

Acquisition by Veolia Environnement S.A. of Suez S.A.

Final report

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The Competition and Markets Authority has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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Summary

What we have found

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Veolia Environnement S.A. (**Veolia**) of Suez S.A. (**Suez**) may be expected to result in a substantial lessening of competition (**SLC**) in the supply of several waste management and water treatment services in the United Kingdom (**UK**).
2. We refer to this transaction as **the Merger** and to Veolia and Suez collectively as **the Parties**.
3. The competition concerns that we have found result from the Merger involving two companies that previously competed head-to-head for a range of customer contracts. Our concerns arise in relation to the following services provided in the UK:
 - (a) non-hazardous municipal waste collection services;
 - (b) operation and maintenance (**O&M**) services for material recovery facilities (**MRF**) to local authorities;
 - (c) O&M services for energy recovery facilities (**ERFs**) to local authorities;
 - (d) the supply of waste disposal services by incineration in the local areas surrounding Suez's Wilton 11 and Teesside ERFs;
 - (e) non-hazardous commercial and industrial (**C&I**) waste collection services;
 - (f) O&M services for water and wastewater treatment facilities to industrial customers; and
 - (g) mobile water services (**MWS**).
4. In each of these markets, we consider that the Merger will remove an important competitor, which could result in higher prices for customers and/or a poorer quality of service (reflected, for example, in less frequent waste collection). This would have a significant impact on the services provided on behalf of local authorities to millions of households across the UK, as well as many businesses that purchase some of these services directly.

How we will address the competition concerns that we have found

5. Having found the Merger would give rise to an SLC in multiple waste and water treatment markets, we considered what remedial action should be taken to address these concerns. We have concluded that the sale by Veolia of three separate businesses would remedy the SLCs and resulting adverse effects effectively and proportionately. These are the sale of:
 - (a) Suez's entire UK waste management services businesses;
 - (b) Suez's UK industrial water O&M services business; and
 - (c) Veolia's European MWS business.
6. The buyers of these businesses will need to be approved by the CMA.

Background

7. On 7 December 2021, the CMA's Phase 1 investigation found that the Merger gave rise to a realistic prospect of an SLC in relation to the following services provided in the UK:¹
 - (a) complex waste management contracts procured by local authorities;
 - (b) non-hazardous C&I waste collection services;
 - (c) The supply of non-hazardous municipal waste collection services;
 - (d) The supply of services for the O&M of local authority-owned ERFs;
 - (e) The supply of non-hazardous waste incineration services in several local areas;
 - (f) The supply of organic waste composting services at open-windrow composting (**OWC**) facilities in several local areas;
 - (g) O&M of water and wastewater treatment facilities for industrial customers; and
 - (h) MWS.

¹ CMA Phase 1 Decision.

8. The CMA has no powers to impose remedies at the end of a Phase 1 investigation and Veolia chose not to offer remedies at that stage.²
9. On 21 December 2021, the CMA referred the acquisition by Veolia of Suez for an in-depth Phase 2 investigation by a group of independent panel members (the **Inquiry Group**).³ The Inquiry Group has considered the questions required of it in the Act:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation may be expected to result in a SLC within any market or markets in the UK for goods or services.⁴
10. Having extended the statutory timetable by eight weeks, we are required to publish our final report by 11 September 2022.

The businesses involved and what they do

11. The Parties are both large, multinational waste and water management companies and are two of the three largest waste management companies operating in the UK. The Parties' breadth of activities across the waste management sector is not matched by any other competitor in the UK.
12. Veolia is active globally in water, waste, and energy management solutions, and in other related activities. In 2020, Veolia generated global revenues equivalent to around £22 billion, of which around £2 billion (or approximately 10%) was generated in the UK.
13. Suez is a global provider of waste management, water management, water equipment and water technology services. In 2020, Suez generated global revenues equivalent to around £15 billion, including around £1 billion (approximately 7%) in the UK.

The transaction

14. On 5 October 2020, Veolia acquired 29.9% of Suez from Engie S.A. and announced its intention to launch a public offer for all of Suez's remaining

² CMA Phase 1 Decision

³ Section 33(1) of the Enterprise Act 2002 (**the Act**)

⁴ Section 36(1) of the Act

issued share capital. On 27 January 2022, Veolia completed its acquisition of the remaining issued share capital of Suez.

How we conducted our investigation

15. We have gathered and analysed a significant volume of evidence during our inquiry. We have collated market share and tender data to understand the Parties' and their rivals' existing market positions and what the competitive outcomes have been in the past. We received a very significant amount of information from the Parties and have analysed large volumes of their internal business documents.
16. We have also gathered a significant amount of information from other market participants. We contacted over 100 local authorities and received responses from around 40% of them. We contacted approximately 200 commercial customers in waste and water services as well as large and small competitors. We had a significant number of calls with local authorities, business customers and competitors.
17. We have consulted extensively with the Parties, who have been able to make representations to us (both orally and in writing) on numerous occasions. In particular, the Parties were provided with the opportunity to make representations on our Provisional Findings (May 2022), which set out the reasoning and basis in evidence that underpinned those findings. Certain confidential evidence, which could not be shared with the Parties directly, was disclosed to their advisers through a confidentiality ring. We have considered the representations made by the Parties in reaching our final decision.

The background to our investigation: non-hazardous waste management in the UK

18. Most of the markets in which the Parties' activities overlap are within the non-hazardous waste sector. Managing the UK's non-hazardous waste involves a number of stages.
19. For municipal customers (eg local authorities) the waste is generally collected from households at the kerbside. Depending on the local area this might include separate collections for organic waste (food and garden waste), recyclables and the remaining, or residual, waste. Separately, waste is collected from businesses (ie C&I customers).
20. Some waste is not collected at the kerbside but rather is taken to a recycling centre by households. Nevertheless, this waste is also included in the waste management chain.

21. Recyclable waste is taken to a sorting centre, or MRF, to extract and separate each type of recyclable material (eg plastic, glass, paper) that can be recycled and sold to businesses that use these materials.
22. The remaining waste is disposed of. The disposal method depends on the nature of the waste. Organic waste is composted. Residual waste can be disposed of by incineration at an ERF (which is used to generate electricity and sold to National Grid), sent to landfill or exported.

How will the Merger affect competition in waste management services?

23. We have examined the impact of the Merger on several different areas of activity within the waste management sector in which the Parties compete at present:
 - (a) non-hazardous municipal waste collection services;
 - (b) O&M services for MRFs to local authorities;
 - (c) O&M services for ERFs to local authorities;
 - (d) waste disposal services by incineration in the local areas surrounding Suez's Wilton 11 and Teesside ERFs;
 - (e) OWC services; and
 - (f) non-hazardous C&I waste collection services;
24. In each of these areas, we have considered whether the Merger is likely to give rise to what are known as horizontal unilateral effects. These can arise when one firm merges with a direct competitor. In these circumstances, by removing competition, the Merger might put upward pressure on prices and reduce the incentive for the merged firm to maintain service levels and innovation. This might leave local authorities (and so local taxpayers) and businesses needing to pay more for services from the Parties and/or experiencing lower levels of service and innovation.

The Parties are strong in competing for large and complex contracts

25. The customers in all of the waste management markets that fall within the scope of our investigation are local authorities (apart from non-hazardous C&I waste collection services where the customers are typically businesses). The requirements of local authorities in relation to waste management vary considerably and we have considered how this affects the level of competition

for local authority waste management contracts, specifically where those contracts are more complex.

26. We found widespread evidence that some local authority requirements are complex. While there are no bright-line criteria that determine if a contract is 'complex', evidence provided to us by local authorities, competitors and the Parties show the types of factors that can make the requirements for some local authorities more complex and difficult to fulfil than other local authority waste management contracts. In this regard, such contracts often:
- (a) require the provision of multiple services; and/or
 - (b) involve the provision or maintenance of waste management infrastructure; and/or
 - (c) are awarded by two or more local authorities working in partnership; and/or
 - (d) are of a large size or value.
27. We have also found that the overall risk profile of some contracts might dissuade some suppliers from bidding, including where contracts are complex. We have also considered the competitive effects of how risk is managed in our assessment of the O&M of MRFs and the O&M of ERFs.
28. The evidence available to us shows that complexity can affect competition, as customers with complex needs might see less competition for their waste management contracts (because some suppliers will be weaker competitors for these contracts or may choose not to bid at all). For example:
- (a) 10 local authorities said that their specific requirements meant that the Merger would reduce the set of potential suppliers for their contracts (these local authorities were concerned about competition for large, sometimes multiservice, waste management contracts); and
 - (b) An analysis of 15 contracts that were awarded to either Veolia and Suez, and which we consider to be complex, found that there were relatively few bidders for those contracts.
29. We also found that the Parties hold certain attributes, assets or capabilities – including a full portfolio of services, track record, strength in infrastructure, and size – that can give them a competitive advantage and make them closer competitors to each other compared to most rivals. Accordingly, while the Parties can and do bid for contracts involving a whole range of services relating to collection, sorting and disposal of waste, some competitors are

more limited in their capabilities and the types of contracts that they can bid for.

30. This is consistent with views submitted by several local authorities, which told us that Veolia and Suez are the key suppliers able to offer services across the waste management supply chain and take on large scale contracts. Veolia and Suez were identified by local authorities most frequently and were rated as the two strongest possible bidders.
31. We looked at how successful the Parties have been in winning contracts worth at least £10 million a year. Large value contracts are more likely to be related to complex customer requirements. Contracts of this value account for the top quarter of all municipal non-hazardous waste management contracts. We have found that over the past five years the Parties have won over half of these contracts (which account for 60-70% of the total value of the contracts we considered).
32. We have found that there are some other large suppliers that bid for complex contracts, including Biffa, Viridor and FCC Environment (**FCC**) (and sometimes Urbaser).
33. However, some rival suppliers, such as Biffa, Serco and Viridor, are not present across the waste management chain to the same extent as the Parties, which can limit the competitive constraint they place on the Parties when bidding for some contracts (eg Biffa and Serco do not operate ERFs whereas Viridor does not collect waste).
34. The local authorities that awarded the contracts told us that the suppliers which could credibly fulfil these contracts today are Veolia, Suez, FCC, Biffa and, to a much lesser extent, Viridor. Competitors also indicated that Veolia and Suez are the two strongest suppliers, while FCC, Biffa, Viridor and, to a lesser extent, Serco and Urbaser also compete for multiservice municipal contracts.
35. We consider that the evidence available to us shows that the complexity of contracts is an important factor that affects different suppliers' willingness and ability to compete. This evidence shows that the Parties are likely to be close competitors for complex contracts and that some of the other competitors may be weaker when competing for these contracts. The Merger will reduce the number of strong bidders for these contracts.
36. We have considered how the complexity of contracts affects competition for the different types of services within which the Parties overlap. Accordingly, our findings in relation to complex contracts have been taken into account

when we have considered the effect of the Merger on competition for the individual waste management services.

The Parties are two of a small number of suppliers providing non-hazardous municipal waste collection services

37. Veolia and Suez compete to win municipal contracts for kerbside collection services from local authorities.
38. Although many local authorities self-supply collection services either through their own in-house teams or through wholly-owned specialist companies (which are obliged to focus on that local authority not the requirements of other local authorities), other local authorities do not. We found that many local authorities which currently outsource their waste collection services will continue to outsource in the future. These local authorities rely on the competition between private suppliers (like Veolia and Suez) to get a good deal for their waste collection services on behalf of local taxpayers.
39. The Parties have a significant market position, together serving 30-40% of households that have outsourced non-hazardous municipal waste collection (with an increment of [10-20%] on one measure). This is a materially larger position than any other supplier – FCC serves 20-30% of households while Biffa and Serco each serve 10-20% of households.
40. Within non-hazardous municipal waste collection services as a whole, the Parties' bid data and evidence from both customers and competitors show that the Parties compete against each other for contracts, but also against Biffa, FCC, Serco and Urbaser.
41. Given the variation in local authority requirements we examined competition for complex collection contracts. We identified a set of 11 local authority contracts that we consider to be for complex requirements. These contracts are large in value terms and almost all involve the supply of multiple services, ranging in total value from £68 million to £1.2 billion.
42. Across this set of 11 contracts, we have found that, on average, there were fewer than three bidders identified by local authorities in the final round. No local authority identified any more than four bidders for any of the contracts. Veolia and Suez, together with Serco and Biffa, were identified as bidders more frequently than any other supplier.
43. The local authorities which hold these 11 contracts said that they expect Veolia, Suez, Biffa and Serco (and, to a lesser extent, FCC) would be the most credible suppliers if they were to re-tender.

44. Therefore, the strongest competition to the Parties comes from Biffa and Serco, with FCC being a less significant constraint. This relatively small set of suppliers rarely all bid for the same contracts – so it is likely that only one or two of these competitors would bid against the Merged Entity in any given tender in future. Some local authorities (including around half of those with complex contracts) expressed concern about the Merger in relation to non-hazardous municipal waste collection services. They told us that there would be fewer bidders available for their tenders and prices might increase as a result.
45. On the basis of the evidence we examined – market shares, tender analysis, contract analysis and views of local authorities and competitors – we have found that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of non-hazardous municipal waste collection services. We have found that the effect on competition from the Merger is likely to arise more strongly in relation to competition for complex contracts.

The Parties are two of only three strong suppliers of operation and maintenance services for material recovery facilities to local authorities

46. MRFs sort non-hazardous waste before the recyclable waste is sold to businesses which use it as an input, and the remaining, or residual, waste is sent away for further processing. MRFs differ substantially in terms of capability, sophistication and complexity. Some MRFs employ optical sorting software and machinery using cameras and/or lasers that allow the optical sorter to detect different types of waste (eg metal, paper and plastic), while other MRFs use a mix of less sophisticated automated sorting and manual sorting. Veolia and Suez operate MRFs, some of which use optical sorting and some use manual sorting.
47. The competitor set is limited by the fact that some local authorities have a preference for large suppliers with the ability to manage the risks associated with the volatile market for various recycled materials and/or to enter into risk/profit sharing arrangements with local authorities. Scale is important in a supplier's ability to manage these pricing risks.
48. Veolia and Suez have a significant market position, together accounting for 40-50% of O&M of MRFs by capacity (with an increment of 10-20% in share brought about by the Merger). Biffa is the second largest operator and accounts for a similar proportion of supply as Suez. After the Merger, Biffa and the Parties will hold 80-90% of the market. No other provider has a share exceeding 5%. The Merger therefore increases concentration significantly in a market that is already highly concentrated.

49. Local authorities and competitors identified Veolia and Suez as the strongest suppliers in the market together with Biffa. Our assessment of complex contracts indicates that without the Merger the Parties would have been two of the three strong competitors (along with Biffa) for multiservice contracts that include services related to MRFs.
50. We have found that the evidence strongly suggests that the Parties are close competitors to each other and that they face strong competition from only Biffa.
51. On this basis, we find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of O&M of MRF services.

The Parties are strongly placed to compete for future contracts to supply operation and maintenance of energy recovery facilities services

52. ERFs are used to incinerate residual waste in order to generate heating or energy (in the form of electricity) which can be either used onsite or sold to National Grid. Incineration is sold to those looking to dispose of residual waste at private ERFs or at public-private partnership (**PPP**) ERFs.
53. Providers of privately owned ERFs sell incineration services on fixed contracts or, if capacity allows, on the spot market.
54. PPP-backed ERFs were built and managed on behalf of public authorities. Most of an ERF's operational capacity is typically reserved for use by the local authority that commissioned the infrastructure. The remaining capacity is usually controlled by the operator of the ERF and can be sold to other customers or used to service its own waste treatment contracts. This is called Controlled Merchant Capacity (**CMC**). Incineration capacity purchased from private asset ERFs or CMC is described as 'merchant capacity'.
55. Many (but not all) public authority ERFs using the PPP model were built over 20 years ago. Very few of these ERFs have seen their O&M contracts come to an end yet, but some will end over the next few years. Once these contracts come to an end, local authorities are very likely to put the O&M of the ERF out to tender for a new contract period. It is possible that some of these contracts will involve refurbishment or some upgrade of the ERF facility.
56. Since there have been few O&M service contracts tendered in recent years, there is little evidence of competition in practice for this kind of contract that we can rely on. Instead, we have made our assessment on the basis of the customer selection criteria that are likely to be used, as identified by local authorities in response to our inquiries. These criteria include a supplier's (management and technical) expertise, experience, track record (eg in

relation to reliability of service) and access to contingency capacity. We have also considered whether operators gain an advantage from being the operator of an existing ERF (ie an incumbency advantage), the Parties' own plans to compete for these contracts in the future, as well as a range of evidence from customers and the Parties' rivals.

57. We found that Veolia and Suez are in a strong position to bid for and win future contracts based on the criteria likely to be applied by local authorities. In this regard:
- (a) the Parties have significant management and technical expertise. Veolia is the second-largest and Suez the third-largest operator of ERFs in the UK. In terms of the number of accumulated years' experience, Veolia and Suez combined far outstrip any other supplier.
 - (b) in terms of reliability and access to contingency capacity, local authorities told us that landfill and export are generally undesirable forms of contingency capacity, as public policy objectives are to significantly reduce the use of landfill and to move to more sustainable practices (eg incineration for energy generation). While these forms of disposal will continue, the evidence indicates that they will continue to decline in line with Government policy and customer preferences and suppliers that offer UK incineration options will likely be preferred by local authorities. In this regard Veolia and Suez are likely to have a competitive advantage over most other rivals (with the exception of Viridor and FCC).
58. An incumbent operator may have an advantage over other O&M operators when competing for new O&M contracts for ERFs (ie following the end of PPP contracts). Therefore, Veolia and Suez will have a competitive advantage with respect to more ERFs than any of their rivals. We also consider that the Parties' experience and scale advantages make them strong competitors to incumbents, including each other.
59. We asked local authorities to list the suppliers that they would consider credible if they were to retender their existing O&M for ERFs contracts. Both Veolia and Suez were identified more frequently and rated more highly than any other supplier. After the Parties, FCC and Viridor were the next most frequently identified and rated suppliers. Similarly, competitors identified Veolia, Suez, Viridor and FCC most frequently, with Veolia, Suez and Viridor rated the highest.
60. O&M services for ERFs are complex services and therefore Veolia and Suez are likely to compete particularly closely (and face more limited competition) including where O&M services for ERFs are bundled with other services.

61. We therefore found that the Parties are close competitors to each other and would face only limited competition after the Merger, with only Viridor and FCC likely to be strong competitors to the Parties.
62. On this basis, we have found that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of operation and maintenance of energy recovery facility services.

