

31 May 2022

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

SAUR RESPONSE TO CMA NOTICE OF POSSIBLE REMEDIES

31 MAY 2022

LATHAM & WATKINS^{LLP}

1. INTRODUCTION

- 1.1 This submission by Saur S.A.S. and its wholly owned subsidiary Nijhuis Industries Holdings B.V. (“**Nijhuis**” and together “**Saur**”) relates to the investigation by the Competition and Markets Authority (“**CMA**”) into the acquisition by Veolia Environnement S.A. (“**Veolia**”) of Suez S.A. (“**Suez**” and together with Veolia the “**Parties**”) by means of its acquisition of a 29.9% minority stake from an existing Suez shareholder dated 6 October 2020, and the voluntary public offer by Veolia for the remaining issued share capital of Suez (the “**Transaction**”).
- 1.2 Saur has considered the summary of the CMA’s provisional findings dated 19 May 2022 in relation to the Transaction (the “**Provisional Findings**”) and its notice of possible remedies published on the same date (the “**Remedies Notice**”).
- 1.3 Saur submits this response to the Remedies Notice in accordance with paragraph 63 thereof. Saur is grateful to the CMA for the opportunity to respond to the Remedies Notice, in particular given its interest as the proposed acquirer of almost all of Veolia’s mobile water services (“**MWS**”) business in the European Economic Area (“**EEA**”) and the UK (the “**Veolia MWS Divestment Business**”) under the Parties’ remedies process with the European Commission (“**EC**”), pursuant to which [redacted].

2. PROVISIONAL WATER BUSINESS CONCERNS

(a) Mobile Water Services

- 2.2 The Remedies Notice invites comments on three possible options to remedy its provisional finding of a substantial lessening of competition (“**SLC**”) in the supply of MWS in the UK, namely:
- (a) divestiture the Veolia MWS Divestment Business in line with the remedy agreed between the Parties and the EC;
 - (b) divestiture of Suez’ mobile water service business in the UK (the “**Suez MWS Divestment Business**”); or
 - (c) divestiture of a broader divestiture package that goes beyond the UK operations of either Suez or Veolia.¹
- 2.3 Saur strongly supports a standalone divestment of the Veolia MWS Divestment Business. As Saur notes below, it is commercially imperative that, should the CMA approve the divestment of the Veolia MWS Divestment Business to Saur, that divestment should take place as soon as possible. In the event that the CMA also considers Saur to be a suitable purchaser for other water operation and management (“**O&M**”) divestment businesses, Saur believes that this should take place as a distinct process.
- 2.4 Each of the remedy options set out above is addressed in turn below.

¹ Remedies Notice, paragraph 42.

2.5 ***Veolia MWS Divestment Business.*** The EC cleared the Transaction subject to commitments on 14 December 2021. The commitments accepted by the EC include the divestment of (almost all) Veolia's activities in the MWS market in the EEA and their entirety in the UK. Saur submits that the remedy accepted by the EC would comprehensively and effectively address the MWS SLC in the UK provisionally identified by the CMA.

2.6 Saur appreciates that the CMA should in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC.² When considering divestitures, Saur notes that the CMA has regard to the need to minimise three risks that may impair an effective and comprehensive solution to the SLC; composition risk, purchaser risk, and asset risk.³ For the reasons set out below, by approving the commitments accepted by the EC the CMA would be minimising these risks:

- (a) *Composition Risk:* The Veolia MWS Divestment Business is capable of being operated as a standalone enterprise separate from the Parties' O&M services (as further explained below). In any event, under the control of Saur, as an existing market participant in the UK through Nijhuis, it is clear that the divested business will have the appropriate infrastructure, required expertise and know-how to compete effectively and aggressively with the merged entity immediately.

Saur agrees with the CMA's preference to avoid a 'mix-and-match' divestiture,⁴ and submits that the Veolia MWS Divestment Business is the most credible option for the CMA to avoid this scenario. Competitors have told the CMA that fleet size and investment are vital for a business to be competitive in the MWS market.⁵ Saur submits that the Veolia fleet, combined with a market participant with a track record of investment in innovation across the water services supply chain, would be a strong competitor to Suez. For this reason the Veolia MWS Divestment Business is capable of existing as a standalone competitor to the Suez Mobile Water Service Business, particularly if it is operated by an existing market participant with considerable infrastructure, expertise, and know-how.

