not available or that the Parties will be incentivised to divest a divestment business to a weak or otherwise inappropriate purchaser.

4.8 [Company X] considers that there are suitable purchasers available, and recognises that the CMA will be vigilant during its purchaser approval process to ensure that the divestment business is not divested to a weak or otherwise inappropriate purchaser.

(e) The CMA invites views on whether the risks associated with a divestiture of the Water Divestment Businesses will necessitate the requirement for an upfront buyer (see also footnote 30 and paragraph 44 above).

4.9 At this stage [Company X] does not consider there is any need for an upfront buyer requirement. However, [Company X] would note that it is important that the divestment processes (to the extent there are multiple divestiture packages, including as between the waste and water businesses) run to the same timescales in order to allow potential purchasers to assess any synergies that exist or could be generated between the businesses.

5. **57. INVITATION FOR VIEWS ON ENSURING AN EFFECTIVE DIVESTITURE PROCESS FOR: (I) THE UK WASTE BUSINESS; AND (II) THE WATER DIVESTMENT BUSINESSES:**

(a) The CMA invites views on the appropriate timescale for achieving a divestiture (the Initial Divestiture Period).

5.1 Subject to good quality due diligence information being available, [Company X] considers a six month period would be sufficient for achieving an agreed SPA in relation to a divestiture.

(b) The CMA invites views on the risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture, and whether the functions of the Monitoring Trustee (see paragraph 7 above) should be expanded to oversee the divestiture process and to ensure that the operations and assets to be divested are maintained and properly supported during the course of the process.

5.2 [Company X] considers that the functions of the Monitoring Trustee should be expanded to oversee the divestiture process. The divestment businesses hold a wide range of assets, which will require constant maintenance and upkeep. It is important that these assets are fully maintained during the divestment process to ensure that the divestment package does not deteriorate.

5.3 It is also important that the key staff of the divestment business are retained and that key staff have the opportunity to raise any concerns they have regarding any decisions that might undermine the divestment business with the CMA (via the Monitoring Trustee).

5.4 Similarly, the divestment businesses are likely to have contracts that are due for renewal or new opportunities that become available during the divestment process. As these markets are characterised by large, long term contracts, losing even a small number of contracts (or signing new contracts on unfavourable terms) during the divestment process could be extremely detrimental to the divestment business. It is therefore important that there is independent oversight to ensure that appropriate resources are being deployed to bid for renewals and new opportunities.

(c) Where the CMA has not required an upfront buyer (see footnote 30 above), the CMA has the power to mandate an independent divestiture trustee to dispose of the divestiture package at no minimum price if: (i) parties fail to procure

divestiture to a suitable purchaser within the Initial Divestiture Period; or (ii) the CMA has reason to expect that the parties will not procure divestiture to a suitable purchaser within the Initial Divestiture Period.

In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of this Merger necessitate such an approach.

5.5 [Company X] considers that the standard process is appropriate in this case. Please also refer to the response to Question 4(e) above.

6. **62. INVITATION FOR VIEWS ON THE COST OF REMEDIES AND RCBS:**

(a) The CMA invites views on what relevant costs are likely to arise (if any) in implementing the different remedy options the CMA is considering, or any remedies you wish to put forward for the CMA's consideration.

6.1 [Company X] considers that there are no relevant costs associated with implementing the remedies, or that any such relevant costs would not be disproportionate in relation to the SLC and the adverse effects identified by the CMA.

(b) The CMA invites views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options the CMA is considering, or any remedies you wish to put forward for the CMA's consideration.

6.2 [Company X] considers that the potential loss of any RCBs would not outweigh the SLCs and adverse effects identified by the CMA.