The Parties face limited competition in the supply of incineration services in two local areas

63. We have also examined how the Merger will affect competition in the supply of merchant capacity in the supply of incineration services (paragraph 54).
64. We identified 11 local area overlaps between the Parties' facilities. Of these, in nine local areas the Parties have either a low combined share or the increment arising from the Merger is low (or both).
65. In the remaining two local areas, the Teesside and 'Wilton 11' areas, the Parties have strong market positions, with combined shares of 40-50% and 50-60% respectively (and the Merger bringing about an increment in share of 10-20% in both areas). We consider that the Parties compete closely at present and will face limited constraints after the Merger.
66. On this basis, we find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of merchant capacity incineration services in the local areas surrounding the Wilton 11 and Teesside ERFs.

Competition will remain in the supply of open windrow composting services

67. OWC processes garden waste into compost. Unlike the other waste management services that we have investigated, we have found that OWC services typically do not form part of complex contracts. The Parties are both active in the composting of garden waste via OWC.
68. Veolia is active in nine local areas and Suez in eight, but the Parties only overlap in four local areas. In two of these areas, the increment in market share is limited, indicating that the Merger brings about little change in the competitive structure of the local market. In the other two areas, the Parties' overall combined share is relatively modest, and they will continue to face a significant number of credible competitors (10 competitors in one area and 12 in the other).

69. On this basis, we find that the Merger will not result in an SLC in the provision of OWC services.

In the supply of non-hazardous commercial and industrial waste collection services the Merger makes a concentrated market even more concentrated

70. C&I waste collection services involve the collection of mixed and specific waste from C&I customers (including offices and shops). Both Parties supply non-hazardous waste collection services to C&I customers at a national level. We have considered national customers to be customers which require collection services in at least two regions in the UK.
71. C&I waste collection contracts are negotiated either through tenders or through bilateral contract negotiations. Some competitors are waste management companies and others are brokers which subcontract to waste companies.
72. We have found that Biffa and Veolia are by some distance the largest suppliers for national customers. Biffa alone accounts for 50-60% of the market and collectively Biffa and Veolia account for 70-80%. Suez has an estimated share of 5-10%. The Merger will therefore result in further consolidation of an already highly concentrated market. Novati and DS Smith (both brokers) have similar shares to Suez. All other competitors have very low market shares.
73. Once a supplier has collected the waste it is responsible for disposing of it. We have found that this can significantly influence competition. We have found that suppliers with their own disposal infrastructure have a greater ability to control disposal costs and capacity, which likely gives these suppliers a competitive advantage over smaller C&I suppliers that need to rely on third party capacity. After the Merger, the Parties will control significantly more ERF capacity than any other supplier.
74. The largest supplier in the market, Biffa, does not yet operate its own ERFs and relies on third-party disposal infrastructure. Biffa, however, has significant scale, which is likely to give it more favourable terms at third-party disposal sites relative to most other competitors. Biffa is also investing in its own ERFs, as a result of having less attractive landfill and export options, so will have improved access to disposal infrastructure in future.
75. Biffa is a strong competitor to both Veolia and Suez. The tender data shows that Suez imposes a more limited competitive constraint on Veolia than Veolia does on Suez, but also that other suppliers in the market, including brokers

such as DS Smith, Novati, and Reconomy, impose only a limited competitive constraint on either of the Parties.

76. Although brokers do win some national contracts, some customers for these contracts have a preference for minimising the level of subcontracting, and therefore broker competitors offer a weaker alternative compared to Suez.
77. We asked customers to list the suppliers that they would consider to be credible if they were to re-tender their current C&I waste collection contracts in the near future. Biffa and Veolia were rated clearly above other suppliers. Suez was mentioned less frequently and was considered to be of similar competitive standing to a small number of other waste management companies and brokers.
78. Accordingly, although Suez is considerably smaller than either Biffa or Veolia, it is an important competitor (and, in the round, a more significant competitor than other smaller suppliers, brokers, and FM suppliers) because of its access to disposal infrastructure and ability to compete for national customers. Veolia already holds a very strong position in the market (currently facing only one strong competitor) and is a strong competitive constraint on Suez.
79. On this basis, we find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of non-hazardous commercial and industrial waste collection services.

How the Merger will affect competition in water management services

The Parties are large and close suppliers in the operation and maintenance of water and wastewater facilities for industrial customers

80. Businesses that use water as part of their processes and/or which generate wastewater that is discharged under licence into public water courses require water treatment services. Water used in a manufacturing process must be of suitable quality and may therefore need to be treated to meet the requirements of the industrial customer, both in terms of quality (degree of water purity required) and quantity (volume of water required). Wastewater must be treated to a suitable quality to meet regulatory requirements.
81. The O&M of water and wastewater treatment facilities is sometimes 'self-supplied' by the owner of the facility whereas in other instances it is contracted to a third party, such as Veolia or Suez. O&M services usually include specialist, routine and reactive maintenance of the treatment facility involving a dedicated person (or persons) at the customer's site and access to

off-site technical support. The O&M provider is generally responsible for breakdown and maintenance risks associated with the facility, as well as ensuring the facility is compliant with all relevant regulations.

82. We have not included self-supply in our assessment. This is because self-supply is not a strong option for some customers. The fact that some customers are able to self-supply will not protect those other customers which cannot from any lessening of competition brought about by the Merger.
83. We have found that estimating market shares in this segment is difficult. The Parties and some third parties had very different market share estimates which we could not validate. We have therefore placed limited weight on market shares. However, we note that several third-party competitors and an industry report all estimated that together Veolia and Suez would be the largest supplier in the market.
84. We have found that Veolia and Suez are close competitors. A range of evidence shows that the Parties' competitive strength comes from their experience, capabilities and financial size.
85. Some customers raised strong concerns about the Merger. Three large customers told us that Veolia and Suez were the only two suppliers which bid for their contracts and that they did not see any other credible suppliers for their requirements.
86. We have found that when bidding for contracts, Suez was Veolia's closest competitor and that Veolia was, by far, the most frequent competitor to Suez in contract tenders. This indicates that that Veolia is a close competitor to Suez although Veolia won only one of these contracts.
87. When we asked customers and competitors who they considered to be credible suppliers, customers identified Veolia and Suez most frequently. Competitors told us that Veolia and Suez together with Alpheus were the strongest competitors in the market.
88. On this basis, we find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of O&M services for water and wastewater treatment facilities to industrial customers.

The supply of mobile water services

89. MWS involves the provision of moveable water treatment units that are trailer-mounted so that they can be transported by truck to customers in response to emergency shutdowns or planned outages of a customer's water or wastewater treatment facility.

90. Veolia submitted that the Parties are complementary, with Veolia focussing on emergency supply and Suez on planned, multi-year contracts. However, we have found that they do compete head-to-head for multi-year contracts.
91. We have estimated that, together, Veolia and Suez account for 80-90% of MWS in the UK. We consider that only one competitor, Ecolutia, has a share of over 10%. We have estimated that all other competitors have negligible shares. We have also found that the Parties' fleet – the number of mobile water units that it has available in the UK – vastly outnumbers the aggregate fleet size of its rivals. This means that the Parties together have a large share of overall capacity.
92. We have found that the Parties are close competitors and would face only limited competition, at best, after the Merger.
93. For some customers, Veolia and Suez were the only two options. Customers have told us that the Parties' fleet size and responsiveness (given the Parties have the capacity to respond), and having one but not both of the two commonly used technologies (ie membrane-based or resin-based technologies), are reasons why other suppliers are weaker alternatives.
94. Competitors agreed that fleet size is an important factor of competition and that there are few strong suppliers other than Veolia and Suez.
95. There is some evidence from customers, competitors and from the Parties that Ecolutia is a credible competitor. However, our market share estimates, as well as evidence from Ecolutia, indicate that it is very much smaller than either of the Parties.
96. We also considered whether other technologies (known as activated carbon and water tankering) could be used instead of the Parties' products and services in the event of higher prices or worse non-price parameters of competition following the Merger and have found that they could not.
97. On this basis, we find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of MWS in the UK.

Findings

1. THE REFERENCE

- 1.1 On 21 December 2021, the Competition and Markets Authority (**CMA**) in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), referred the acquisition⁵ by Veolia Environnement S.A. (**Veolia**) of Suez S.A. (**Suez**) (the **Merger**) for further investigation and report by a group of independent panel members (the **Inquiry Group**) on the following questions in accordance with [section 36\(1\)](#) of the Act:
- (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.⁶
- 1.2 In answering the statutory questions, we applied a ‘balance of probabilities’ threshold to our analysis. That is, we considered whether it is more likely than not that an SLC has resulted, or may be expected to result, from the Merger.
- 1.3 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. We are required to publish our final report by 11 September 2022.⁷
- 1.4 Throughout this document, Veolia and Suez are referred to collectively as the **Parties**.
- 1.5 Our terms of reference, along with information on the conduct of the inquiry are set out in Appendix A.

⁵ The CMA referred two related transactions for a phase 2 investigation: Veolia’s completed acquisition of a 29.9% minority shareholding in Suez from an existing Suez shareholder (Engie S.A.) on 6 October 2021; and Veolia’s anticipated voluntary public offer for the remaining issued share capital of Suez, which was completed on 18 January 2022, after the CMA’s reference to phase 2.

⁶ On 17 June 2022, the CMA granted a derogation under the CMA’s interim measures permitting Suez to change the names of its Suez S.A. and Suez Groupe SAS legal entities to ‘Vigie’ and ‘Vigie Groupe’ respectively. This change came into effect on 29 July 2022, when Suez’s corporate name was changed to Vigie. In this report the term ‘Suez’ refers to Suez S.A. before these name changes and to Vigie subsequently (ie once the new name comes into effect).

⁷ The statutory deadline was extended by eight weeks, pursuant to section 39(3) of the Act (see [Notice of Extension](#), dated 30 June 2022).

- 1.6 This document, together with its appendices, constitutes the CMA's findings (from here on referred to as the **Final Report**). published and notified to Veolia and Suez in line with the CMA's rules of procedure.⁸ Further information relevant to this inquiry, including non-confidential versions of submissions, including from the Parties, can be found on the CMA case page.⁹

⁸ CMA rules of procedure for merger, market and special reference groups (CMA 17), Rule 13.

⁹ Veolia / Suez merger inquiry webpage.

2. THE PARTIES AND THE MERGER

2.1 In this chapter we provide an overview of the Parties, the Merger and the Parties' rationale for the Merger.

Veolia

2.2 Veolia is active globally in water, waste, and energy management solutions, and in other related activities.^{10,11} Headquartered in Paris, Veolia is listed on the Euronext Stock Exchange in Paris and is part of the CAC 40 index. Veolia is not listed on any UK stock exchange.¹²

2.3 As at 15 August 2022, Veolia's largest shareholder was Caisse des Dépôts et Consignations (an investment arm of the French state), which holds around 6% of Veolia shares (and around 9% of the ordinary voting rights of Veolia on an aggregate basis).¹³ Veolia group employees hold 4% of shares.¹⁴

2.4 In 2020, Veolia generated consolidated global revenues of around £22 billion, of which around £2 billion (or approximately 10%) was generated in the UK.¹⁵

2.5 Veolia's main activities in the UK are:

- (a) *Waste management services*: in the UK waste sector, Veolia is primarily active in the collection, sorting, treatment, and disposal of non-hazardous waste. It is also active, [§], in collecting and treating hazardous, healthcare, and electrical waste.^{16,17}
- (b) *Water management services*: Veolia's UK water management services activities mainly relate to the operation and maintenance of water and

¹⁰ In particular, its Seureca consulting engineering division, through which Veolia designs expert solutions for industrial, public authority and tertiary sector clients in water, waste and energy management.

¹¹ Veolia's consolidated response to CMA Phase 2 s.109 notice, 21 January 2022, paragraph 4.1.

¹² Final Merger Notice (FMN), 7 October 2021, paragraph 2.1.

¹³ Veolia's response to CMA Phase 2 21 June 2022 RFI 4, question 148. Confirmed as correct as at 15 August 2022 as per Refinitiv shareholder report.

¹⁴ FMN, 7 October 2021, paragraph 2.40.

¹⁵ Veolia's response to CMA Phase 2 s.109 notice, 21 January 2022, paragraph 4.1.

¹⁶ Veolia's response to CMA Phase 2 s.109 notice, 21 January 2022, paragraph 4.2.

¹⁷ We also note that Veolia recently announced plans to launch an electric car battery recycling centre in the West Midlands, which will have the capacity to process 20% of the UK's end-of-life electric vehicle batteries by 2024. See Veolia's website: [A sustainable future for electric vehicle batteries | Veolia UK](#), accessed by the CMA on 3 May 2022

wastewater treatment plants, which process water and wastewater, and the maintenance of sewerage systems.¹⁸

- (c) *Water management technologies*: Veolia is active in water management technology, partly through its Veolia Water Technologies business (**VWT**).¹⁹ Veolia's UK activities in water management technology services relate primarily to the design and supply of water and wastewater treatment facilities, the supply of technological solutions and equipment for water and wastewater treatment systems, the provision of mobile water and wastewater treatment services, and the supply of water treatment chemicals; and
- (d) *Energy business*: Veolia offers services related to industrial energy, heat networks and combined heat and power, facilities management, and demolition and decommissioning.

- 2.6 In 2020 Veolia's waste business generated a significant majority ([X]%) of its total UK revenue, while its water and VWT businesses generated around [X]%, and its energy business generated around [X]%.²⁰ We provide further details of Veolia's UK activities in waste management in Chapter 5 and water management services in Chapters 13 and 14.
- 2.7 Veolia's activities in waste management services, water management services and energy business in the UK are carried out by its Veolia UK & Ireland business unit (**Veolia UK&I**),²¹ while its activities in water management technologies are carried out primarily by VWT.
- 2.8 Table 2.1 below sets out a summary profit and loss account (**P&L**) for Veolia UK&I, including its revenue, earnings before interest, tax, depreciation and amortisation (**EBITDA**) and earnings before interest and tax (**EBIT**). Total revenue grew by [X]% from around £[X] billion to around £[X] billion from 2019 to 2021.²²

¹⁸ Veolia's response to CMA Phase 2 s.109 notice, 21 January 2022, paragraph 4.9.

¹⁹ Veolia's response to CMA Phase 2 s.109 notice, 21 Jan 2022, paragraph 4.16.

²⁰ Veolia's response to CMA Phase 2 s.109 notice, 21 Jan 2022, paragraph 4.1.

²¹ Veolia's response to CMA Phase 2 s.109 notice, 21 Jan 2022, paragraph 6.2.

²² VWT UK financial information is not included in the summary P&L of Veolia UK&I at Table 2.1.

Table 2.1: Summary P&L of Veolia UK&I (2019 to 2021)

	£m		
	31 December 2019	31 December 2020	31 December 2021
Revenue	[REDACTED]	[REDACTED]	[REDACTED]
EBITDA	[REDACTED]	[REDACTED]	[REDACTED]
EBIT	[REDACTED]	[REDACTED]	[REDACTED]

Source: Veolia's consolidated response [REDACTED].

Notes:

1. Revenue, EBITDA and EBIT figures comprise: Treatment, Commercial, Municipal, Industrial Water and Energy and UK Corporate departments, net of intercompany revenue. Intercompany revenue comprises transactions with affiliated companies; eliminating the related revenue results in no effect on the company's financial position.

2. [REDACTED].

2.9 Veolia noted that, following a start to the year marked by the 'exceptional impact of the Coronavirus (COVID-19) health crisis', 2020 performance returned to growth in the fourth quarter of the year.²³ Therefore we understand that the decrease in Veolia UK&I's revenue from 2019 to 2020 can be attributed to the COVID-19 pandemic.

2.10 Veolia UK&I also monitors its financial performance along the following four operational business lines, following its management structure: Treatment, Commercial, Municipal, and Industrial Water & Energy (IWE):²⁴

- (a) Treatment accounted for between [REDACTED]% and [REDACTED]% of total Veolia UK&I revenues, while Commercial and Municipal accounted for around [REDACTED]–[REDACTED]% and [REDACTED]–[REDACTED]% respectively between 2019 and 2021;²⁵
- (b) Treatment accounted for between [REDACTED]% and [REDACTED]% of Veolia UK&I's EBITDA and between [REDACTED]% and [REDACTED]%²⁶ of EBIT between 2019 and 2021. Commercial accounted for between [REDACTED]% and [REDACTED]% of Veolia

²³ Veolia's website: [Annual Results 2020](#), page 7, accessed by the CMA 6 May 2022.

²⁴ Veolia provided a description of its UK&I four operational business lines as follows: (a) *Treatment*: this covers a number of contracts and site activities including [REDACTED]; (b) *Commercial*: this covers a number of [REDACTED] contracts and associated activities; (c) *Municipal*: this covers [REDACTED]; and (iv) *IWE*: this covers a number of contracts for [REDACTED] (Veolia's consolidated response to CMA Phase 2 s.109 notice, 21 January 2022, paragraph 4.18).

²⁵ CMA analysis of Veolia's response to CMA Phase 2 s.109 notice, 21 January 2022, paragraph 4.19; Annex Q4.1 and Veolia's response to CMA Phase 2 s.109 notice, 16 February 2022, Annex Q108.

²⁶ Commercial accounted for between [REDACTED]% and [REDACTED]% of EBIT; IWE accounted for between [REDACTED]% and [REDACTED]% of EBIT and Municipal accounted for between [REDACTED]% and [REDACTED]% of EBIT between 2019 and 2021; but these were [REDACTED].

UK&I's EBITDA and between [X]% and [X]% of EBIT between 2019 and 2021. Municipal waste had a [X] EBIT in 2019 and 2021.²⁷

2.11 Table 2.2 sets out a summary P&L for VWT UK for the period 2019 to 2021.

Table 2.2: VWT UK Summary P&L (2019 to 2021)

	£m		
	31 December 2019	31 December 2020	31 December 2021
Revenue	[X]	[X]	[X]
EBITDA	[X]	[X]	[X]
EBIT	[X]	[X]	[X]

Source: Veolia's consolidated response [X].

Note: Revenue, EBITDA and EBIT figures comprise: Treatment, Commercial, Municipal, IWE and UK Corporate departments, net of intercompany revenue. Intercompany revenue comprises transactions with affiliated companies; eliminating the related revenue results in no effect on the company's financial position.

