

## ACQUISITION BY BOUYGUES S.A. OF EQUANS S.A.S.

### Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in Bouygues S.A. (**Bouygues**) and Equans S.A.S. (**Equans**) ceasing to be distinct;
- (b) on 19 July 2022, the CMA decided that it is or may be the case that the transaction may be expected to result in a substantial lessening of competition within the supply of high-speed overhead catenary systems (**OCS**) to High Speed 2 (**HS2**); the CMA is considering whether to make a reference under sections 22 or 33 of the Act;
- (c) on 26 July 2022, the parties offered undertakings in lieu of a reference to the CMA for the purposes of section 73(2) of the Act (Proposed UILs);
- (d) the CMA is now considering whether the Proposed UILs may be acceptable in principle in addressing the substantial lessening of competition identified in its 19 July 2022 decision or if the transaction will be referred for an in-depth investigation under sections 22 or 33 of the Act;
- (e) the CMA wishes to ensure that no action is taken pending final acceptance of the undertakings, or final determination of any reference under sections 22 or 33 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (f) Bouygues has agreed to divest Colas Rail Belgium to a suitable purchaser as part of the European Commission's investigation into the transaction;
- (g) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Bouygues S.A. and Equans S.A.S (the **Order**).

### **Commencement, application and scope**

1. This Order commences on the commencement date: 2 August 2022.
2. This Order applies to Bouygues and Equans.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Bouygues or Equans to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.
4. This Order prevents the completion of any agreement or arrangement which transfers to Bouygues or any of Bouygues' subsidiaries the ownership or control of the Equans business or any of Equans' subsidiaries, including any business of Equans as at the commencement date. This order also prevents any transfer of ownership or control of the Equans business (as a whole) or the Bouygues business (as a whole), or any of their subsidiaries which are active, directly or indirectly, in supplying OCS products and / or services in Europe (except for Colas Rail Belgium).
5. This Order prevents Bouygues and Equans from removing either of their bids for the HS2 high-speed OCS tender prior to final acceptance of the Proposed UILs, or final determination of any reference under sections 22 or 33 of the Act. This Order prevents Bouygues and Equans from engaging in interim action that could result in the loss of the competitive potential of either of the OCS Businesses.

### **Prohibition on completion, transfer of ownership or control, and bid withdrawal until determination of proceedings**

6. Except with the prior written consent of the CMA, Bouygues and Equans shall not, prior to the final acceptance of the Proposed UILs, or final determination of any reference under sections 22 or 33 of the Act, take any action which would:
  - (a) transfer the ownership or control of: (1) the Equans business (as a whole); (2) the Bouygues business (as a whole); (3) any of Equans' subsidiaries which are active, directly or indirectly, in supplying OCS products and / or services in Europe; or (4) any of Bouygues' subsidiaries which are active, directly or indirectly, in supplying OCS products and / or services in Europe (excluding Colas Rail Belgium);
  - (b) result in the withdrawal of the OCS Businesses' tenders for the supply of high-speed OCS to HS2; or

- (c) otherwise impair the ability of the Equans business to compete independently in the supply of high-speed OCS in the UK.

### **Interim action**

- 7. Pending final acceptance of the Proposed UILs, or final determination of any reference under sections 22 or 33 of the Act, save as otherwise agreed in advance in writing by the CMA, Bouygues and Equans shall minimise as far as possible any risk of loss of competitive potential of the OCS Businesses and in particular ensure that:
  - (a) the OCS Businesses are maintained as a going concern and sufficient resources are made available for the development of the OCS Businesses, on the basis of their respective pre-transaction business plans;
  - (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the OCS Businesses;
  - (c) the nature, description, range and quality of goods and/or services supplied in the UK by each of the Bouygues and Equans OCS Businesses are maintained and preserved;
  - (d) except in the ordinary course of business:
    - (i) all of the assets of the OCS Businesses are maintained and preserved, including facilities and goodwill;
    - (ii) none of the assets of the OCS Businesses are disposed of; and
    - (iii) no interest in the assets of the OCS Businesses is created or disposed of;
  - (e) no changes are made to key staff of the OCS Businesses;
  - (f) all reasonable steps are taken to encourage all key staff to remain with the OCS Businesses.
- 8. At all times, Bouygues and Equans shall each actively keep the CMA informed of any material developments relating to the Equans or Bouygues OCS Business in Europe that relate to their bids for the HS2 OCS tender, which includes but is not limited to:
  - (a) details of key staff who leave or join the OCS Businesses;
  - (b) any interruption of the OCS Businesses (including without limitation its procurement, production, logistics, sales and employee relations

arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;

