

Anticipated acquisition by Bouygues S.A. of Equans S.A.S.

Summary of the decision on relevant merger situation and substantial lessening of competition

ME/6987-22

SUMMARY

1. On 12 May 2022, Bouygues S.A. (**Bouygues**) agreed to acquire the entire issued share capital of Equans S.A.S. (**Equans**) from ENGIE S.A. (**ENGIE**) (the **Merger**). Bouygues and Equans are together referred to as **the Parties**, and for statements referring to the future (if the Merger were to proceed), as the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Bouygues and Equans is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test in the Enterprise Act 2002 (the **Act**) is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the UK, including in: a) the supply of high-speed overhead catenary systems (**OCS**), b) the supply of 'standard' (ie non-high-speed) OCS, and c) the provision of certain maintenance-focused (or 'hard') facilities management (**FM**) services, in particular to customers in the healthcare sector.
4. The CMA found that the competitive conditions for the supply of each of these services are distinct in the UK, compared to other regions, including because of the customer preference for suppliers with a national presence and other specific customer and regulatory requirements in the UK.
5. The CMA has considered whether the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) in relation to each of these services in the UK.

6. In the supply of **high-speed OCS in the UK**, the CMA found that the Parties are close competitors and are currently competing to supply High Speed 2 (**HS2**) – the only contract in the recent years for the supply of catenary to high-speed in the UK. The CMA's assessment takes into account the impact that the change in market structure brought about by the Merger would have on the ongoing HS2 Tender (which is currently scheduled to complete around the end of 2022), and also on any high-speed OCS projects that might be tendered in the UK in future.
7. The Parties are two of only a very limited number of tenderers participating in the HS2 tender. The CMA considers that the Merger would result in the Merged Entity exercising control over two separate tenders for HS2, which could soften competition between those tenders for the remainder for the HS2 tender process. Alternatively, in the event that the Parties are required to withdraw one of their bids following the Merger (under HS2's tender rules, which place restrictions on multiple tenders from entities that are part of the same corporate group), the Merger could result in the number of tenderers being reduced without a competitive process. The CMA notes that it would be difficult, in practice, for HS2 to introduce a new (or previously eliminated) supplier into the tender process at such an advanced stage. On this basis, the CMA considers that the Merger gives rise to significant competition concerns in relation to the ongoing HS2 tender.
8. The CMA also assessed competition for future high-speed OCS work. While the outcome of the ongoing HS2 tender is likely to be relevant to competition for future tenders in this market, the competitive choices available to customers are likely to be different to those that currently facing HS2, in particular because of the significant lead-time before the earliest future tender.
9. The CMA notes that it is common industry practice to enter into consortia arrangements to bid for high-speed OCS contracts and that there is limited evidence to suggest that having the capabilities to perform all aspects of the work required (as the Merged Entity will be able to do) will be a material competitive advantage. The CMA notes that a range of suppliers would be able to bid credibly (most likely in combination) for future high-speed OCS work, with several possessing either the design expertise or UK operational experience that would be necessary. On this basis, the CMA considers that the Merger does not give rise to competition concerns in relation to future high-speed OCS contracts.
10. The CMA, therefore, considers that the Merger gives rise to a realistic prospect of an SLC as result of horizontal unilateral effects in relation to the supply of high-speed OCS. The CMA found, however, that these concerns are

limited to the current HS2 tender and that there would be sufficient competition for any future high-speed OCS tenders in the UK.

11. In the supply of **standard OCS**, the CMA found that Bouygues is a relatively recent entrant in the UK, albeit with ambitions to grow in the future. The Parties do not appear to be particularly close competitors, and there are several well-established players in the UK.
12. The CMA, therefore, considers that the Merger does not raise competition concerns as a result of horizontal unilateral effects in relation to the supply of standard OCS, as there will be sufficient competition to constrain the Parties post-Merger.
13. In the supply of **'hard' FM services to healthcare**, the CMA found that both of the Parties generate a significant portion of their FM revenues in the healthcare sector and have competed to a material extent in the relatively limited number of recent tenders for hard FM contracts. The CMA also found, however, that a number of credible alternative suppliers pose a significant competitive constraint onto the Parties, including suppliers active nationally (eg Mitie, CBRE, Serco, Sodexo, and ISS) and, to a lesser extent, competitors present in certain regions of the UK.
14. The CMA also found that the phase-out of the project finance initiative (**PFI**) framework will likely result in changes to public healthcare bodies' procurement strategies. This is likely to increase competition for the supply of hard FM services to healthcare customers (by increasing the incentives of existing suppliers to compete and encouraging additional entry by FM providers not currently active in the healthcare space).
15. The CMA, therefore, considers that the Merger does not raise competition concerns in the supply of hard FM services to healthcare customers because there will be sufficient competition to constrain the Parties post-Merger.
16. The CMA is now considering whether to accept undertakings under section 73 of the Act. The Parties have until 26 July 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.