Suez

2.12 Prior to the Merger, Suez was listed on the Euronext Stock Exchange in Paris, France, before being delisted on 18 February 2022 when Veolia completed a mandatory 'squeeze-out' procedure to purchase the Suez shares it did not already own.²⁸ Suez was not listed on any UK stock exchange.²⁹

2.13 Suez's primary business activities include waste management services, water management, and water equipment and water technology services.³⁰

2.14 In 2020, Suez generated consolidated global revenues of around £15 billion, including around £1 billion (approximately 7%) in the UK. In the UK Suez's waste business generated around [90–100%] [X] of its total revenues in the UK.³¹

²⁷ CMA analysis of Veolia's response to CMA Phase 2 s.109 notice, 21 January 2022, paragraph 4.19; Annex Q4.1 and Veolia's response to CMA Phase 2 s.109 notice, 16 February 2022, Annex Q108.

²⁸ Veolia's website: [Result of Veolia's reopened tender offer for Suez shares and mandatory squeeze-out procedure | Veolia](#), accessed by the CMA on 3 May 2022.

²⁹ FMN, 7 October 2021, paragraph 2.7.

³⁰ Suez's Second Tranche response to CMA Phase 2 s.109, 18 January 2022, paragraph 7.2, Table 7.2.

³¹ FMN, 7 October 2021, paragraph 2.9.

2.15 Suez's main activities in the UK are:

- (a) *Waste management services*: in the UK waste sector, Suez is primarily active in the collection, sorting, treatment, and disposal of non-hazardous waste. Suez is active in the hazardous waste sector to only a very limited extent in the disposal of certain hazardous waste in dedicated cells at its non-hazardous landfill sites; and
- (b) *Water management services*: Suez's UK water management services relate to the operation and maintenance (**O&M**) of water and wastewater treatment plants. Suez's water technologies services, conducted principally through its WTS subsidiary,³² include the design and supply of water and wastewater treatment facilities, the supply of technological solutions and equipment for water and wastewater treatment systems, and the provision of mobile water and wastewater treatment services.

2.16 Suez is not active in energy management services in the UK.

2.17 We provide further details of Suez's UK activities in waste management in chapter 5; and water management services in chapters 13 and 14.

2.18 Table 2.3 below sets out a summary P&L for Suez's waste management services in the UK.

Table 2.3: Suez waste management services in the UK: Summary P&L (2019 to 2021)

	£m		
	2019	2020	2021
Revenue	[REDACTED]	[REDACTED]	[REDACTED]
EBITDA	[REDACTED]	[REDACTED]	[REDACTED]
EBIT*	[REDACTED]	[REDACTED]	[REDACTED]

Source: Suez's Third Tranche response to [REDACTED].

* 2021 EBIT data was not provided to the CMA prior to publication of findings.

³² The holding company for the WTS global business is SUEZ Water Technologies & Solutions SA, which is incorporated in France. Caisse de Depot et Placement de Quebec (**CDPQ**), a global investment company, holds 30% equity in Suez Water Technologies and Solutions SA. Suez's Second Tranche response to s.109, 18 January 2022, paragraph 7.2, Table 7.2.

- 2.19 Table 2.4 below sets out a summary P&L for Suez's water management services in the UK.

Table 2.4: Suez water management services in the UK: Summary P&L (2019 to 2021)

	£m		
	2019	2020	2021
Revenue	[REDACTED]	[REDACTED]	[REDACTED]
EBITDA	[REDACTED]	[REDACTED]	[REDACTED]

Source: Suez's Third Tranche response to [REDACTED].

* [REDACTED].

- 2.20 Suez submitted that revenue declined from 2019 to 2020 due to COVID-19, as it did not gain any new water management projects and the backlog of projects from 2019 was completed.

The Merger

- 2.21 On 5 October 2020, Veolia announced its acquisition of a 29.9% non-controlling minority shareholding in Suez from an existing Suez shareholder, Engie S.A., and announced its intention to launch a voluntary public offer for all of Suez's remaining issued share capital.
- 2.22 Following the Suez board's initial rejections of Veolia's unsolicited approach, on 14 May 2021, Veolia and Suez announced that they had signed a combination agreement including an increased offer price for the remaining issued share capital of Suez (the **Combination Agreement**).³³
- 2.23 On 18 January 2022, Veolia completed the Merger and on 27 January 2022, Veolia proceeded with a mandatory 'squeeze-out' procedure on Suez shares that were not already owned by Veolia.³⁴

Merger rationale

- 2.24 Veolia publicly communicated that the Merger would create 'a world champion of ecological transformation' and would result in the creation of a

³³ FMN, 7 October 2021, paragraph 2.13.

³⁴ Veolia's website: [Press release, January 27, 2022 – Result of Veolia's reopened tender offer for Suez shares and mandatory squeeze-out procedure](#), accessed by the CMA on 3 May 2022.

truly global player in the management of water and waste processing. In its 2020 universal registration document Veolia noted that the merged entity of Veolia and Suez (the **Merged Entity**) would be extremely strong in strategic future growth segments and in know-how, especially in digital.³⁵

- 2.25 In relation to the strategic and economic rationale for the Merger, Veolia told us that in the face of growing international competition, the Merger would help the Parties to [REDACTED].³⁶
- 2.26 Veolia submitted that it expected the Merger to result in efficiencies and customer benefits due a number of reasons, including [REDACTED].³⁷

Merger reviews in other jurisdictions

- 2.27 The Merger was investigated in a number of other jurisdictions outside the UK.³⁸ The Merger was cleared subject to remedies by the European Commission on 14 December 2021 and by the Australian Competition and Consumer Commission (**ACCC**) on 21 December 2021. The Merger was unconditionally cleared in the other jurisdictions.
- 2.28 We set out further detail on the remedies required by the ACCC and the European Commission in Chapter 15 of this Final Report.

³⁵ Veolia's website: [Universal registration document 2021](#), page 22.

³⁶ FMN, 7 October 2021, paragraph 2.24.

³⁷ FMN, 7 October 2021, paragraph 2.26.

³⁸ Veolia's acquisition of Suez was investigated in the following jurisdictions: Australia, Brazil, Canada, Chile, China, Colombia, COMESA (Common Market for Eastern and Southern Africa), Ecuador, European Union, India, Morocco, Russia, Saudi Arabia, South Korea, Taiwan, Turkey, United Arab Emirates and the United States.

3. JURISDICTION

- 3.1 This section addresses the first of the two statutory questions which we are required to answer under section 35 of the Act and pursuant to our Terms of Reference, namely: whether a relevant merger situation (**RMS**) has been created.³⁹
- 3.2 Section 23 of the Act sets out two criteria required for the existence of an RMS:
- (a) First, two or more enterprises must cease to be distinct at a time or in circumstances falling within section 24 of the Act;⁴⁰ and
 - (b) Second, either:
 - (i) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test); or
 - (ii) the merged enterprises both supply or acquire goods or services of a particular description and will after the merger supply or acquire 25% or more of those goods or services in the UK (or a substantial part of the UK) (the share of supply test).⁴¹
- 3.3 These criteria are assessed in turn below, after we set out the parties' submissions as regards jurisdiction.
- 3.4 By way of background, as described at paragraph 2.21, at the time of reference to Phase 2 of the Merger Veolia had already acquired a 29.9% shareholding in Suez from an existing Suez shareholder in October 2020 (the **Completed Transaction**) and, pursuant to the Combination Agreement, had agreed to acquire all of Suez's remaining issued share capital (the **Anticipated Transaction**). The Anticipated Transaction completed during the course of our phase 2 inquiry.
- 3.5 In the Phase 1 Decision and the Reference Decision (together, the **CMA's Phase 1 Decision**), the CMA used its discretion under sections 27(5) and 29 of the Act to treat the completed transaction and the Anticipated Transaction as occurring on the date of the last transaction (which as at the date of the

³⁹ Section 36(1)(a) of the Act.

⁴⁰ Enterprises ceasing to be distinct is defined in further detail in section 26 of the Act.

⁴¹ Where an enterprise already supplies or acquires 25% of any particular goods or services, the test is satisfied so long as its share is increased as a result of the merger, regardless of the size of the increment (where there is no increment, the share of supply test is not met).

Phase 1 Decision and the Reference Decision was yet to occur).⁴² As such, the Merger was referred to Phase 2 as an anticipated merger under section 33 of the Act.

Parties' submissions

- 3.6 Veolia submitted that the Anticipated Transaction would constitute an acquisition of control over Suez by Veolia and that the turnover test is met. Veolia submitted that the Anticipated Transaction therefore is a RMS for the purposes of the Act.⁴³
- 3.7 As regards the Completed Transaction, Veolia submitted that the 29.9% shareholding it held in Suez prior to the Anticipated Transaction did not bring Veolia and Suez under common ownership or control. In particular, Veolia submitted that its 29.9% shareholding in Suez did not give Veolia:
- (a) [REDACTED];
 - (b) [REDACTED]; or
 - (c) [REDACTED].⁴⁴
- 3.8 Veolia also submitted that [REDACTED].⁴⁵ Finally, Veolia submitted that it received various documents and information, as a shareholder of Suez.⁴⁶

Our assessment

Enterprises ceasing to be distinct

- 3.9 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'.⁴⁷ A 'business' is defined as 'including a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which good are supplied other than free of charge'.⁴⁸

⁴² CMA Phase 1 Decision.

⁴³ FMN, Sections 1-11, paragraph 5.1.

⁴⁴ FMN, Sections 1-11, paragraph 2.42.

⁴⁵ FMN, Sections 1-11, footnote 41. Veolia also confirmed separately that [REDACTED] (Veolia's response to CMA Phase 2 s.109 notice, 16 February 2022, paragraph 4.1).

⁴⁶ FMN, Sections 1-11, paragraphs 2.43-2.44.

⁴⁷ Section 129(1) of the Act.

⁴⁸ Section 129(1) of the Act.

- 3.10 Veolia and Suez are companies that operate as a going concern, with a range of assets and employees, and which contract with customers to supply goods and services on commercial terms. Both Veolia and Suez, therefore, satisfy the definition of an enterprise for the purpose of the Act.
- 3.11 The concept of ‘ceasing to be distinct’ is described in section 26 of the Act. This provides that any two enterprises cease to be distinct if they are brought under common ownership or common control.⁴⁹ This is the case regardless of whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control.⁵⁰
- 3.12 The Merger comprises the staggered acquisition of Suez’s entire issued share capital by Veolia:
- (a) First, Veolia acquired a 29.9% shareholding in Suez from an existing Suez shareholder in October 2020 (ie the Completed Transaction); and
 - (b) Second, Veolia was to acquire all of Suez’s remaining issued share capital, pursuant to the Combination Agreement, (ie the Anticipated Transaction). Veolia did in fact acquire Suez’s remaining issued share capital with completion occurring following the reference to phase 2 (paragraph 2.23).
- 3.13 Accordingly, the Merger (ie the Completed Transaction and the Anticipated Transaction together) has led to Veolia acquiring the entirety of Suez’s share capital.
- 3.14 We consider that the Anticipated Transaction, at the time of the reference, would have brought Veolia and Suez under common ownership and control (and did in fact subsequently bring Veolia and Suez under common ownership and control).⁵¹ Therefore, as a result of the Merger, Veolia has acquired a controlling interest in Suez and consequently, these enterprises would have and have ceased to be distinct.

⁴⁹ Section 26(1) of the Act. ‘Control’ is not limited to the acquisition of outright voting control but may include situations falling short of outright voting control. Section 26 of the Act distinguishes three levels of interest (in ascending order): (i) material influence (ii) de facto control, and (iii) a controlling interest (also known as ‘de jure’, or ‘legal’ control).

⁵⁰ Section 26(1) of the Act.

⁵¹ Pursuant to section 23(9)(b) of the Act, the CMA is required to assess whether a RMS has been created as at immediately before the time when the reference was been made.

- 3.15 In light of this conclusion, there is no need for us to separately consider whether the completed transaction may have conferred material influence if considered in isolation.

UK nexus

- 3.16 The second criterion for the existence of an RMS seeks to establish whether the Merger has sufficient connection with the UK. This criterion can be met on the basis of either (i) the turnover test; or (ii) the share of supply test.

The turnover test

- 3.17 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.
- 3.18 Suez has been taken over as a result of the Merger. The UK turnover of Suez exceeds £70 million (paragraph 2.14), so we are satisfied that the turnover test is met. As we have concluded the turnover test is met, there is no need to consider the share of supply test.

Statutory four month period for reference

- 3.19 We also note that for completed mergers, there is a further criterion. Under section 24 of the Act, the completed merger must have taken place not more than four months before the reference to phase 2 is made, unless the merger took place without having been made public and without the CMA being informed of it (in which case the four-month period starts from the earlier of the time that material facts are made public or the time the CMA is told of material facts).
- 3.20 As explained at paragraph 1.1, in the Phase 1 Decision and the Reference Decision, the CMA used its discretion under sections 27(5) and 29 of the Act to treat the completed transaction and the anticipated transaction as occurring on the date of the last transaction (which as at the date of the Phase 1 Decision and the Reference Decision was yet to occur).⁵² As such, the Merger was referred to phase 2 as an anticipated merger under section 33 of the Act.
- 3.21 Accordingly, as it is only applicable to references of completed mergers, the four month statutory period for reference under section 24 of the Act was not

⁵² [CMA Phase 1 Decision](#), paragraphs 35, 88 and 91. [Decision to refer](#), paragraph 1.

relevant to the CMA's assessment at phase 1 of whether the Merger would result in an RMS for the purposes of the Act. Consequently, we are not required to consider the four month statutory period for reference in order to find that the Merger constitutes an RMS for the purpose of our phase 2 inquiry.⁵³

Conclusion on the relevant merger situation

3.22 In the light of the above assessment, we have concluded that the Merger would result in the creation of an RMS.

⁵³ For completeness, however, we note that the Completed Transaction completed on 6 October 2020. At that time, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EUMR) still applied in the UK. The European Commission (the EC) had informed the CMA that it considered that the Completed Transaction and the Anticipated Transaction formed a single concentration with an EU dimension for the purposes of the EUMR. Accordingly, the CMA was prevented by the EUMR from applying the provisions of the Act to the Completed Transaction at that point (Article 21(2)-(3) of the EUMR). The Act, however, provided that the four month statutory period for reference which applies in respect of completed mergers will only begin when the CMA is no longer prevented from making a reference because of the EUMR, or anything done under or in accordance with the EUMR (see Section 122 of the Act as in force until 31 December 2020). Therefore, despite the completed transaction completing on 6 October 2020, the four month period did not begin until 31 December 2020 (the first date on which the EUMR did not prevent the CMA from making a reference). See [Guidance on the functions of the CMA after the end of the Transition Period \(CMA125\)](#), December 2020, paragraphs 1.1 and 3.7–3.10. Had the Parties completed pre-notification discussions and initiated merger control proceedings under the EUMR prior to the UK's exit from the EU, per Article 92 of the UK – EU Withdrawal Agreement, the EC would have retained jurisdiction to review any concentration which was notified pursuant to the EUMR. See CMA125, paragraphs 3.4–3.6. This was not the case and the CMA had jurisdiction to review the Merger. Due to the Parties failing to respond by the stated deadline to numerous notices issued under section 109 of the Act during the phase 1 inquiry, the CMA extended the four month period pursuant to section 25(2) of the Act several times. The first such notice of extension was issued on 29 January 2021 and the last was terminated on 18 October 2021, with at least one notice under section 25(2) of the Act being in force at all times in between these dates. The four-month deadline for a decision under section 24 of the Act in respect of the Completed Transaction would therefore, if applicable, have been 17 January 2022, following the numerous extensions under section 25(2) of the Act. The CMA's reference decision in respect of the Merger (including the Completed Transaction) was made on 21 December 2021, well in advance of this statutory deadline.

4. THE COUNTERFACTUAL

Framework for assessing the counterfactual

- 4.1 The counterfactual is an analytical tool used to help answer the question of whether a merger has resulted, or may be expected to result, in an SLC. It involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the counterfactual.⁵⁴ As part of its counterfactual assessment in a phase 2 investigation, the CMA may examine several possible scenarios to determine the appropriate counterfactual, including prevailing or pre-merger conditions of competition, conditions of stronger competition or conditions of weaker competition. The appropriate counterfactual may increase or reduce the prospects of an SLC finding by the CMA.⁵⁵
- 4.2 Only events that would have happened in the absence of the merger under review – and not as a consequence of it – should be incorporated into the counterfactual.⁵⁶

Submissions on the relevant counterfactual

Summary of the Parties' views

- 4.3 Veolia submitted that the appropriate counterfactual is the 'current or pre-existing competitive situation' ie pre-Merger conditions of competition.⁵⁷
- 4.4 During the CMA's phase 1 investigation, Veolia also submitted that the counterfactual should take into account the divestment of parts of Suez's business ([X]) to New Suez as a part of its commitments to the European Commission.⁵⁸ In particular, Veolia submitted that it has offered to divest its UK MWS business pursuant to its commitments to the European Commission⁵⁹ and that the CMA had considered a parallel merger in some depth in its Phase 1 decision in *BT/EE*.⁶⁰

⁵⁴ [Merger Assessment Guidelines \(CMA129\)](#), paragraph 3.1.

⁵⁵ [CMA129](#), paragraph 3.2.

⁵⁶ [CMA129](#), paragraph 3.4.

⁵⁷ FMN, Sections 1-11, paragraph 11.1.

⁵⁸ Veolia's submission to the CMA dated 26 November 2021, paragraphs 2–5.

⁵⁹ Veolia's submission to the CMA dated 26 November 2021, paragraph 3.

⁶⁰ Veolia's submission to the CMA dated 26 November 2021, paragraph 4. See also [CMA's decision of 9 June 2015](#) in case ME/6519-15, regarding the anticipated acquisition by BT Group plc of EE Limited.

Our assessment of the counterfactual

- 4.5 Only events that would have happened in the absence of the merger under review, and are not a consequence of it, should be incorporated into the counterfactual.⁶¹ We note, as the CMA did in its Phase 1 Decision, that in *BT/EE* the CMA considered the impact of a parallel transaction between different parties which was not contingent on or a consequence of the merger in question.⁶² *BT/EE* is therefore not analogous to the present situation. The European Commission's investigation and subsequent remedies clearly would not have happened absent the Merger. Accordingly, we do not consider that the counterfactual should take into account divestments that form a part of Veolia's commitments to European Commission.
- 4.6 There is no evidence supporting a different counterfactual to that of pre-Merger conditions of competition. Further, we did not receive submissions from any other parties on the counterfactual.

