

Dear sirs,

GMCA RESPONSE TO THE CMA'S PROVISIONAL FINDINGS - VEOLIA/SUEZ MERGER

This response is from the Greater Manchester Combined Authority Waste and Resources Service. Throughout our response when we refer to "Suez" we mean the waste business unless otherwise stated. Our comments are in red.

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.

The GMCA considers the full divestiture of either business in its full UK service delivery form does represent the most effective remedy to address the SLC in the waste sector. This is because, effectively, the core competitive business entity would be retained (albeit without the larger international parent body supporting it) and have the scale, competency and capability to continue to deliver services and compete in the marketplace.

(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

We do not see that the loss of the brand is a barrier to future competitiveness. The new company's presence will be adequately addressed, we are sure, through comprehensive marketing campaigns and the continuation of its current high profile external activities although under a different name. A loss of the Suez brand will not impact upon the continued delivery of existing contracts and in any procurement process the new entity will be well able to demonstrate its track record in the market even if operating under a changed name.

(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).

Divestiture to any other "equally strong brand" in the waste sector may result in similar competition questions. In the wider environment and utilities sector this could be a possibility but recently we have seen Pennon Group (a utilities and environmental infrastructure provider) divest itself of its waste business (Viridor) and this might be an indicator of a lack of appetite for such an acquisition.

(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.

Competition between Veolia and Suez is the issue so divesting one or the other addresses this.

(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.

The GMCA is not sighted on any 'interdependent' activities or assets outside of the UK so cannot provide comment.

(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;

If the objective to avoid a significant lessening of competition is to be met Suez Recycling and Recovery UK Ltd has to be divested as a single entire package and required to continue to operate as such.

(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

If Suez was broken up into smaller packages we would consider they would find purchasers that would perhaps increase the scale of smaller companies. However, it is far from likely that these new expanded companies could provide adequate competition to Biffa, FCC etc. let alone Veolia.

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

Failure to be able to effectively maintain current levels of competition.

(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?

We do not believe it is necessary to bundle the waste and water businesses for sale. We contract solely with Suez Recycling and Recovery UK Ltd and have not had any interaction (knowingly) with the water business.

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.

As above – no.

(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.

A long term commitment to maintain the business structure as it is at the point of purchase which may well be considered to be covered implicitly by point (d) in paragraph 28.

(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.

The CMA should require the purchase to be obligated to maintain Suez as an entity that is capable of competing in the waste market with Veolia. A purchaser that then selectively sells off elements of the Suez business will have the effect of reducing competition. Purchasers with this intent should be avoided.

(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.

It is our belief that this is a low risk. The UK waste sector is going through a period of policy change which will create opportunities for businesses to grow and invest. Acquisition of a leading waste management company with a £900mpa turnover with scope for growth will be an attractive proposition.

(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).

Not in a position to comment.

57. Invitation for views on ensuring an effective divestiture process for: (i) the UK Waste Business; and (ii) the Water Divestment Businesses: 18

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

The timescale has to be long enough to allow the completion of comprehensive due diligence otherwise potential purchasers will be deterred from coming forward or the company will be undervalued (which in itself is not necessarily a concern so long as the purchase has the longer financial capability to support the acquisition).

We cannot provide detailed comment on the timescales as we have little experience in the due diligence and acquisition process.

(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.

A concern is that Suez lose key staff during the divesture and as a result services and operations suffer through a loss of competence and experience. Although we recognise that staff cannot be prevented from changing jobs, staff retention oversight could be a role for the Monitoring Trustee. Equally, Veolia should not be allowed to seek to recruit key staff from Suez during the divestiture period.

(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.

No comment to make on this.

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.

No comments to make.

(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.

The divestiture remedy (with Suez divested as a whole) would retain the current benefits of competition and satisfy the first RCB (a) driving quality, pricing and innovation as is currently the position (with no lessening of competition and accruing within a reasonable period).

Kind regards,

Paul Morgan

Head of Commercial Services
Greater Manchester Combined Authority



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