- (b) *Purchaser Risk:* There is no purchaser risk associated with a divestment of the Veolia MWS Divestment Business. Saur is already engaging with the EC as a suitable purchaser (subject to final approval, which Saur expects may be as soon as mid-June), and will be capable of immediately providing a strong and effective competitive alternative to the merged entity.⁶
- (c) *Asset Risk:* There is no risk of deterioration of the Veolia MWS Divestment Business if the CMA approves this remedy. Saur has already agreed the terms of a deal and, subject to CMA approval of its terms and the transaction agreements, it can immediately acquire and integrate the business into its own

² CMA Merger Remedies Guidance, paragraph 3.3; Enterprise Act 2002, sections 35(4) and 36(3).

³ CMA Merger Remedies Guidance, paragraph 5.3.

⁴ Summary of Notice of Possible Remedies, paragraph 26.

⁵ CMA Provisional Findings, paragraph 13.34.

⁶ Saur refers to its submissions at Annex 1 respecting its ability to restore and improve the competitive integrity of the market.

operations. There will be no transitional services period required and the divested business will immediately be able to compete with the merged entity.

- 2.7 For all of the reasons set out above, the divestment of the Veolia MWS Business is a comprehensive and effective remedy, which is capable of implementation. In addition, its approval creates business certainty by eliminating the risk of a divergent outcome from the commitments already accepted by the EC in its review of the same Transaction.
- 2.8 In line with the CMA's objective of establishing an effective divestiture process through finding a suitable purchaser in an acceptable timescale, Saur is preparing a further submission explaining why it would be a suitable purchaser of the divestment business and intends to submit this by no later than the deadline for responding to the Remedies Notice on 2 June 2022. Saur would request that the CMA progress the suitable purchaser approval process immediately.
- 2.9 ***Suez' Mobile Water Service Business.*** Carve-out of the Suez Mobile Water Service Business would clearly carry relatively greater composition, purchaser and asset risks than the divestment of the larger Veolia MWS Divestment Business given its smaller scale, the lack of an already identified suitable purchaser and the likely need for transitional services. Crucially, whilst it would be a smaller divestment package, it would not be less costly or proportionate to implement.
- 2.10 If the CMA were to choose this remedy option, then the Parties would be required to carve-out the Veolia UK mobile water services business from the Veolia MWS Divestment Business, which not only introduces significant risks as to the merged entity's incentives to continue to operate the Veolia UK mobile water business in isolation without the broader EEA-wide mobile water services, but it also requires a re-negotiation of agreed commitments with the EC. This outcome would entail significant uncertainty, expense and result in significant delays to remedy implementation and disruption in the English workforce, since [redacted]
- 2.11 Saur is already engaged in discussions with the EC regarding its suitability as a purchaser of the Veolia MWS Divestment Business and will be capable of implementing the remedy as soon as approval is received from the CMA. As set out above, there are no composition, purchaser or asset risks in respect of the Veolia MWS Divestment Business, meaning that any efforts to resolve such risks in respect of the divestment of the Suez Mobile Water Service Business would be unnecessary and wholly disproportionate.
- 2.12 ***A Wider Divestment Package.*** The divestiture of the Veolia MWS Divestment Business would represent a complete resolution to the MWS SLC provisionally found by the CMA such that a broader remedy is neither necessary nor proportionate:
- (a) The CMA has provisionally concluded that the Parties are by far the largest participants in the MWS market in the UK and are close competitors with each other.⁷ The sale of the Veolia MWS Divestment Business to a third party which

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Provisional Findings Report, paragraph 13.33

is willing and capable of operating it as a standalone business will preserve it as a close competitor to Suez.

- (b) The CMA has provisionally concluded that the MWS market is national in scope.⁸ The sale of the Veolia MWS Divestment Business provides a complete solution to a national SLC since it involves the divestment of the entirety of Veolia's MWS business in the UK.
 - (c) The CMA has provisionally concluded that the Transaction will all but completely remove competition for customers seeking emergency purchase.⁹ Divestment of the Veolia MWS Divestment Business will preserve Veolia as a competitor for customers requiring emergency MWS.
- 2.13 The narrower sale of the Veolia MWS Divestment Business to Saur has been approved by the EC and Saur is already engaging with the EC as a suitable purchaser. Saur has extensive activities at all levels of the water services supply chain, and it is capable of effecting cost saving synergies and through innovations in related business activities.
- 2.14 In the circumstances, it would be unnecessary and disproportionate to require a global divestment package, especially since the CMA is treating the MWS market as national in scope.