Conclusion on the counterfactual

- 4.7 In view of the above, we find that the appropriate counterfactual against which to assess the Merger is that of the pre-Merger conditions of competition.

⁶¹ [CMA129](#), paragraph 3.4.

⁶² [CMA Phase 1 Decision](#), paragraph 99.

5. THE WASTE MANAGEMENT INDUSTRY

- 5.1 Both Parties have significant activities in waste management in the UK and globally. This chapter sets out the key elements of the waste management industry. A description of the relevant activities in the O&M of water and wastewater treatment facilities and MWS are in Chapters 13 and 14 respectively.

Description of waste management services

Waste management lifecycle

- 5.2 The organisation of the Parties' respective waste management businesses in the UK is consistent with the waste management lifecycle, which covers:
- (a) Collection (either directly (from households or business) or from household waste recycling centres (**HWRCs**⁶³));
 - (b) In some cases: recycling (including sorting through MRFs);
 - (c) Recovery through incineration (eg ERFs), composting (organic waste); and disposal via landfill or refuse derived fuel (**RDF**⁶⁴).
- 5.3 The first stage is collection and for municipal customers (eg local authorities) the waste is generally collected at the kerbside. Depending on the local area this might include separate collections for organic waste (eg food and garden waste), recyclables and the remaining, or residual, waste. Separately, waste is collected from business (ie C&I customers). Some waste is not collected at the kerbside but rather is taken to a recycling centre by households. This waste is also included in the waste management chain and can be considered to be a part of the collection stage.
- 5.4 The second stage involves sorting. Recyclable waste is taken to a sorting centre, or MRF, to extract and separate each type of recyclable material

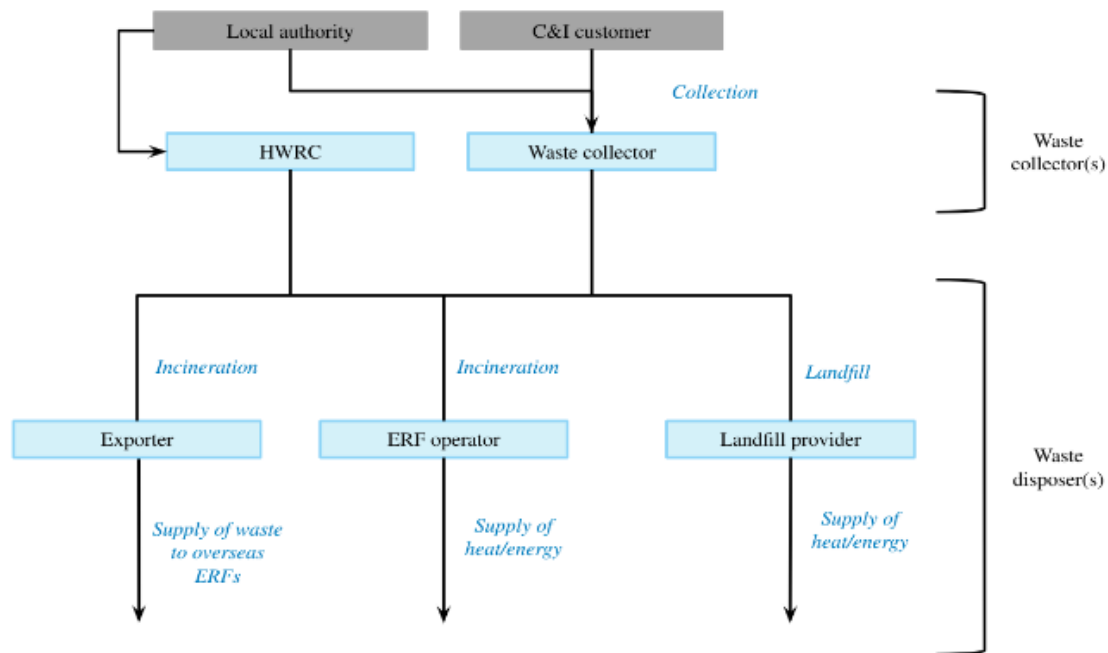
⁶³ Collections activities are supported by waste transfer stations, buildings in which waste is tipped and temporarily stored before being taken to sorting, recycling and/or treatment facilities (FMN, NHW Chapter, paragraph 12.5).

⁶⁴ RDF is essentially shredded residual waste that may be exported in order to be incinerated abroad (FMN, NHW Chapter, paragraphs 12.30 and 12.102).

(eg plastic, glass, paper) that can be sold to businesses that use these materials as an input into their own operations.

- 5.5 At the third stage the remaining waste is disposed of. The disposal method depends on the nature of the waste.
- 5.6 Organic waste is composted. In broad terms, composting is undertaken using one of two methods depending on the type of waste included: (i) in-vessel composting (**IVC**) facilities process food and garden waste in an enclosed container or vessel; whereas (ii) open-windrow composting (**OWC**) facilities process garden waste only. Our inquiry has focused on OWC.
- 5.7 Waste that is not recycled or converted into compost is called '**residual waste**'. Residual waste is disposed of using one of three methods:
- (a) Waste can be incinerated at an ERF. Incineration is used to create heat or to generate energy, either for a business' own requirements or for the sale of electricity to National Grid;
 - (b) Waste can be sent to landfill; or
 - (c) Waste can be exported (and it may be converted into energy at the importing country).
- 5.8 Figure 5.1 below sets out the key stages of the non-hazardous waste management supply chain (the **waste management supply chain**) for residual waste.

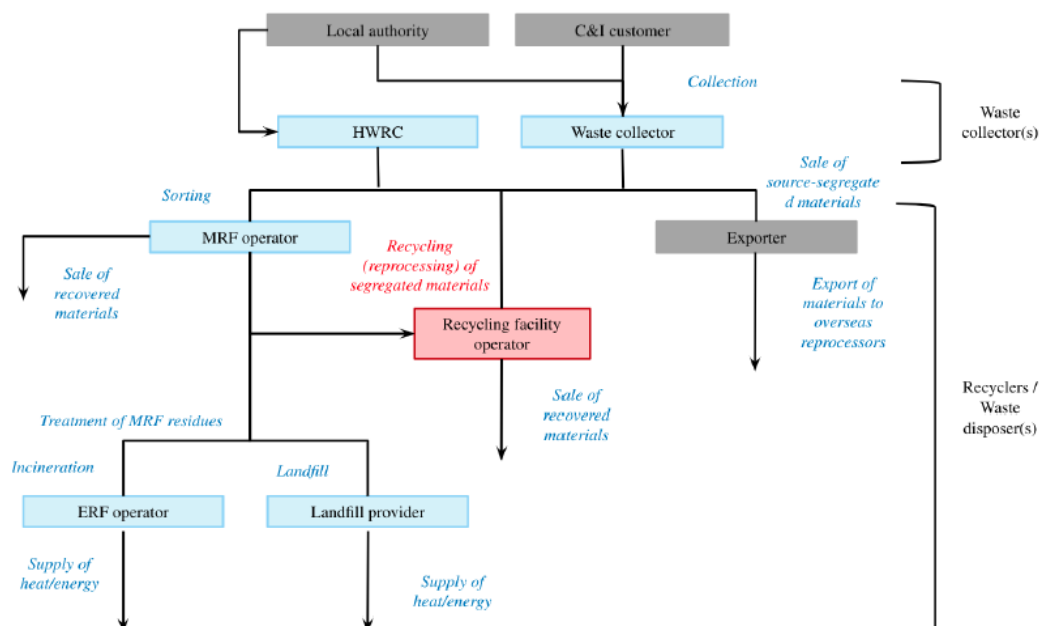
Figure 5.1: Non-hazardous waste supply chain – Residual waste



Source: Veolia's **Vertically Related Products Submission** provided in response to the CMA's first notice under section 109 to Veolia, 22 January 2021, Figure 1.

5.9 Figure 5.2 below sets out the key stages of the waste management supply chain for dry mixed recyclables.

Figure 5.2: Key stages of the non-hazardous waste management supply chain



Source: Veolia's **Vertically Related Products Submission** provided in response to the CMA's first notice under section 109 to Veolia, 22 January 2021, Figure 2.

Waste management services

5.10 In the UK, the Parties supply a broad range of waste management services and are active at substantially all stages of the waste management supply chain,^{65,66} including:

- (a) **Collection of municipal waste:** this includes the collection of residual waste, recyclables, food and garden waste through collection rounds or at HWRCs which the Parties may also manage on behalf of local authorities;⁶⁷

⁶⁵ Veolia's submission on Vertically Related Products (the **Vertically Related Products Submission**) provided in response to the CMA's first notice under section 109 to Veolia, 22 January 2021 (the **first notice to Veolia**), Figures 1, 2 and 3 and paragraph 6.

⁶⁶ The final report does not discuss hazardous waste management services and regulated waste management services owing to Suez's limited related activities in the UK. Source: Veolia's submission (the **Vertically Related Products Submission**) provided in response to the CMA's first notice under section 109 to Veolia, 22 January 2021, Figures 1 and 2 and paragraph 6.

⁶⁷ Veolia manages [§] HWRCs across the UK and Suez manages [§] HWRCs (FMN, Non-Hazardous Waste (NHW) Chapter, paragraphs 12.176, 12.229 and Table 17).

- (b) **Collection of C&I waste:** this includes the collection of mixed and specific waste flows from factories and other industrial premises, as well as offices and shops;⁶⁸
- (c) Waste recycling services:
 - (i) **Sorting of dry recyclates** (eg paper, cardboard, glass, metals, plastics) at MRFs:⁶⁹ MRFs sort different non-hazardous waste streams before the waste is sent away for further processing. MRFs can differ in their capabilities and the types of waste they can sort. For example, the most advanced MRFs use automated optical sorting software and sorting machinery with cameras and/or lasers that allow the optical sorter to detect different types of waste (eg metal, paper and plastic). Other MRFs employ mechanical sorting equipment and manual sorting using operatives on picking lines. Some MRFs focus specifically on plastics and could be referred to as plastic recovery facilities (**PRFs**);^{70,71}

Not all waste mixes can be treated at all MRFs, therefore MRFs have different profiles and attract different customers. The waste that is sorted at MRFs can be from both municipal and C&I sources although most of it derives from municipal contracts, including household waste recycling centre management contracts and contracts for the processing and/or sale of dry mixed recyclables (ie paper, glass, plastics and metals), whether as a standalone service or an add-on to municipal collection.

Under public-private partnerships, long-term contracts with local authorities, a portion of a MRF's operational capacity will typically be reserved for use by the local authority that commissioned the infrastructure.^{72,73} This gives the local authority priority of access to the capacity. The waste management company operating the MRF can sell the remaining capacity (ie that which has not been

⁶⁸ C&I waste does not include waste resulting from construction and demolition activities Source: FMN, NHW Chapter, paragraph 15.102.

⁶⁹ FMN, NHW Chapter, paragraphs 12.119 and 12.201.

⁷⁰ FMN, NHW Chapter, paragraphs 12.10-12.16.

⁷¹ For the purpose of this final report, the term MRFs includes PRFs.

⁷² However not all MRFs will have reserved capacity for use by the local authority.

⁷³ FMN, NHW Chapter, paragraph 12.14.

reserved for the local authority) (CMC) to other customers,⁷⁴ usually subject to the local authority's prior authorisation.

After material is sorted at an MRF, the recycled material can be sold on for recovery. We understand that typically the O&M operator is responsible for the resale of the recycled material. This is a significant revenue stream for MRF operators. For example, Suez told us that revenue from sorting and recycling (including revenue from transfer stations, recycling facilities, RDF and solid recovered fuel (**SRF**)) accounts for around [X] of its waste revenue.⁷⁵ The resale market can be volatile, which can introduce considerable risk to the seller. Some local authorities submitted they have risk/profit sharing agreements with their O&M operator, although the exact degree of risk-sharing between the local authority and the O&M operator varies by contract.⁷⁶

- (d) Waste recovery and disposal (together, **waste disposal**) services, including:
 - (i) **Incineration** of residual waste and MRF residues through energy recovery facilities: ERFs are incineration plants producing heat or electricity from burning residual waste, a process referred to as Energy-from-Waste (**EfW**) incineration. To treat waste by EfW incineration, waste management companies require access to capacity at an ERF.

The calorific value (**CV**) of the waste is an important determinant of how much waste the ERF can incinerate and how efficiently it can convert that waste into energy.⁷⁷ The conversion of waste into energy provides revenue to the ERF operator as the energy is sold to National Grid. However, the sale of energy is not the only revenue stream for ERFs. Given waste management companies have residual waste to incinerate at third parties' ERFs under Fuel Supply Agreements, ERF operators also earn revenue through gate fees (where the fee paid is typically on a price per tonne basis but the price may vary depending on demand for waste, the

⁷⁴ These can be either the Parties' own C&I or municipal customers or other waste companies seeking to supply their own C&I or municipal customers.

⁷⁵ Suez site visit slides (slide 18)

⁷⁶ Responses to the CMA's phase 2 questionnaire from [X], [X], [X], [X], [X], [X], [X] and [X].

⁷⁷ As the CV decreases, more tonnes of waste can be processed in each EfW facility, since their capacity is limited by their thermal treatment capacity rather than by tonnage. Source: The Scottish Government, [Waste Markets Study: full report](#), 2019.

availability of ERF capacity in the region, the volume of waste involved and the contract term).^{78,79} Therefore, the ERF operator will look to maximise revenues by optimising energy generation (which might require high CV waste) and gate fees (which might require higher volume but lower CV waste).

Some ERFs are publicly owned, usually (although not always) under a public-private partnership arrangement, while others are privately owned. As is the case with MRFs, a portion of local authorities' ERFs' operational capacity will typically be reserved for use by the local authority that commissioned the infrastructure, with the remaining capacity available to the ERF operator as CMC (though this usually requires prior authorisation from the local authority).

- (e) Composting of organic waste at in-vessel composting facilities (for mixed food and garden waste) and open-windrow composting facilities (for unmixed garden waste);⁸⁰
 - (i) **Processing of wood waste:** wood waste is collected separately from other dry recyclates and sent to specific wood-reprocessing sites rather than to MRFs;⁸¹ and
 - (ii) **Disposal** of residual waste and MRF residues **via landfill**, ie in structures specifically designed for its containment, built in or on the ground, and in which the waste is isolated from the surrounding environment (groundwater, air, and rain).⁸²

5.11 The *Waste (England and Wales) Regulations 2011* (**The Waste Regulations**)⁸³ require all parties involved in waste management and waste producers to apply the priority order of the waste hierarchy. Priority goes to preventing the creation of waste in the first place, followed by preparing waste for reuse, to recycling, and then recovery. Disposal – in landfill for

⁷⁸ FMN, NHW Chapter, paragraph 15.135 and FN 579

⁷⁹ FMN, NHW Chapter, paragraphs 12.25-12.39, 12.138, 12.148, 12.207.

⁸⁰ FMN, NHW Chapter, paragraph 12.50.

⁸¹ FMN, NHW Chapter, paragraphs 12.48, 12.163-12.165, 12.220-12.222. Suez does not own or operate any waste wood biomass facilities in the UK (FMN, NHW Chapter, paragraph 12.210), whereas Veolia does own or operate [] in the UK. (Veolia's submission, the Vertically Related Products Submission, paragraph 6). Biomass facilities are incineration plants producing heat or electricity from waste wood or other biomass wastes (FMN, NHW Chapter, paragraph 12.45). These do not form a part of our competitive assessment.

⁸² FMN, NHW Chapter, paragraphs 12.17-12.24, 12.204, 12.125, Table 7 and Table 26.

⁸³ [Waste Regulations 2011](#) (England and Wales).

example – is regarded as the worst option.⁸⁴ Incineration with energy recovery falls within the recovery (ie the penultimate) tier within the waste hierarchy.⁸⁵

- 5.12 As part of their waste collection and disposal activities, both Parties also operate [X] of waste depots and waste transfer stations, which they either own or manage on behalf of local authorities.⁸⁶
- 5.13 In the UK, local authorities are responsible for managing the waste generated by households. This generally includes **collecting** waste from residents, **sorting** different dry recyclates (such as paper, cardboard, glass, metals and plastics), recovery (eg incineration with energy recovery, composting) and **disposing** of waste (eg via landfill). More information on which type of local authority is responsible for which waste management activity can be found at paragraph 5.97. To fulfil these responsibilities, local authorities may procure services from specialist waste management companies, such as Veolia and Suez. Self-supply of collection services is also possible, either in-house or via Teckals.⁸⁷ More information on local authority contracts can be found at paragraphs 5.99 to 5.101. Businesses must also procure collection and disposal services for the waste they generate.

Trends in waste management and the move towards a net zero economy

- 5.14 Water and waste management services are becoming increasingly important as the UK Government and devolved nations implement their net zero strategies and move towards a circular economy.⁸⁸ The ‘circular economy’ is a model of consumption and production that involves sharing, reusing, repairing, renewing and recycling existing products for as long as possible. Pursuant to this strategic goal, the UK Government’s waste hierarchy prioritises the prevention of waste, waste recycling and other waste recovery, while seeking to reduce waste disposal, including via landfill. In particular, the UK Government expects waste incineration, which can be

⁸⁴ DEFRA, [Waste Management Plan for England](#), January 2021

⁸⁵ DEFRA, [Guidance on applying the waste hierarchy](#), June 2011.

⁸⁶ Veolia response to CMA Phase 1 investigation s109, 26 March 2021, Annex 5 and Suez response to s109, 26 April 2021, annex 17.1.

⁸⁷ A Teckal company (or Teckal) is a term for an organisation, such as a local authority trading company, that is wholly owned and controlled by a parent, public sector body. A Teckal is exempted from Public Procurement rules if it does most of its work (at least 80%) for its public body owner (Veolia Supplemental Response on Teckals, 27 April 2022).