(c) all substantial customer volumes won or lost or substantial changes to the customer contracts for OCS Businesses including any substantial changes in customers' demand;

(d) substantial changes in the OCS Businesses' contractual arrangements or relationships with key suppliers.

## **Compliance**

9. Bouygues and Equans shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
10. Bouygues and Equans shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Bouygues and Equans and their subsidiaries with this Order. In particular, on 12 August 2022 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Bouygues and the Chief Executive Officer of Equans or other persons of Bouygues and Equans as agreed with the CMA shall, on behalf of each of Bouygues and Equans, provide a statement to the CMA in the form set out in the Annexes to this Order confirming compliance with this Order.
11. If Bouygues or Equans has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Bouygues or Equans may be directed to appoint under paragraph 12.
12. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
13. Bouygues and Equans shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

## **Interpretation**

14. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
15. For the purposes of this Order:

**‘the Act’** means the Enterprise Act 2002;

**‘Bouygues’** means Bouygues S.A., a company incorporated under the laws of France;

**‘the Bouygues business’** means the business of Bouygues S.A. and its subsidiaries carried on as at the commencement date;

**‘business’** has the meaning given by section 129(1) and (3) of the Act;

**‘Colas Rail Belgium’** means Colas Rail Belgium, a company incorporated under the laws of Belgium having its registered office at 3, Rue des Ateliers, B-7850 Enghien, Belgium, and registered in the Crossroads Bank for Enterprises under number 0460.627.462 (Register of Legal Entities Hainaut, section Tournai);

**‘commencement date’** means 2 August 2022;

**‘control’** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**‘Equans’** means Equans S.A.S., a company incorporated under the laws of France;

**‘the Equans business’** means the business of Equans and its subsidiaries carried on as at the commencement date;

**‘key staff’** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**‘the OCS Businesses’** means:

1. On the part of Bouygues: Colas Rail S.A.S. (a company incorporated under the laws of France), Colas Rail Holdings Limited, and each of Colas Rail Holdings Limited’s direct and indirect subsidiary companies excluding Colas Rail Belgium.
2. On the part of Equans, Powerlines GmbH (a company incorporated under the laws of Germany), SPL Powerlines UK Holding Limited, each of SPL Powerlines UK Holding Limited’s direct and indirect subsidiary companies, and Ineo SCLE Ferroviaire S.N.C. (a general partnership organised under the laws of France).

**‘the ordinary course of business’** means matters connected to the day-to-day supply of goods and/or services by Equans or Bouygues and does not include matters involving significant changes to the organisational structure or related to the post-transaction integration of Equans and Bouygues;

**‘subsidiary’**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**‘the transaction’** means the transaction by which Bouygues and Equans will cease to be distinct within the meaning of section 23 of the Act;

unless the context requires otherwise, the singular shall include the plural and vice versa.