(b) Sale of O&M Business and MWS Business to a Single Purchaser

- 2.15 The Remedies Notice invites views on whether the Parties' industrial O&M services for water and wastewater treatment and mobile water divestment business should be sold to a single purchaser or to separate purchasers.¹⁰
- 2.16 It is not necessary to sell the O&M divestment business and Mobile Water Divestment Business to a single purchaser. The two businesses are standalone and severable and in Saur's experience, clients negotiate O&M and MWS contracts asynchronously over different timeframes. There are no material synergies or economies of scale to be achieved by ensuring the two businesses are sold together to a single purchaser.
- 2.17 Saur considers that the divestment of the industrial O&M water services business should be considered and treated separately from the divestment of the mobile water services business. In the event that the CMA considers Saur to be a suitable purchaser for the Veolia MWS Divestment Business, but also decides to engage with the Parties on any potential O&M divestment, these two processes should be treated distinctly.

⁸ Provisional Findings Report, paragraph 13.15.

⁹ Provisional Findings Report, paragraph 13.44 (b)

¹⁰ Remedies Notice, paragraph 55 (c)(i)

3. TIMELINE FOR DIVESTMENT OF THE VEOLIA MOBILE WATER SERVICES BUSINESS

- 3.1 In order to restore the competitive constraint that would be lost as a result of the Transaction,¹¹ in the shortest possible timeframe, Saur would request that the CMA expedite the approval of the sale of Veolia MWS Divestment Business.
- 3.2 In Saur's view, the most effective way of achieving this outcome would be by way of derogation under the initial enforcement order imposed on 20 December 2021 ("IEO"), as the CMA envisages in the Remedies Notice.¹² This would not be in addition to, but rather in lieu of, incorporating the sale of the Veolia MWS Divestment Business into any final remedies undertakings (or final order) to address all of the SLCs identified in the Provisional Findings.
- 3.3 In the particular circumstances of this case, such an efficient and pragmatic approach is highly desirable. Saur is already engaging with the EC as a suitable purchaser, it has [redacted] for the acquisition of the Veolia MWS Divestment Business and it has [redacted] it is uniquely well placed to quickly complete the divestment given these facts.¹³ This would minimise any asset risk whereby the competitive capability of the Veolia MWS Divestment Business would deteriorate before completion of the divestiture.
- 3.4 To assist with swift approval from CMA, Saur will provide a suitable purchaser questionnaire by no later than 2 June 2022 and it will stand ready to engage with the Group of Panel Members on its approval as a suitable purchaser approval as soon as the Final Report is published, with such approval to be granted by way of derogation from the IEO (and not following the acceptance of remedies undertakings or the issue of a final order). Saur will also share all transaction documentation for approval by the CMA by late June / early July 2022.
- 3.5 [redacted] As such, Saur would appreciate the CMA's careful consideration of this proposed approach.

4. CONCLUSION

- 4.1 As explained to the CMA during its Phase 1 investigation,¹⁴ Saur has significant concerns that the Transaction will result in a SLC in MWS in the UK, and strongly endorses the CMA's provisional finding of that fact.
- 4.2 Saur believes that the most effective, efficient, and proportionate remedy is the sale of the Veolia MWS Divestment Business to Saur. For reasons which will be explained in its suitable purchaser questionnaire, Saur believes that it is uniquely well positioned to restore the pre-merger conditions of competition.

¹¹ Remedies Notice, paragraph 26.

¹² Remedies Notice, paragraph 18

¹³ The European Commission has previously taken into account similar "factual elements" in: Case COMP/M.5529 – *Oracle / Sun Microsystems* (2010), paragraph 654; and Case COMP/M.6381 – *Google / Motorola Mobility* (2012), paragraphs 120-121.

¹⁴ Saur Questionnaire Response dated 20 September 2022.

- 4.3 Finally, Saur encourages the CMA to act as expeditiously as possible to implement the divestment of the Veolia MWS Divestment Business by means of a derogation from the IEO, without requiring that this aspect of its required remedies be formalised in undertakings given the pre-existing commitments given to the EC.
- 4.4 Saur is available at the convenience of the CMA to answer any further questions.