⁸⁸ See, for example, [Net Zero Strategy: Build Back Greener](#), October 2021.

used to generate energy, to play a significant ongoing role in waste management in the UK.⁸⁹

- 5.15 While historically most of the UK's waste was disposed of via landfill this is changing. In January 2021 DEFRA published its 'Waste Management Plan for England' (the **Plan**). The Plan sets out measures to increase the recycling of municipal waste from households and businesses to a minimum of 65% by weight, and to reduce the amount of municipal waste sent to landfill to 10% or less of the total amount of municipal waste generated (by weight), both by 2035.⁹⁰
- 5.16 The UK Government's strategy is to ultimately reduce the use of landfill to zero. It uses a landfill tax to create better price signals for waste to be disposed of via other methods.⁹¹ Indeed, over the past decade the proportion of waste disposed of via landfill has steadily reduced from over 80% in 2010 to less than half in 2019, with waste processed through incineration with energy recovery increasing from around 6.7 million tonnes in 2014 to 14 million tonnes (or 52% of UK residual waste) in 2020. Administrations in the devolved nations have similar strategies.⁹²
- 5.17 Suez's long-term strategy appears consistent with the long-term trend towards a circular economy. This can be seen below at Figure 5.3 with waste sent to landfill decreasing from [X] million tonnes in 2009 to a projected [X] million tonnes in 2030.

Figure 5.3: Suez Long term strategy

[X]

Source: Suez [X].

- 5.18 In addition to the waste hierarchy, the industry is also changing how it operates in order to improve its environmental sustainability. For example, we have been told by several waste collection suppliers that they are migrating to electric vehicles for waste collections. In incineration, carbon capture, utilisation and sequestration technology is being improved and Suez

⁸⁹ UK Government, [Our Waste, Our Resources: A Strategy For England](#), 2018.

⁹⁰ DEFRA, [Waste Management Plan for England](#), January 2021, page 6.

⁹¹ An industry report submitted by Veolia said that 'the share of waste going to treatment facilities is projected to grow, while waste being disposed of in landfill sites is anticipated to decline due to a higher landfill tax rate' (IBISWorld, 'Non-hazardous waste treatment and disposal in the UK' February 2021),

⁹² FMN, NHW Chapter, Figures 4 and 5.

told us that these are beginning to emerge as specific requirements for EfW bids.⁹³ We have seen evidence in our inquiry of suppliers, such as Veolia and Suez, using these types of environmental initiatives as parameters of competition to differentiate their service offers.

- 5.19 Moreover, as economies evolve new opportunities emerge for waste management companies. For example, Veolia is investing in recycling plants for electric car batteries.⁹⁴
- 5.20 The Environment Act 2021 sets out a number of new measures relating to waste and resource efficiency which relate to and may affect the Parties' businesses, including: (i) consistency of waste collection methodology; (ii) extended waste producer responsibility; (iii) deposit return schemes; (iv) electronic waste tracking; and (v) drainage and sewage management plans. Although the Environment Act came into force in 2021, the majority of its provisions did not require any immediate changes for businesses or public authorities. Changes to duties for businesses and public authorities are expected in subsequent secondary legislation made under the Environment Act. Veolia submitted that likely impacts on the competitive landscape following the implementation of the Environment Act 2021 are still unknown at this stage, [REDACTED].⁹⁵ Suez submitted that, in general, given the increased focus on recycling and reuse as a result of the Environment Act 2021, Suez expects to see a reduction in landfill and RDF export volumes, as well an increase followed by a levelling off in incineration volumes.⁹⁶ [REDACTED] on its water management services as a result of the Environment Act 2021.^{97, 98}

Parties and main rivals

Veolia and Suez's global activities

- 5.21 Both Parties have significant activities in waste and water management in the UK and globally.

⁹³ Suez response to CMA RFI of 16 February 2022.

⁹⁴ Veolia's website: [Veolia announces its first electric vehicle battery recycling plant in UK](#), accessed by the CMA on 16 May 2022.

⁹⁵ Veolia's response to the CMA's 22 February 2022 question on the Environment Act 2021, 4 March 2022, paragraph 7.

⁹⁶ Suez's response to the CMA's 22 February 2022 question on the Environment Act 2021, 7 March 2022, paragraph 1.2.

⁹⁷ Veolia's response to the CMA's 22 February 2022 question on the Environment Act 2021, 4 March 2022, paragraph 6.

⁹⁸ Suez's response to the CMA's 22 February 2022 question on the Environment Act 2021, 7 March 2022, paragraph 2.1.

Veolia

- 5.22 Veolia has permanent establishments and approximately 176,000 employees across 52 countries.⁹⁹ In 2020, Veolia generated consolidated global revenues of around £22 billion.¹⁰⁰
- 5.23 In its 2021 universal registration document, Veolia states that it is ‘a world leader in environmental services and offers a complete range of solutions for managing Water, Waste and Energy on five continents’.¹⁰¹ Across the UK and Ireland, Veolia employs approximately 14,000 people.¹⁰² In the UK, Veolia is present across the waste management supply chain including collection, sorting, incineration with energy recovery, and also has activities in several water management services.
- 5.24 With regard to waste management, Veolia’s 2021 universal registration document sets out that, globally, it is one of the leading players in the management of liquid, solid, non-hazardous and hazardous waste.¹⁰³ With respect to water management, the same document states that Veolia is a leading expert in water cycle management, engaged in resource management, production and transport of drinking water and industrial process water, collection, treatment and recovery of wastewater from all sources and treatment of by-products, customer relationship management and design and construction of treatment infrastructure and networks.¹⁰⁴

Suez

- 5.25 With approximately 86,000 employees across 70 countries and global revenues of around £15 billion,¹⁰⁵ Suez refers to itself as one of the ‘two main players in the global environment market’.¹⁰⁶ In its 2020 universal registration document, Suez notes that it is present throughout the water management and waste recovery value chain, from the construction and the operation of water networks and infrastructure, to collection, sorting and recycling, and the production of renewable energy, new materials and the provision of digital services. It describes itself as being able to offer a

⁹⁹ Veolia’s website: [Universal registration document 2021](#), pages 12 and 16.

¹⁰⁰ Veolia’s response to CMA Phase 2 s.109 notice, 21 January 2022, paragraph 4.1.

¹⁰¹ Veolia’s website: [Universal registration document 2021](#), page 16.

¹⁰² See, for instance, Veolia’s [LinkedIn](#) company profile.

¹⁰³ Veolia’s website: [Universal registration document 2021](#), page 25.

¹⁰⁴ Veolia’s website: [Universal registration document 2021](#), page 23.

¹⁰⁵ Converted from EUR to GBP using [HMRC yearly average and spot rates](#) for the year to 31 December 2020 from HMRC

¹⁰⁶ UNGC website: [Suez’s Universal registration document 2020](#), page 34.

complete range of services, to all categories of customers, including public authorities and industrial players.¹⁰⁷ In the UK, Suez employs approximately 5,700 people.¹⁰⁸

Veolia and Suez's activities in the UK

- 5.26 Veolia and Suez are two of the leading providers of waste management services in the UK. They provide services to many local authorities and businesses across the UK to collect, recycle and recover (via incineration or composting) or dispose of their waste. As noted at paragraph 5.10, Veolia is active in all stages of the waste management supply chain, and Suez is active at most stages. Both Parties have a national presence with access to capacity at several types of waste management facilities (such as sorting facilities, incineration facilities, landfills, etc.) and benefit from comprehensive research, development and innovation capabilities.
- 5.27 The Parties have some of the most longstanding and largest waste management contracts with local authorities, serving millions of households across the UK. Across all waste management services, Veolia and Suez have [X] and [X] local authority customers respectively.¹⁰⁹ The Parties also both provide a range of water management services to businesses.

Main rivals

- 5.28 There are several other waste management companies of different sizes and capabilities operating in the UK. We have found that the largest of these companies (excluding the Parties) include the following:
- (a) **Biffa** is a UK national provider of waste management services, with approximately 9,000 employees. Biffa states that it is active in the waste sector, including in collection, recycling, treatment and disposal, operation and management of landfills.¹¹⁰ Biffa is listed on the London Stock Exchange and its 2020 turnover was approximately £1 billion.¹¹¹
 - (b) **FCC Environment** is a globally-active Spain-based corporation active across the UK in waste, water and construction services. In waste it

¹⁰⁷ UNGC website: [Suez's Universal registration document 2020](#), page 34.

¹⁰⁸ UNGC website: [Suez's Universal registration document 2020](#), page 42.

¹⁰⁹ Veolia response to CMA phase 2 CMA RFI, 21 December 2021, question 25 and Suez response to CMA phase 2 CMA RFI, 21 December 2021, question 25.

¹¹⁰ Biffa's website: [About Us](#), accessed by the CMA on 8 May 2022.

¹¹¹ Biffa's website: [Annual Report and Accounts Year-in Review FY21](#), accessed by the CMA on 8 May 2022.

submitted that it is active across all aspects of the waste management supply chain including collection, treatment, recycling, EfW and disposal [X].¹¹² It has 55,000 employees globally, of which 2,450 are employed in the UK.^{113,114} The FCC group's 2020 worldwide turnover was approximately £5.5 billion, of which approximately £595 million was generated in the UK.^{115,116}

- (c) **Serco** is a UK-based provider of public services in the defence, justice, transport, citizens and health services sectors. In the waste management sector, Serco is active nationally in collection, recycling and street cleansing.¹¹⁷ It employs approximately 55,000 people globally and more than 30,000 in the UK across all services.¹¹⁸ Serco is listed on the London Stock Exchange and its 2020 turnover was approximately £3.9 billion,¹¹⁹ of which £1.6 billion was generated in UK.¹²⁰ Of the revenue generated in the UK, £143 million was generated in waste management services.¹²¹
- (d) **Urbaser** is a global Spain-based environmental services provider with activities in Europe, Asia, North Africa and South America.¹²² In the UK, Urbaser is active nationally in waste treatment and recovery, water treatment and urban services such as waste collections, street cleansing, grounds maintenance and beach cleansing. It employs approximately 40,000 employees globally, of which approximately 1,080 are in the UK.¹²³ Urbaser's 2019 worldwide turnover was approximately £2 billion,¹²⁴ with revenues of approximately £56.2 million in the UK. In 2020 Urbaser generated approximately £52.5 million in the UK.¹²⁵ In January 2021, Urbaser acquired six waste

¹¹² Note of call with FCC, 15 April 2021, page 1.

¹¹³ FCC's website: [About us](#), accessed by the CMA on 8 May 2022.

¹¹⁴ FCC's latest accounts filed on Companies House.

¹¹⁵ FCC's website: [FCC 2020 Annual Report](#), accessed by the CMA on 8 May 2022.

¹¹⁶ Converted from EUR to GBP using [HMRC yearly average and spot rates](#) for the year to 31 December 2020 from HMRC

¹¹⁷ Serco's website: [Waste and recycling](#), accessed by the CMA on 6 May 2022.

¹¹⁸ Serco's website: <https://www.serco.com/> and [Serco UK](#)

¹¹⁹ Serco's website: [Annual Report and Accounts 2020](#), accessed by the CMA 6 May 2022.

¹²⁰ Serco's latest accounts filed on Companies House, page 66.

¹²¹ Email from Serco to CMA, 4 April 2022.

¹²² Urbaser's website: [Company background](#), accessed by the CMA 6 May 2022.

¹²³ Urbaser's website: [Urbaser around the world](#), accessed by the CMA on 6 May 2022. See also Urbaser's [Sustainability Report 2020](#), page 111.

¹²⁴ Converted from EUR to GBP using [HMRC yearly average and spot rates](#) for the year to 31 December 2020 from HMRC

¹²⁵ Of which approximately £48.33 million are revenues for the provision of services and approximately £4 million for construction contracts. See Urbaser's website: [Urbaser in figures](#), accessed by the CMA on 6 May 2022 and Urbaser's latest accounts filed on Companies House, page 16 and 33.

management contracts from Amey.¹²⁶ Several respondents to our inquiry reported that Amey was exiting the market and no longer actively bidding for municipal waste contracts.¹²⁷ Amey told us that it was rationalising its portfolio; that it was not looking for any growth in the waste treatment sector and [REDACTED].¹²⁸ In October 2021, Platinum Equity acquired Urbaser for €2.97 billion.¹²⁹

- (e) **Viridor** is a UK national energy and waste management company with 3,000 employees.¹³⁰ Its 2020 turnover was approximately £717 million in the UK.¹³¹ Viridor divested its C&I waste collection business and a number of its recycling assets to Biffa on 1 September 2021.¹³² Viridor also sold its landfill business in April 2022, and since then has specialised in energy recovery and recycling plastics.¹³³
- (f) **Beauparc** is an Ireland-based company with national activities in the UK in waste management, recycling and MRF sorting services. Beauparc currently employs over 2,300 employees in Ireland, the UK and the Netherlands and trades under multiple acquired brands (eg Panda).¹³⁴ Macquarie Asset Management acquired the Beauparc group in June 2021 for €1.3 billion.¹³⁵

5.29 In addition to the main suppliers, there are many other, smaller suppliers, which are active only in a specific part of the supply chain such as collection, incineration, or O&M of MRFs, or which may be active only in one region of the UK. More detail on the number of suppliers and their respective market share in each market can be found in those chapters where we consider the impact of the merger (in particular chapters 8, 9, and 10).

¹²⁶ Letsrecycle.com website, [Urbaser acquires six Amey waste contracts](#), 14 January 2021, accessed by the CMA on 6 June 2022.

¹²⁷ [REDACTED] and [REDACTED] responses to the CMA's disposal competitors questionnaire and [REDACTED] and [REDACTED] response to the CMA's collection competitors questionnaire. See also note of call [REDACTED].

¹²⁸ Note of call with Amey, 14 February 2022, page 15.

¹²⁹ Platinum Equity's website: [Platinum Equity Acquires Global Environmental Services Business Urbaser from China Tianying for \\$4.2 Billion](#), dated 22 October 2021, accessed by the CMA 6 May 2022.

¹³⁰ Viridor's website: [Modern Slavery Statement 2021](#), accessed by the CMA on 8 May 2022.

¹³¹ Viridor's latest accounts filed at Companies House.

¹³² Biffa's website: [Biffa acquires Viridor collections business and certain recycling locations](#), accessed by the CMA on 8 May 2022.

¹³³ Let's recycle website: [Viridor sells landfill business](#), accessed by the CMA on 22 August 2022.

¹³⁴ Beauparc's website: [About us](#), accessed by the CMA 6 May 2022.

¹³⁵ Macquarie's website: [Macquarie Asset Management agrees to acquire Beauparc Utilities](#), dated 1 June 2021, accessed by the CMA 6 May 2022.

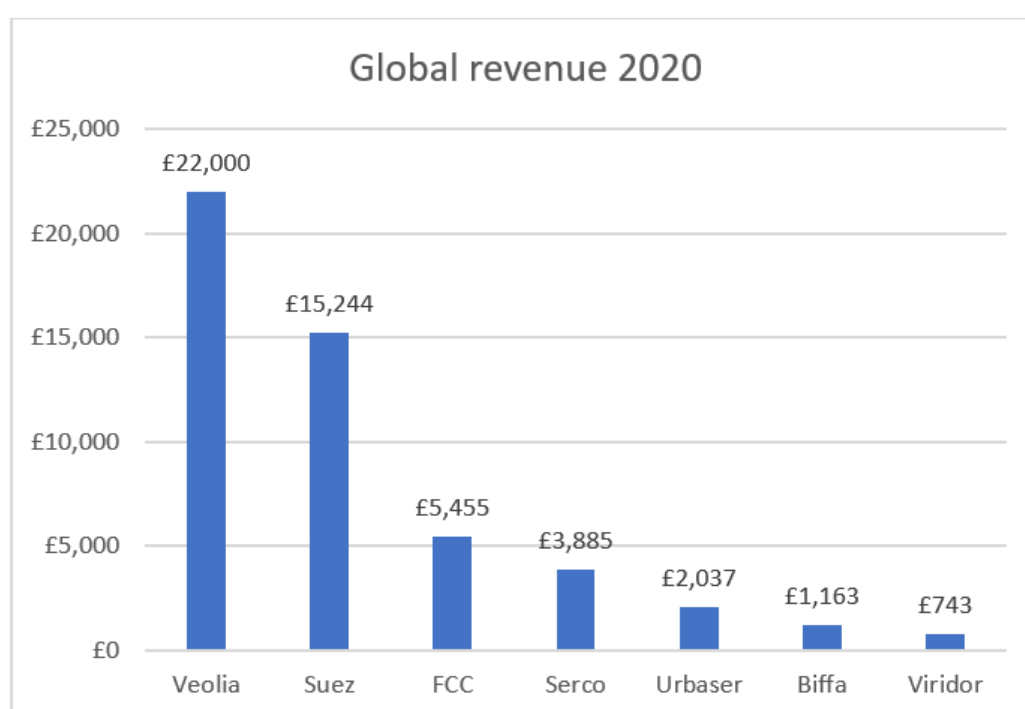
Company size and financial position

5.30 This section covers, for the Parties and third parties:

- (a) Global financial position;
- (b) UK financial position; and
- (c) 'Financial standing' requirements for local authority contracts.

5.31 Figure 5.4 below shows the global revenue generated by the Parties and third parties, all of which operate in the UK.

Figure 5.4: Global revenue 2020 by party (£m)



Source: Veolia – CMA analysis of publicly available information.

5.32 Veolia and Suez were the largest and second largest industry players (active in the UK) in terms of global revenues in 2020. Their combined revenues in 2020, of nearly £40 billion, were approximately seven times the next largest, FCC, at £5.5 billion.

5.33 Figure 5.5 below shows the total revenue generated in the UK in 2020 by Veolia, Suez and third parties.¹³⁶ Of UK revenue in 2020, the amount generated by the waste management business of the Parties was approximately:^{137, 138}

- (a) £[1.5-2] billion for Veolia; and
- (b) £[800-900] million for Suez.

Figure 5.5: UK revenue 2020 by party (£m)

[REDACTED]

Source: CMA analysis [REDACTED]

5.34 Figure 5.5 shows that in terms of revenue in the UK, Veolia was the largest industry player and Suez was the third largest industry player with £[800-900] million, while Biffa was second largest with UK revenue of just over £1.1 billion. Together the Parties represented roughly £[REDACTED] billion of UK revenue, nearly [REDACTED] times that of Biffa.¹³⁹

5.35 A summary of the impact of the Covid-19 pandemic on the Parties' and third parties' revenue, as set out in their public financial statements or annual reports, is set out below:

- (a) Veolia noted in its 2020 Annual Results announcement that, following a start to the year marked by the 'exceptional impact of the Covid-19 health crisis', the Group's 2020 performance confirmed its 'capacity for resilience' and returned to growth in the fourth quarter of the year.¹⁴⁰
- (b) Suez noted in its 2020 financial statements that the Covid-19 pandemic had a significant impact on the economies of the countries where Suez operated during that year. Specifically, it noted that the Suez Group

¹³⁶ With the exception of Serco which comprises revenue from waste management only.