**Signature:**

Shantanu Kafle

**Assistant Director, Mergers**

## **Compliance statement for Bouygues S.A.**

I [insert name] confirm on behalf of Bouygues S.A. (**Bouygues**) that:

### **Compliance in the Relevant Period**

16. In the period from [insert date] to [insert date] (the Relevant Period):
- (a) Bouygues has complied with the Order made by the CMA in relation to the transaction on [insert date of this Order] (the Order).
  - (b) Bouygues's subsidiaries have also complied with this Order.
17. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
- (a) No action has been taken by Bouygues that might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) transfer the ownership or control of the Bouygues business (as a whole), or of any of Bouygues' subsidiaries which are active, directly or indirectly, in supplying OCS products and / or services in Europe (excluding Colas Rail Belgium);
    - (ii) result in the withdrawal of the Bouygues OCS Business' tender for the supply of high-speed OCS to HS2; or
    - (iii) otherwise impair the ability of the Bouygues business to compete independently in the market for high-speed OCS.
  - (b) The Bouygues OCS Business has been maintained as a going concern and sufficient resources have been made available for the development of the Bouygues OCS Business, on the basis of its pre-transaction business plans.
  - (c) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Bouygues OCS Business, except in the ordinary course of business.
  - (d) The nature, description, range and quality of goods and/or services supplied in the UK by the Bouygues OCS Business have been maintained and preserved.

- (e) Except in the ordinary course of business:
- (i) all of the assets of the Bouygues OCS Business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Bouygues OCS Business have been disposed of; and
  - (iii) no interest in the assets of the Bouygues OCS Business has been created or disposed of.
- (f) No changes have been made to key staff of the Bouygues OCS Business.
- (g) All reasonable steps have been taken to encourage all key staff to remain with the Bouygues OCS Business.
- (h) Except as listed in paragraph [●] below, there have been no:
- (i) key staff that have left or joined the Bouygues OCS Business;
  - (ii) interruptions of the Bouygues OCS Business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Bouygues OCS Business; or
  - (iv) substantial changes in the Bouygues OCS Business' contractual arrangements or relationships with key suppliers,
- in each case, in Europe that relate to Bouygues' bid for the HS2 high-speed OCS tender.

18. *[list of material developments]*

19. Bouygues and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Bouygues business in accordance with paragraph 9 of the Order.

### **Interpretation**

20. Terms defined in the Order have the same meaning in this compliance statement.



**I understand that:**

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF BOUYGUES

Signature .....

Name .....

Title .....

Date .....

## **Compliance statement for Equans**

I [insert name] confirm on behalf of Equans S.A.S. (**Equans**) that:

### **Compliance in the Relevant Period**

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Equans has complied with the Order made by the CMA in relation to the transaction on [insert date of this Order] (the Order).
  - (b) Equans's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Equans that might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) transfer the ownership or control of the Equans business (as a whole) or any of its subsidiaries which are active, directly or indirectly, in supplying OCS products and / or services in Europe;
    - (ii) result in the withdrawal of the Equans OCS Business' tender for the supply of high-speed OCS to HS2; or
    - (iii) otherwise impair the ability of the Equans business to compete independently in the market for high-speed OCS.
  - (b) The Equans OCS Business has been maintained as a going concern and sufficient resources have been made available for the development of the Equans OCS Business, on the basis of its pre-transaction business plans. No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Equans OCS Business, except in the ordinary course of business.
  - (c) The nature, description, range and quality of goods and/or services supplied in the UK by the Equans OCS Business have been maintained and preserved.

(d) Except in the ordinary course of business:

- (i) all of the assets of the Equans OCS Business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
- (ii) none of the assets of the Equans OCS Business have been disposed of; and
- (iii) no interest in the assets of the Equans OCS Business has been created or disposed of.

(e) No changes have been made to key staff of the Equans OCS Business.

(f) All reasonable steps have been taken to encourage all key staff to remain with the Equans OCS Business.

(g) Except as listed in paragraph [●] below, there have been no:

- (i) key staff that have left or joined the Equans OCS Business;
- (ii) interruptions of the Equans OCS Business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Equans OCS Business; or
- (iv) substantial changes in the Equans OCS Business' contractual arrangements or relationships with key suppliers.

in each case, in Europe that relate Equans' bid for the HS2 high-speed OCS tender.

3. *[list of material developments]*

4. Equans and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Equans business in accordance with paragraph 9 of the Order.

### **Interpretation**

5. Terms defined in the Order have the same meaning in this compliance statement.

**I understand that:**

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years**, or both. (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF EQUANS

Signature .....

Name .....

Title .....

Date .....