¹³⁷ CMA analysis of Veolia response to Phase 2 CMA s109 notice, 16 February 2022, annex 108: Breakdown of intercompany revenue, Suez response to Phase 2 CMA s109 notice, 21 January 2022, question 4, email from [REDACTED], Biffa 2020 Annual Report page 4, Viridor 2020 Financial Statements available at Companies House, page 50.

¹³⁸ Veolia revenue excludes revenue generated in its IWE business line.

¹³⁹ Prior to the acquisition of Viridor's landfill business in April 2022.

¹⁴⁰ Veolia's website: [Annual Results 2020](#), page 7, accessed by the CMA on 6 May 2022.

experienced a significant decline in business, and that it saw the following decrease in revenues compared to 2019:¹⁴¹

- (i) Water: -2.9%
- (ii) Recycling & Recovery: -2.7%
- (iii) Environmental Technology & Solutions (**ETS**): -2.8%.

Suez's UK revenue decreased from £[900million-1 billion] to £[800-900] from 2019 to 2020.

- (c) Biffa: In its 2020 Annual Report Biffa noted that volumes were beginning to recover from the impact of Covid-19. We noted that its revenue increased slightly from £1.1 billion to £1.2 billion from 2019 to 2020, then decreased to £1.0 billion in 2021.
- (d) Viridor: In its 2020 Financial Statements, Viridor stated that it was 'well positioned to manage the impact of Covid-19' and that the strong local authority contracted position provided resilience to the underlying business, with strong ERF performance mitigating the volume impact from Commercial & Industrial customers in Collections, Landfill¹⁴² and Recycling.¹⁴³ However, Viridor's UK revenue decreased from £802 million in 2019 to £695 million in 2021.
- (e) Urbaser: In its 2020 Financial Statements Urbaser stated that, as most of the services it provided were considered essential during the Covid-19 pandemic, it had been able to continue operating throughout the lockdown period. Urbaser revenue in the UK decreased from £56.2 million to £55.3 million from 2019 to 2020.

5.36 Notwithstanding the impact of Covid-19, Veolia and Suez were, and remain, the first and third largest providers in the UK market, by UK waste management revenue.

¹⁴¹ Suez's website: 2020 consolidated financial statements [available here](#), page 25, accessed by the CMA on 6 May 2022.

¹⁴² Which have now been sold, as per paragraph 5.28(e).

¹⁴³ Viridor's 2020 financial statements, available on Companies House, page 7.

Financial standing

- 5.37 This section considers the impact of the Parties' and third parties' financial position on their ability to bid for local authority contracts.
- 5.38 When a local authority is procuring a contract subject to the Public Contracts Regulations (2015) (the **Regulations**), it may impose requirements for participation ensuring that bidders have the necessary economic and financial capacity to perform the contract. Early in the procurement process, local authorities may use a selection questionnaire to assess prospective bidders' credentials, before inviting tenders. The selection questionnaire helps local authorities decide if a supplier has the capability and capacity to carry out a contract. The questions are typically designed to give information about a supplier's financial strength, as well as its experience in delivering the required services (eg its technical and professional capabilities and its past performance) along with other issues relevant to the contract. Bidders can also be asked for further information relating to their financial standing during the remainder of their participation in the procurement process.
- 5.39 The Parties and third parties confirmed that there were often financial standing and stability requirements when bidding for local authority contracts.
- 5.40 Veolia submitted that local authorities used a number of financial ratios and/or indicators to assess the financial standing of bidders. It also submitted that many local authority procurements involved a preliminary financial evaluation, with a pass/fail outcome. If the bidder failed this evaluation, it would not be able to participate further in the procurement process.¹⁴⁴
- 5.41 Veolia told us that for bidders who passed the preliminary financial evaluation, a more detailed financial evaluation would be undertaken, including further evaluation of the bidders' financial standing where bidders were typically assessed on their recent financial statements and financial and commercial aspects of their tender submissions. It added that this further financial evaluation considered factors such as: turnover, profitability, post-balance sheet events, interim accounting statements and off-balance-sheet financing. It submitted that local authorities may also take into account recent announcements and credit reports from appropriate credit referencing

¹⁴⁴ Veolia response to CMA phase 2 CMA RFI, 24 March 2022, question 134.

agencies to understand and further explore the financial viability of the bidding organisation.^{145, 146}

- 5.42 Veolia submitted that it was its experience that the financial indicators used by local authorities were rarely determinative of who won a contract and that the thresholds were routinely met by all reasonably large operators.¹⁴⁷
- 5.43 Similarly, Suez submitted that the financial ratios and indicators used by local authorities varied significantly. It also told us that some local authority contracts also required parent company guarantees.
- 5.44 One party provided a list of [REDACTED] recent instances where it participated in the pre-qualification process for local authority contracts and provided the financial requirements specified by the local authority as part of that process. These included a number of financial ratios and indicators, such as:¹⁴⁸
- (a) financial assessment based on profitability, gearing and liquidity;
 - (b) a credit rating report;
 - (c) a minimum level of economic and financial standing;
 - (d) a demonstration of net assets over a specific value; and
 - (e) a minimum level of insurance.
- 5.45 In order to assess the impact in practice of these financial requirements, we reviewed the list provided by one party and considered the instances which related to municipal collection services, which account for [REDACTED] out of the total of [REDACTED].¹⁴⁹ In [REDACTED] of those examples, [REDACTED] submitted that there was a turnover threshold which ranged from £2 million to £54 million. Therefore, we compared the 2020 UK revenue of each of the parties and third parties to the highest turnover threshold of £54 million, as can be seen at Figure 5.6 below.

¹⁴⁵ These included the following ratios: gearing, liquidity, cash interest cover, profit margins and new assets, cash resources, shareholder funds and the annual contract value compared to turnover.

¹⁴⁶ Veolia's response to Phase 2 CMA RFI, 24 March 2022, question 134.

¹⁴⁷ Veolia's response to Phase 2 CMA RFI, 24 March 2022, question 134.

¹⁴⁸ Suez's response to Phase 2 CMA RFI, 24 March 2022, question 134.

¹⁴⁹ Of the remaining four instances: one had no turnover threshold; one placed more importance on parental company guarantee; one required an external credit check by provided Equifax and for one Suez did not pass the pre-qualification stage and was therefore unable to provide us with more information.

Figure 5.6: CMA analysis of UK revenue compared to financial standing threshold (£m)

[X]

Source: CMA analysis [X]

- 5.46 Based on the above, the Parties and third parties all met the highest turnover threshold requirement for municipal collection contracts of the examples provided to the CMA by one party, based on their 2020 UK turnover.
- 5.47 Veolia's 2020 UK turnover was at least 27 times the size of the highest threshold requirement, while Suez's was at least 15 times the size of the requirement. Urbaser, Serco,¹⁵⁰ FCC and Viridor¹⁵¹ had 2020 UK revenues of between two and 13 times the size of the highest threshold requirement.
- 5.48 Regarding a demonstration of net assets over a specific value:
- (a) [X] provided examples for which the minimum value of net assets ranged from £1.7 to £29.1 million; and
 - (b) [X] provided an example where the minimum value of net assets was £20 million.
- 5.49 Therefore, in terms of financial standing, we consider that it seems likely that all large operators comfortably meet requirements from local authorities. Further, the Parties were in a stronger position to meet a turnover threshold requirement than most other third parties.

Costs of bidding

- 5.50 Related to financial standing is the costs of bidding. Even if firms have the financial capacity to meet local authority requirements to be considered in a tender, they might choose not to participate because of the costs of doing so, given the probability of winning. Third parties told us that bidding costs could be substantial, both in absolute terms and relative to the contract that is being tendered. For example:

¹⁵⁰ Serco revenue from waste management only.

¹⁵¹ However, we note that as per paragraph 5.28(e), as of September 2021 Viridor had sold its Collections business.

- (a) Suez told us that, for one bidding process it was currently going through, there was around £[REDACTED].¹⁵²
- (b) One provider told us that bidding for local authority contracts had become more expensive. It told us that it has a permanently employed bid team and that it costs around £800,000 per year.¹⁵³

5.51 Because bidding costs can sometimes be substantial, some suppliers have told us that they do not bid for some contracts or select the tenders carefully. One supplier told us that it is not active in municipal waste collection because the cost of bidding precluded it from entering the market. It also submitted that the fact that preparation of bids for contracts was typically outsourced to consultancy firms significantly increased bidding costs.¹⁵⁴ Another supplier said that in one tender it had risked ‘the best part of £3 million going through the finance stage down to two’ and ... ‘you need to be selective because you cannot really go to everything that comes up because of this [cost]’.¹⁵⁵ A third supplier stated: ‘You pick your targets carefully ... It is very expensive when one comes second’.¹⁵⁶

5.52 Based on our analysis we consider that in order to progress through the procurement processes, the Parties and third parties need to be able to demonstrate financial resources and balance sheet resilience to take on the liability of large, municipal contracts and the presence of substantial bid costs means that suppliers also consider carefully which opportunities they will choose to pursue.

R&D and Innovation

5.53 For the purpose of the final report we have used the terms research and development (**R&D**) and research and innovation (**R&I**) interchangeably since the Parties refer to R&I.

5.54 First, we set out Veolia’s submissions on innovation in the waste and water management markets.

¹⁵² Transcript of hearing with Suez, 13 April 2022 page 13.

¹⁵³ Note of call [REDACTED].

¹⁵⁴ Note of call [REDACTED].

¹⁵⁵ Note of call [REDACTED].

¹⁵⁶ Note of call [REDACTED].

Veolia

- 5.55 Veolia publicly stated that innovation is inherent to its business strategy.¹⁵⁷ However, it also told us that the Veolia group globally spends a relatively small proportion of total revenues on R&D¹⁵⁸ and that in the waste and water and wastewater management markets, innovation involved incremental process improvements and efficiencies using third party technologies, where new ideas are available to all competitors and quickly percolate throughout the industry. It also told us that all operators – from the smallest to the largest – have introduced, and will continue to introduce, innovations to their services.¹⁵⁹
- 5.56 Veolia told us that it had ambitions to expand and develop its business into new areas and that it believed that the merger would [redacted].¹⁶⁰
- 5.57 Veolia also told us that customers do not focus on innovation when they select a supplier and that they expect an efficient, competitively priced and high-quality service. It told us that, whilst process efficiencies driven by innovation allow Veolia and other suppliers to compete on price and quality metrics, innovation was rarely an independent parameter of competition.¹⁶¹
- 5.58 Veolia submitted the following regarding its different customers:¹⁶²
- (a) For local authorities in particular, the ability to meet standards and contribute to ecological targets was often a pre-qualification factor when being considered as a bidder.
 - (b) Municipal and commercial are similarly subject to mandated or self-imposed sustainability targets. Customers care about an operator's ability to deliver on the 'sustainability promise' and are rarely concerned with the specific innovation or technology that supports the service.
- 5.59 Regarding third parties, Veolia told us that waste and water management companies partnered with specialist technology companies on larger projects. For example, waste management consultancy services are available to help customers implement new technological and digital

¹⁵⁷ Veolia's website: [Universal registration document 2020](#), page 37.

¹⁵⁸ FMN – Non-Hazardous Waste (7 October 2021), paragraph 15.421.

¹⁵⁹ Veolia Supplemental response to CMA questions on innovation, 29 March 2022, paragraph 4.

¹⁶⁰ Veolia Supplemental response to CMA questions on innovation, 29 March 2022, paragraph 5.

¹⁶¹ Veolia Supplemental response to CMA questions on innovation, 29 March 2022, paragraph 8.

¹⁶² Veolia Supplemental response to CMA questions on innovation, 29 March 2022, paragraphs 9 and 10.

solutions. Veolia told us that one example in water management is Cambi, a global leader in thermal hydrolysis, advanced anaerobic digestion and biogas solutions for the management of sewage sludge and organic waste, which targets its strategy on minimising the environmental impact of wastewater.¹⁶³

5.60 Veolia also told us that innovation in waste and water management does not require substantial investment; that incremental gains and process improvements do not require significant capital expenditure nor are they resource intensive. It told us that these were developed through ongoing practice, experience and know-how and that this was exemplified by the Parties' R&I spending as a proportion of total revenues.¹⁶⁴

5.61 In 2020, Veolia's total budget for R&I was €[REDACTED] million (£[REDACTED] million¹⁶⁵) across water and waste management activities, around [REDACTED]% of global turnover.¹⁶⁶ In 2021 its total budget increased to €66 million (£57 million¹⁶⁷).¹⁶⁸ R&I is coordinated by Veolia Recherche et Innovation (**VERI**) at group level; VERI conducts research programmes on behalf of and in cooperation with all the group's activities.¹⁶⁹

Table 5.5: Veolia's Annual Global R&I spend: 2016 to 2020 (€m)

Year	2016	2017	2018	2019	2020	2016-20 Average
R&I investment (€m)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Group turnover (€m)	24,390	25,125	25,951	27,189	26,001	25,731
Share of investment in turnover	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: FMN [REDACTED]

¹⁶³ Veolia Supplemental response to CMA questions on innovation, 29 March 2022, paragraph 15.

¹⁶⁴ Veolia Supplemental response to CMA questions on innovation, 29 March 2022, paragraph 21.

¹⁶⁵ Converted from EUR to GBP using [HMRC yearly average and spot rates](#) for the year to 31 December 2020 from HMRC

¹⁶⁶ Veolia's website: [Universal registration document 2020](#), page 37.

¹⁶⁷ Converted from EUR to GBP using [HMRC yearly average and spot rates](#) for the year to 31 December 2021 from HMRC

¹⁶⁸ Veolia's website: [Universal registration document 2021](#), page 38.

¹⁶⁹ Veolia's website: [Universal registration document 2021](#), page 38.

5.62 As can be seen at Table 5.1, Veolia's global R&I spend decreased from €[X] million to €[X] million in the period 2016 to 2020. It also decreased as a percentage of global turnover, from [X]% to [X]%.

5.63 Table 5.2 below sets out Veolia's estimate of its annual R&I spend in the UK, based on applying the share of investment in turnover at Table 5 to Veolia's total UK revenue.

Table 5.6: Veolia's Estimated Annual R&I spend in the UK: 2016 to 2020 (€m)

Year	2016	2017	2018	2019	2020	2016-2020 Average
Estimated R&I investment (€m)	[X]	[X]	[X]	[X]	[X]	[X]
Total UK revenue (€m)	[X]	[X]	[X]	[X]	[X]	[X]
Investment as a share of total revenue	[X]	[X]	[X]	[X]	[X]	[X]

Source: FMN [X].

5.64 Therefore, Veolia's estimate of its UK R&I spend also decreased between 2016 and 2020, from €[X] million to €[X] million.

Suez

5.65 Similar to Veolia, Suez, publicly described innovation as a 'core component of its strategy'¹⁷⁰ and in 2020, it invested €103.3 million in R&I globally.¹⁷¹ Suez also develops innovations in partnerships with academics and European bodies such as Water Europe and KIC Climate.

5.66 Table 5.3 below sets out Suez's global annual R&I spend in euros and as a percentage of its total revenue. It is split between investment in water and waste R&I.

¹⁷⁰ UNGC website: [Suez's Universal registration document 2020](#), page 57.

¹⁷¹ UNGC website: [Suez's Universal registration document 2020](#), page 58.

Table 5.7: Suez Group global on spend R&I: 2016 to 2020 (€m)

Year		2016	2017	2018	2019	2020
Total revenues	€m	15,332	15,783	17,331	18,015	17,209
Total R&I	€m	[X]	[X]	[X]	[X]	[X]
	% of total revenues	[X]	[X]	[X]	[X]	[X]
		[X]	[X]	[X]	[X]	[X]
Water R&I	€m	[X]	[X]	[X]	[X]	[X]
	% of total revenues	[X]	[X]	[X]	[X]	[X]
		[X]	[X]	[X]	[X]	[X]
Waste R&I	€m	[X]	[X]	[X]	[X]	[X]
	% of total revenues	[X]	[X]	[X]	[X]	[X]
		[X]	[X]	[X]	[X]	[X]

Source: FMN [X].

- 5.67 Suez's global R&I spend increased from €[X] million to €[X] million in the period 2016 to 2020. Global R&I spend also increased as a percentage of global turnover, from [X]% to [X]%. Water R&I accounted for a greater proportion of overall R&I spend in each year from 2016 to 2020.
- 5.68 Suez told us that R&I costs in the UK were embedded in the Suez UK waste business, which did not maintain a separate accounting line item for R&I spend. However, Suez provided us with an estimate of the costs incurred by each of the R&I projects undertaken over the last five years. This did not include 'in-kind' costs¹⁷² which were included in overheads of the relevant business unit. Suez also noted that some projects may include in-kind costs that could be claimed back under government funding arrangements, or were paid for by partners Suez worked with on joint projects.

¹⁷² In-kind costs comprise staff costs (including overheads such as salaries), general expenses, and incremental costs resulting from the use of existing equipment and resources belonging to different Suez businesses, operations or functions. Suez response to Phase 2 CMA RFI, 24 March 2022, Q132, paragraph 132.1.

5.69 Suez estimated that the Suez UK waste estimated spend on R&I projects over the last five years total [above] £[10] million.¹⁷³

Third parties

5.70 We received limited information from third parties on their annual R&D spend. Of the main other large waste management companies:

(a) FCC reported in its 2020 annual report that the FCC group spent €2.3 million on R&D projects and €3 million on R&D in environmental protection.¹⁷⁴ FCC also told us that [REDACTED].¹⁷⁵

(b) Urbaser told us that [REDACTED].¹⁷⁶

(c) Viridor told us [REDACTED].¹⁷⁷

5.71 The R&D spend of other third parties can be found at Table 5.4 below:¹⁷⁸

Table 5.8: Summary of third party spend on R&D

<i>Party</i>	<i>Implied annual spend (£m)</i>	<i>Implied spend as % of revenue</i>
Biffa	[REDACTED]	[REDACTED]
Beauparc	[REDACTED]	[REDACTED]
FCC	[REDACTED]	[REDACTED]

Source: Biffa response to CMA phase 1 investigation RFI, 27 September 2021, question 14; email from Beauparc to CMA, 24 March 2022; FCC [2020 Annual Report](#).

5.72 Within waste, over the period 2016 to 2020, the Parties' R&D spend as a percentage of turnover ranged from [REDACTED] to [REDACTED]% (globally for both and in the UK for Veolia). Suez's global R&D spend was approximately [REDACTED] times the size of Veolia's spend, as a percentage of revenue, however we note that between 2016 and 2020 the majority of the Suez Group's total global R&I spend related to Water R&I.

¹⁷³ Suez response to Phase 2 CMA RFI, 24 March 2022, Q132, table 132, paragraph 132.1 to 132.2.

¹⁷⁴ Including group activities on construction and water. FCC website: [2020 annual report](#), accessed by the CMA on 6 May 2022.

¹⁷⁵ Email from FCC to CMA, 11 May 2022.

¹⁷⁶ Urbaser response to CMA phase 2 RFI, 24 March 2022, question 14

¹⁷⁷ Viridor response to CMA phase 2 RFI, 24 March 2022, question 14

¹⁷⁸ R&D spend by the third parties listed relates to waste management only and does not include any R&D on water or wastewater management.

5.73 Based on the information available on third party spend on R&D, in absolute terms both Veolia and Suez spend more in the UK than competitor Biffa. However, when considering R&D spend as a percentage of revenue, Beauparc, Biffa and FCC spent a similar proportion at [%], [%] and [%].

Access to assets and infrastructure

5.74 This section covers the assets which the Parties operate, own or have access to, in the following categories:

- (c) MRFs;
- (d) ERFs;
- (e) Landfill;
- (f) Composting; and
- (g) Waste depots and waste transfer stations.

MRFs

5.75 Table 5.5 below sets out the number of MRFs operated by major waste management companies in 2021.

Table 5.9: MRFs operated by major waste management companies in 2021

<i>Operator</i>	<i>Number of MRFs operated</i>	<i>Total operational capacity (kt)</i>
Veolia	[%]	[%]
Suez	[%]	[%]
Biffa	[%]	[%]
Beauparc	[%]	[%]
FCC	[%]	[%]

Source: [%]

5.76 It can be seen at Table 5.5 that only one provider has more than ten operational sites in the UK. Veolia had the largest ‘estate’ in terms of number of MRFs operated and total operational capacity, with [%] MRFs (and total operational capacity of [%]kt). Suez had the second largest estate by

number of MRFs operated with [REDACTED] MRFs. However, its estate was the third largest by operational capacity, where Biffa was second largest.

- 5.77 The Merged Entity would have the largest share of MRFs and 13 more than Biffa, which operated the third largest estate by number of sites in 2021 and which was second largest by operational capacity. Its operational capacity would be more than twice that of Biffa.

ERFs

- 5.78 Table 5.6 below sets out the number of operational ERFs operated by major waste management companies in 2021.

Table 5.10: ERFs operated by major waste management companies in 2021

<i>Operator</i>	<i>Number of ERFs operated</i>	<i>Assumed operational capacity (ktpa)</i>
Veolia	[REDACTED]	[REDACTED]
Viridor	[REDACTED]	[REDACTED]
Suez	[REDACTED]	[REDACTED]
FCC	[REDACTED]	[REDACTED]

Source: [REDACTED]

- 5.79 In 2021 there were 56 operational ERFs in the UK. Table 5.6 shows that Veolia and Suez operated [REDACTED] and [REDACTED] respectively. Viridor, which now focuses on energy recovery and plastics, also operated [REDACTED] ERFs, but had the [REDACTED] operational capacity. Veolia and Suez had the [REDACTED] and [REDACTED] highest operational capacity respectively.
- 5.80 Of the [REDACTED] ERFs Veolia operated, it owned [REDACTED] and owned [REDACTED]. Of the [REDACTED] Suez operated: [REDACTED] was owned by a local authority; [REDACTED] were 100% owned by Suez and [REDACTED] were owned in part by Suez, with interests owned ranging between [REDACTED].
- 5.81 The remaining 23 ERFs were operated by nine other, smaller, third parties including three local authorities.

Landfill

- 5.82 Table 5.7 below sets out a breakdown of the number of landfill sites in the UK owned by the Parties and third parties in 2019.

Table 5.11: Landfill sites owned by the Parties and third parties in 2019

<i>Operator</i>	<i>Number of sites owned</i>
Biffa	[10-20]
Suez	[10-20]
FCC	[10-20]
Viridor	[10-20]
Veolia	[0-10]
Other third parties	[300-350]
Total	[350-400]

Source: FMN, Annex NHW 4 Waste – Consolidated shares estimate.

5.83 As can be seen at Table 5.7 above, in 2019 there were [350-400] landfill sites in the UK. Biffa owned the most landfill sites at [10-20], while Suez, FCC and Viridor¹⁷⁹ each owned [10-20], and Veolia owned [10-20].

Composting

5.84 Table 5.8 below sets out a breakdown of the number of composting sites in the UK operated by the Parties and third parties in 2019.

Table 5.12: Composting sites operated by the Parties and third parties in 2019

<i>Operator</i>	<i>Number of sites owned</i>	<i>Capacity (tpa)</i>
Veolia	[10-20]	[450,000-500,000]
Biffa (including Viridor assets)	[0-10]	[350,000-400,000]
Suez	[0-10]	[150,000-200,000]
Third Parties	[200-250]	[4.5-5 million]
Total	[200-250]	[5.5 – 6 million]

Source: FMN, NHW 4 Waste – Consolidated shares estimate.

¹⁷⁹ However, as per paragraph 5.28(e) Viridor sold its landfill business in April 2022.

- 5.85 As can be seen at Table 5.8 above, in 2019 there were [200-250] composting sites in the UK, of which Veolia operated [10-20] and Suez operated [0-10] [REDACTED]. Veolia's composting sites had the highest capacity of [450,000-500,000] and Suez's the third largest of [150,000-200,000].

Waste depots and waste transfer stations

- 5.86 In 2020 Veolia operated [REDACTED] waste depots and Suez operated [REDACTED] waste depots. In terms of waste transfer stations, Veolia operated [REDACTED] assets across the UK, of which: [REDACTED]. Suez operated a total of [REDACTED] waste transfer stations.¹⁸⁰

Our assessment of access to assets and infrastructure

- 5.87 Tables 5.5 to 5.8 show that Veolia and Suez have strong positions in sorting (MRFs), treatment (composting) and disposal (ERFs and landfill). They are the only two suppliers in the UK with strong positions in each of these activities. Moreover, we have shown in Chapter 8 that Veolia and Suez also have strong positions in non-hazardous municipal waste collections services. Biffa, FCC and Serco are also active in non-hazardous municipal waste collections services. Therefore, Veolia and Suez have strong positions across the waste management supply chain which is not replicated by any other supplier. By overall scale, Veolia is the largest supplier in the UK and Suez is the third largest (Figure 5.5).
- 5.88 We have found that this degree of integration might give the Parties incentives that might differ from their rivals. It might also give the parties options and, potentially, flexibility in terms of how they run their businesses which are not available, at least to the same degree, to other competitors in the waste management sector. For example,

(h) Veolia's Strategic Plan for 2020-2023 said that Veolia should:

(i) [REDACTED] and that [REDACTED].

(ii) [REDACTED].

(iii) [REDACTED];¹⁸¹

¹⁸⁰ Veolia response to CMA Phase 1 investigation s109, 26 March 2021, Annex 5 and Suez response to s109, 26 April 2021, annex 17.1.

¹⁸¹ Veolia's internal document VECMA00009189

- (i) A Veolia internal document from [REDACTED] said [REDACTED];¹⁸²
- (j) Veolia's published strategic program notes that it [REDACTED].¹⁸³
- (k) A Veolia internal document [REDACTED].¹⁸⁴
- (l) A Suez document on recycling and recovery (February 2021) noted that it is 'advantageous to be present in all forms of treatment (incineration/composting/landfill) to [REDACTED] and to [REDACTED]';¹⁸⁵
- (m) The same Suez document noted that Suez has 'presence across the full value chain ensuring ownership and control of waste flows'. It also discusses how Suez is well placed to benefit from the shift away from landfill to greater levels of recycling and energy from waste disposal given its recycling and EfW infrastructure and its waste collection infrastructure;

5.89 Further, Suez told us that '[REDACTED]'.¹⁸⁶

5.90 We have heard that not only do suppliers with collection and treatment activities try to optimise bidding behaviour accordingly, they will also target particular types of waste. For example, Enfinium told us that 'we really are trying to target a waste that has a lower CV [calorific value] if we can get it. That means we can process more through the facility and obviously, therefore, get more gate fee revenue, as a consequence. The higher the CV then that restricts the amount of fuel that you can take. That plays into how we price it as well and where the fuel might come from.'¹⁸⁷

5.91 We have also found that waste management companies will consider the cost effectiveness of their disposal options (ie between incineration, landfill and export). For example, we have seen several examples of Veolia in internal documents [REDACTED].¹⁸⁸ The cost of disposal is not the only factor in deciding a disposal route. Customer preferences/demand are also taken into account. For example, some local authorities stipulate that their waste cannot go to landfill.

¹⁸² Veolia's internal document VECMA00002441

¹⁸³ [Impact 2023: Strategic Program 2020-2023](#), 28 February 2020

¹⁸⁴ Veolia's internal document SON_CMA-0006495-0001

¹⁸⁵ Suez's internal document [REDACTED]

¹⁸⁶ Suez hearing, 13 April 2022

¹⁸⁷ Call with Enfinium, 2 March 2022. Although Enfinium does not collect waste the point remains that suppliers who operate both non-hazardous C&I waste collection services and ERFs will try to target particular customers who have a reliable source of a particular waste type and CV.

¹⁸⁸ Veolia's internal documents VES-000002176 and VECMA00003203.

- 5.92 It therefore appears that the Parties' strong positions across the waste management chain influence their commercial behaviour (eg in which contracts to compete for, bidding strategies for particular tenders and in which areas to invest) in a way or to a degree that might be different from their rivals. It seems to be the case, for example, that which waste collection contracts the Parties compete for will depend (in part at least) on whether they have MRFs and/or ERF infrastructure in the area.
- 5.93 Whether this gives the Parties a competitive advantage, and whether it makes Veolia and Suez close competitors in some markets, is explored in this report in chapters in particular Chapters 8, 9, 10, 11 and 12.

The procurement process

- 5.94 Local authorities are responsible for collecting and treating the waste generated by households and ensuring the waste is properly disposed of. To fulfil these responsibilities, local authorities may self-supply, use an LA-owned company (a Teckal), or procure services from specialist waste management companies, such as Veolia and Suez. If they wish to use third parties to provide waste management services LAs must comply with the Regulations and put their requirements out to tender. Further detail on the public procurement framework in the UK, including when it applies and what the process generally involves, is in Appendix B.
- 5.95 Commercial and industrial businesses are responsible for arranging their own waste collections. They usually do so on relatively short contracts (of one to two years).
- 5.96 We identify in our analysis where the procurement of services is subject to the Regulations.

Local authority types

- 5.97 There are three different types of local authority in England, which may procure waste management services in different ways. In particular:
- (a) Waste Collection Authorities (**WCAs**) are responsible for waste collection and recycling services described at paragraphs 5.10(a) and 5.10(c) (eg the district, borough and city councils in England such as St Albans City Council);
 - (b) Waste Disposal Authorities (**WDAs**) are not responsible for waste collection and recycling services but are responsible for the waste

disposal services described at paragraph 5.10(d) above (eg the county councils in England such as Surrey County Council (Surrey)); and

- (c) Some Unitary Authorities (**UAs**) are responsible for all of waste collection, recycling and waste disposal services (eg UAs in the shire areas, London boroughs, and metropolitan boroughs in England such as South Gloucestershire Council).¹⁸⁹

5.98 Scotland, Wales and Northern Ireland are not subject to the same two-tier local government system applicable in England and responsibilities relating to waste management are therefore not split between different types of local authority.¹⁹⁰ In our report we refer to all public procurement authorities collectively as ‘local authorities’.

Local authority contracts

5.99 When procuring waste management services, local authorities may seek to procure a contract to supply a single service or several services provided together under a multi-service contract. Local authority contracts that are multi-service are described by many industry participants as ‘integrated contracts’. Where they consider it appropriate, local authorities have the option of splitting a contract they are procuring into smaller ‘lots’ which can be bid for separately.

5.100 Historically, local authorities have procured many municipal waste management services under single PPP contracts (including some contracted through the Private Finance Initiative (the **PFI**)), procuring a broad range of services under a single waste management contract with a supplier such as Veolia or Suez (which may then in turn have sub-contracted some of the services included in the contract). The use of PPP and PFI contracts arose from the need to fund the construction of major infrastructure facilities. However, not all local authority waste management contracts have been under the PPP and PFI schemes.

5.101 Since 2018, the PFI is no longer used to develop new infrastructure (although the option to procure waste management contracts through PPP

¹⁸⁹ UK Government’s website: [Understand how your council works](#), accessed by the CMA on 6 May 2022. Some Unitary Authorities are responsible only for waste collection and recycling only as there is a separate statutory body responsible for waste disposal (eg the West London Waste Authority which is responsible for waste disposal services for the London boroughs of Brent, Ealing, Harrow, Hillingdon, Hounslow and Richmond Upon Thames).

¹⁹⁰ See webpages of the devolved governments for [Scotland](#), [Wales](#) and [Northern Ireland](#).

contracts remains).¹⁹¹ We have considered the impact of the procurement framework on how local authorities procure services in more detail in our Complex Contracts chapter.

¹⁹¹ UK government website (HM Treasury and Infrastructure and Projects Agency): [Project Finance Initiative and Private Finance 2 projects: 2018 summary data](#), accessed by the CMA on 8 May 2022.

6. THE STRUCTURE AND APPROACH OF OUR REPORT

The structure of the report

- 6.1 We have divided our analysis into two broad sections. The first considers whether the Merger is more likely than not to give rise to an SLC due to horizontal unilateral effects in various waste management markets. These are the supply of:
- (a) non-hazardous municipal waste collection services;
 - (b) O&M services to local authorities for MRFs;
 - (c) O&M services to local authorities for ERFs;
 - (d) the supply of waste disposal services by incineration in the local areas surrounding Suez's Wilton 11 and Teesside ERFs;
 - (e) OWC services; and
 - (f) non-hazardous C&I waste collection services.
- 6.2 These are examined in chapters 8 to 12.
- 6.3 The second considers whether the Merger is more likely than not to give rise to an SLC due to horizontal unilateral effects in two water markets. These are the supply of:
- (a) the O&M services for water and wastewater treatment facilities; and
 - (b) MWS.
- 6.4 These are examined in chapters 13 and 14.
- 6.5 With respect to the various waste management markets, in Chapter 7 we have considered whether competitive conditions in complex waste management contracts for municipal customers are such that the Parties are likely to be closer competitors for these types of contracts. Municipal customers have varying requirements in the collection, sorting, and disposal of municipal waste. Some local authority contracts are for multiple services. The differences in the requirements of local authorities might affect, and in particular limit, the number of suppliers able to compete for these contracts. We discuss in Chapter 7 the factors that we have found give rise to complex waste management contracts.

- 6.6 Taking account of these factors, the report then assesses in detail the competitive effects of the Merger in the individual waste management markets.
- 6.7 In deciding whether a Merger has resulted, or may be expected to result, in an SLC, we must apply a ‘balance of probabilities’ standard. This means that we must decide whether it is more likely than not that a Merger will result in an SLC. We have applied this standard in each of the markets that we have assessed.

The nature of competition and our analysis

- 6.8 Veolia submitted that our analysis suffers from a number of shortcomings.¹⁹² Where these submissions relate to our analysis in an individual market, we address them in the relevant chapter (Chapters 7 to 14). Below we consider Veolia’s arguments that relate to our analysis across multiple markets.

Long-term contracts

- 6.9 In its merger assessments, the CMA seeks to develop a general understanding of the competitive process, which will, in turn, take into account the specific features of the markets at issue. In this case, we note that certain market dynamics have shaped our approach to the gathering and assessment of the evidence. In particular, some services within the waste management industry are characterised by long-term contracts. For some municipal contracts the contracted period can be very long. For example, some existing municipal ERF contracts which originated from PPP/PFI projects around 25 years ago are nearing the end of the contractual period whereas others have many years left to run.¹⁹³ Similarly, municipal collection contracts can be between eight and 10 years.¹⁹⁴

The timing of long-term contracts

- 6.10 Where relevant, we have taken the long-term nature of contracts into account in our analysis in the following ways:

¹⁹² Some of Veolia’s submissions were in response to our Provisional Findings and some as a part of other submissions to us. We notified Veolia and Suez of our Provisional Findings on 19 May 2022. Our Provisional Findings can be found [here](#) on the CMA case page.

¹⁹³ [Overview submission by Veolia](#), paragraphs 31 and 32

¹⁹⁴ [Overview submission by Veolia](#), paragraph 53

- (n) Where we consider that past competitive interactions offer insight into current competitive conditions, we have examined bid data for tendered contracts. We have made clear in our analysis where we have done this. Where the dataset for bids spans a long period of time we have in some instances (when assessing bids qualitatively) considered recent bids to be more informative of competitive conditions that might be affected by the Merger than older bids.¹⁹⁵ In all cases where we have used bid data, we have used it in conjunction with a broader range of evidence;
- (o) In circumstances in which, because of the long contract periods, there have been few recent tenders from which we can directly observe competitive dynamics, we have put less weight on the bidding data that is available and instead primarily relied on other evidence to come to our conclusions. For example, in the O&M of ERFs we have examined (together with other evidence) the criteria that local authorities told us they would be likely to use when selecting suppliers when their current contracts expire and considered the evidence on how the Parties compare to their rivals in relation to these criteria ; and
- (p) Similarly, we have used contemporaneous views from third parties – both customers (local authorities) and competitors – on who they consider to be the most credible current suppliers and how they see the market developing (eg whether customers are likely to use, or continue to use, multiservice contracts). We have used this evidence in most of the markets that we have assessed, and where appropriate have assessed it alongside bid data. In particular, a relatively large number of MRFs and ERFs were built and managed under PPP/PFI arrangements which were put in place many years ago. In our assessment of the O&M of MRFs and of O&M of ERFs we have therefore not used historical bid data given tenders that took place some years ago provide only limited insight into current competitive conditions.

6.11 We have also had regard, to the extent relevant, to longer-term public policy objectives in waste management, especially with respect to landfill and the introduction of the Environment Act (Appendix B). It is well established public policy to move away from landfill as a disposal option. Landfill today accounts for almost half of municipal waste disposal and the Government's target for landfill in England is that by 2035 no more than 10% of municipal

¹⁹⁵ We have done this in our analysis of non-hazardous municipal collection services in which some contracts have been in place for several years. More recent tenders may be able to offer a better guide to competitive conditions after the Merger than older tenders.

waste is to be sent to landfill which will increase the importance of disposal by ERFs (paragraph 5.15).¹⁹⁶ Notwithstanding this, landfill remains a significant route for waste disposal (albeit one in decline) and we have considered how much it is a competitive constraint on incineration services and on the O&M of ERFs.

The role of existing contracts within our competitive assessment

- 6.12 Veolia submitted that the Parties' customers will not be affected by the Merger in the short term because they are protected by contracts with set durations, defined prices and detailed KPIs.¹⁹⁷ Therefore, Veolia submitted, our theories of harm apply to customers in their next tender process some of which are years away.
- 6.13 Veolia also submitted that we should conduct an analysis of whether the contracts due for renewal within our time horizon for assessment are sufficiently significant to be capable of representing an SLC and whether the remaining existing long-term contracts are captured by any SLC finding.¹⁹⁸
- 6.14 First, while any loss of competition brought about by the Merger would impact most directly on customers in their next tender process, it is not the case, as a factual matter, that these processes are all many years away. Our assessment encompasses tenders that will occur in the short-term as well as tenders that will occur over the medium-term (several years from now) and some existing contracts that will not expire for another 10 years or more. For example, the Parties have told us about upcoming tenders in municipal collection, sorting (MRFs) and disposal (ERFs) throughout 2022 to 2026.¹⁹⁹
- 6.15 Second, not all services within the scope of our review are purchased under long-term contracts. Across the markets that we have assessed, some customers will have long-term contracts (although some of these will be coming to an end soon), some will have short-term contracts, and some acquire services on the spot market.
- 6.16 Third, we consider that any loss of competition brought about by the Merger would not just affect customers with existing contracts at the point at which those contracts are currently scheduled to end.

¹⁹⁶ [Waste Management Plan for England](#), January 2021

¹⁹⁷ [Veolia's Response to the CMA's Provisional Findings](#), paragraph 48

¹⁹⁸ [Veolia's Response to the CMA's Provisional Findings](#), paragraph 195

¹⁹⁹ Suez site visit slide deck, slides 25 and 26 (15 February 2022) and Veolia site visit slide deck, slide 48 (24 February 2022)

- 6.17 The evidence available to us shows that detailed KPIs and prices in current contracts are likely to offer some protection to existing customers but typically do not offer complete protection from all the ways in which a merger could lead to adverse effects (and customer harm). Service quality can be degraded but still be within contractual bounds and/or the degradation in the quality of service might be incremental over time or persistent before the customer takes action. Over time contracts can be renegotiated or terminated. In particular, during our inquiry, we have heard examples of customers being dissatisfied with the service that they have received from their supplier and re-letting the contract or some part of it, which indicates that contractual provisions do not offer full protection for customers.²⁰⁰
- 6.18 The Parties' internal documents show that contractual provisions do not always protect customers from performance issues of suppliers and that poor performance can also be a "trigger" for contracts to be re-tendered. For example:
- (a) a Veolia document from [REDACTED];²⁰¹
 - (b) a Veolia document from [REDACTED];²⁰²
 - (c) a Veolia document from [REDACTED] noted that [REDACTED]²⁰³; and
 - (d) a further Veolia document from [REDACTED] in relation to one particular tender said that [REDACTED].²⁰⁴
- 6.19 On this basis, we consider that the effects of a loss of competition are not, in principle, limited to the competition currently expected to take place at the end of existing contracts.
- 6.20 We note that the Merger would bring about a permanent change in market structure. The CMA will consider any merger in terms of its effect on rivalry over time in the market or markets affected by it.²⁰⁵ We have assessed in each of chapters 8 to 14 whether the loss of competition brought about by the Merger gives rise to an SLC. In keeping with the CMA's established approach to assessment, as set out in our guidance, the existence of

²⁰⁰ For examples, in Chapter 8 we found that Blackburn with Darwen local authority had taken its collection of recycling in-house when it had issues with its current provider.

²⁰¹ Veolia's internal document, VECMA00017650

²⁰² Veolia's internal document, VECMA00011879

²⁰³ Veolia's internal document, VES-000002631 / VECMA00018348

²⁰⁴ Veolia's internal document VECMA00000578

²⁰⁵ [CMA129](#), paragraph 2.6

ongoing contracts (even long-term ones), and the protections that they contain, should be given only limited weight in assessing the overall loss of competition that a merger will bring about.²⁰⁶

- 6.21 For this reason, we do not believe that Veolia's suggested approach to assessment – to conduct an analysis of contracts due for renewal within a specific time horizon for assessment – appropriately reflects how competition takes place within these markets. Similarly, we do not specify a precise time horizon over which we think the effects of the Merger could be felt in the various markets. We do not agree that the effects of the Merger will be felt only at the end of existing contracts, and we consider that the immediate loss of rivalry brought about by the Merger would continue to have an impact on the choices available to customers for the foreseeable future.

The Parties' plans to bid for future contracts

- 6.22 Veolia also submitted that, absent the transaction, the Parties would not compete for the types of contract that the CMA is considering. It told us that [REDACTED].²⁰⁷
- 6.23 We consider competition between the Parties in Chapters 8 to 14. In those chapters we have generally found strong market-specific evidence of competition between the Parties. This takes into account that the Parties do not bid against each other for all tenders and also that the frequency with which the Parties bid against each other can vary over time. We note, as explained in more detail in those chapters, that the evidence that the Parties have advanced to support the position that they would not consider bidding for the same upcoming contracts absent the Merger is generally not persuasive.
- 6.24 We note, in addition, that we would typically expect to see other evidence of material changes in the Parties' business strategies that might lead them to compete less closely in future (such as decisions to deprioritise or exit certain types of activities). Absent such evidence, it does not seem to us credible that the Parties would not compete at all (in areas in which they have competed extensively in the past) absent the Merger.

²⁰⁶ CMA129, paragraph 7.15

²⁰⁷ Veolia's response to CMA working paper on services for complex municipal contracts.

Multiservice contracts

- 6.25 In the following chapter, Chapter 7, we discuss why it is to the benefit of some local authorities to have multiple services supplied via one contract and that in doing so, they might also find a limited set of credible suppliers willing and able to bid for those contracts. Multiservice contracts are relevant to a number of the chapters in this report in which we assess competition within specific product markets. Local authorities have told us that there can be benefits that arise to them in having multiservice contracts, particularly when the services interact with each other.
- 6.26 Veolia submitted that multiservice contracts are becoming less prevalent. Veolia submitted that in particular:
- (a) public procurement rules (Regulation 46(2) of the Regulations) and UK Government policy encourage public authorities to tender their waste management services individually or as small packages ('lots'), to increase competition, encourage smaller operators to compete and drive value for money;²⁰⁸
 - (b) the result of this is an increasing trend of local authorities dividing their waste collection and treatment/disposal contracts into lots rather than contracting one supplier to provide all or the majority of their collection and treatment/disposal needs; only one "multi-faceted" contract (ie that includes as a minimum the provision of treatment and disposal services for two or more different waste streams over time) has come to market in the last six years (and only in unusual circumstances); and
 - (c) the median number of waste service providers currently used by unitary local authorities is three, rising to four when looking at more recent contracts (those starting since 2017) which demonstrates that splitting services across providers is not just a theoretical possibility.
- 6.27 Veolia submitted²⁰⁹ that the reason there may be a lack of evidence on a relatively reduced use of multiservice contracts, despite the Regulations being in place since 2015, is because few large contracts have come up for tender since 2015. The only example of an unbundled contract that Veolia provided was the ongoing tender for Surrey (which is still in initial stages but

²⁰⁸ [Overview Submission by Veolia](#), paragraphs 43-49.

²⁰⁹ Transcript of hearing with Veolia, 14 April 2022, pp45-46.

in relation to which Veolia understands that the local authority's approach is to unbundle services).

Use of multiservice contracts in the future

- 6.28 In order to understand the likely use of multiservice contracts in the future, we asked²¹⁰ local authorities whether they would consider unbundling some or all of the services in their current waste management contracts when they expire. Of the 36 local authorities which responded to this question, 14 said they would consider unbundling their waste management contracts, 12 said they would not consider unbundling, and 10 said they would consider their options when their current contract expires. This suggests that, while there may be some degree of unbundling in future procurements, a significant proportion of local authorities might still procure multiservice contracts. We also note that, even though some local authorities might unbundle some of their contracts to some extent, they may still go to tender with a multiservice contract (and/or a number of individual lots might be awarded to the same supplier).²¹¹
- 6.29 Veolia submitted that conclusions drawn from asking local authorities that considered their current contracts to be bundled whether they have a preference for bundling or unbundling and whether they would unbundle their contracts in future, are 'highly unscientific' as 'bundling could mean anything'.²¹² We disagree with this position, noting that our questionnaire asked local authorities whether they 'bundle several waste management services into one contract (i.e. an integrated contract)'. We consider that it is clear, based on the local authority responses, that the respondents understood 'bundling' to mean multiple waste management services in one contract. For example, in response to this question:

- (a) [X] referred to its contract that includes waste collection, operation of HWRC, waste transfer station, street cleansing, grounds maintenance,

²¹⁰ We sent questionnaires to 108 local authorities, of which 42 provided a response.

²¹¹ A competitor ([X]) told us that if a local authority split a contract into lots it would attract more bidders, but the downside of this would be that there were a lot of interfaces for the local authority to handle which could be an issue when allocating responsibility across individual lots. The competitor also said that there were examples of local authorities splitting a contract into lots but at the same time saying they would consider a single award for the whole contract. The competitor said that, in response to that situation it might offer a better price for the whole contract than for the individual lots and would try to sell the benefits of an integrated management of the contract to the local authority (Call with [X], 15 February 2022).

²¹² [Veolia's response to the provisional findings](#), paragraph 45

forestry and cemetery services as a 'large, complex integrated contract'.²¹³

- (b) West Berkshire referred to its contract for household waste collection, operation of HWRCs, mini-recycling centres (**MRC**)s, street cleansing and litter bin servicing, management of an integrated waste facility- including a waste transfer station, a MRF and an IVC²¹⁴
- (c) [X] (which stated that it did not bundle services together) refers to the following distinct contracts being let separately: waste disposal for energy from waste and landfill, household waste recycling centre operations, processing and treatment of dry mixed recycling and fibrous material, treatment and processing of green waste and treatment of street sweeping arisings.²¹⁵

6.30 We have seen a Suez internal document discussing developments in the public sector for waste management from July 2020 stating that there is a recent trend of larger authorities tendering integrated contracts without lots.²¹⁶

6.31 In regard to the Regulations, we note that they are not specific to waste management contracts but cover all the services that a local authority is required to put out to tender. The Regulations do not oblige the local authority to subdivide contracts into smaller lots and do not specify what should go into individual lots. The relevant Regulation (46(2)) states only that the authority shall provide "an indication of the main reasons not to subdivide a contract into lots" if it chooses not to do so, which does not prevent an authority from letting a multiservice, integrated contract should it choose to do so. It is clear from the Regulations that local authorities retain discretion over how they design and award tenders, and a decision not to subdivide into lots, and how far any subdivision might go, is at the discretion of the local authority.²¹⁷

6.32 This is supported by evidence from one of the local authorities²¹⁸ ([X]), that told us that it did not think that the current procurement regulations were an obstruction in terms of whether it wants to have several services included in

²¹³ [X] response to the CMA's Phase 2 questionnaire

²¹⁴ West Berkshire's response to the CMA's Phase 2 questionnaire

²¹⁵ [X] response to the CMA's Phase 2 questionnaire

²¹⁶ Suez's internal document, CMA-SUEZ-00004519 / Document 294

²¹⁷ Regulation 46(1) states that: '[c]ontracting authorities *may decide to* award a contract in the form of separate lots and may determine the size and subject-matter of such lots' (emphasis added).

²¹⁸ Note of call with [X].

the one contract. It stated that the public procurement rules are sufficiently flexible such that it can bundle services into one contract if it chooses to do so.

- 6.33 With respect to Veolia's submission that UK government policy also encourages public authorities to tender their waste management services individually or as small packages, the government guidance provided by the Parties in support of this submission was issued in 2007. This guidance has therefore been in place for a significant period of time already, and we are not aware of any reason why it would have a more significant impact in future than it has to date.

Competing for contracts

- 6.34 In most instances in the markets that we have investigated, suppliers bid for contracts through competitive tenders (there are examples in some markets regarding commercial and/or industrial customers of contracts being awarded without a formal tender process). Where appropriate, we have taken into account bid records of the Parties and competitors. Where appropriate, we have also taken into account customer and competitor views of the strengths and credibility of possible suppliers. Where we have identified a number of credible suppliers who either individually or collectively might be expected to provide some competitive constraint on the Merged Entity, we have considered that evidence with other evidence on the typical number of bidders for contracts. We have found that bidding costs can be substantial and that this tempers the number of tenders in which suppliers participate (paragraphs 5.50 to 5.52). We have found as a consequence of this (and possibly other reasons) not all credible suppliers bid in all tenders and the average number of bidders can be small (we have found in some markets the average number of bidders is three) (eg paragraphs 5.51, 7.125, 7.127 and 8.132).
- 6.35 Veolia has submitted that a low number of bidders is a function of the tender process due to a narrowing by the local authorities themselves.²¹⁹ We have identified in our analysis where in the bidding process we have assessed the average number of bidders (eg whether it is the number of suppliers submitting an expression of interest at the pre-qualification stage or whether it is the number of bidders that the local authority has carried into the final stage of the tender process). We note that competition concerns might arise

²¹⁹ [Veolia's Response to the CMA's Provisional Findings](#), paragraph 102

if a low number of bidders entered into the tender process but competition concerns might also arise if the small number of bidders making it to the final stage of the process consistently came from the same small set of suppliers (irrespective of how many suppliers entered into the tender to start with). We have found across multiple markets in our inquiry that customers consistently receive a small number of final bids from the same relatively small set of providers.

Self-supply

- 6.36 We have found in our inquiry that customers self-supplying some waste management activities is common. Veolia has argued that not only do some customers self-supply some of their requirements, but the possibility of self-supply also provides a competitive constraint on Veolia which should form an important part of our competitive assessments. For example, Veolia argues that self-supply is a significant competitive constraint in non-hazardous municipal waste collection services, O&M of ERFs, O&M of MRFs and the O&M of water and wastewater treatment facilities.²²⁰
- 6.37 Veolia's arguments are considered in detail, within the specific context of each of these markets, in our substantive assessments of those product areas. In considering the role played by self-supply we have generally examined whether:
- (a) customers decide whether to self-supply as a part of their assessment of bids received or whether they do so without any tender exercise. The former might indicate that self-supply is a part of the competitive dynamic. The latter might indicate that although self-supply reduces the scope for competition (ie there are fewer tenders available in which the Parties can compete), self-supply itself does not form a competitive constraint or impact on the intensity of competition for those customers who do run a tender exercise;
 - (b) customers told us if they have considered self-supply in the past (and the extent to which they have considered self-supply) or are likely to do so in future. If only some customers are able to self-supply then self-supply will not protect those customers not able to self-supply from any adverse effects arising from the Merger; and

²²⁰ For example, [Veolia's Response to the CMA's Provisional Findings](#), paragraphs 20, 70-80, 114, 124-127, 172, 267-275

- (c) incidences of self-supply were a result of non-competition factors (eg policy positions within the local authority).

Subcontracting

- 6.38 Veolia has submitted that we have not taken proper account of subcontracting. Veolia submitted that subcontracting is commonplace in the waste management industry, in particular, in municipal waste management services and in non-hazardous C&I waste collection services.²²¹ Indeed, Veolia told us that subcontracting increases competition by enabling certain suppliers – eg brokers – to compete for contracts.²²²
- 6.39 We have taken suppliers using subcontracting into account in our analysis. We have not excluded any supplier in any market that we have investigated on the basis that it subcontracts. Indeed, Veolia and Suez sometimes use subcontractors (eg in non-hazardous C&I waste collection services). We have, however, considered the competitive strength of suppliers reliant on subcontractors and, for example, in some instances have found them to be weaker constraints on the Parties than suppliers not reliant on subcontractors.

Use of customer evidence

- 6.40 Veolia submitted that we place weight on customer responses to our questionnaires even where the number of responses is small.²²³
- 6.41 In regard to the number of customer responses, we sent questionnaires to 108 local authorities who are customers of at least one of the Parties and received responses from 42 (39%), which we consider to be a high overall response rate. Local authorities received questionnaires according to which services the Parties provide for them. We sent questionnaires to 188 C&I non-hazardous waste collection customers of the Parties and received responses from 24 (13%) and to 55 O&M water and wastewater treatment facility customers and received 11 responses (20%). We also held follow-up calls with various local authorities and competitors to deepen our understanding of the third-party evidence.

²²¹ [Veolia's Response to the CMA's Provisional Findings](#), paragraphs 42 and 225

²²² [Veolia's Response to the CMA's Provisional Findings](#), paragraph 232

²²³ For example, [Veolia's Response to the CMA's Provisional Findings](#), paragraphs 12-14

- 6.42 We have interpreted customer responses to our questionnaires as qualitative evidence. In doing so, we have given weight to the number of responses giving a particular view, within the context of the overall number of responses received and other relevant market factors (such as the total number of customers that are supplied with the services in question by the Parties). This evidence is different from survey evidence and needs to be interpreted with this in mind.²²⁴
- 6.43 The views and evidence offered to us by customers have helped to inform our understanding and assessment in the various markets.
- 6.44 We do not consider that the number of customers and competitors who engaged with our inquiry was too small for us to place weight on third party evidence in any of the markets that we investigated.²²⁵ For example, Veolia drew particular attention to our analysis of the O&M of ERFs. It submitted that only six local authorities responded to the CMA's questionnaire on factors to consider in awarding O&M for ERF contracts and only four competitors responded to the CMA's competitor questionnaire for this market.²²⁶ In assessing how much weight to place on this evidence, we noted that there are 26 ERFs that will revert to local authorities at the end of their current PPP contract and, of these, Veolia and Suez provide O&M services for 15 ERFs. Therefore, we received a response of six local authorities out of 15 customers that the Parties serve. Regarding competitors, besides the Parties, there are only three O&M competitors with two or more O&M contracts for ERFs that will revert to local authorities at the end of their current PPP contract. Two of these supplied evidence to our inquiry.
- 6.45 Veolia also submitted that our customer evidence is biased since we have focused on customers of the Parties rather than all customers in the various markets.²²⁷ Veolia has submitted that:
- (a) Our theories of harm, whether relating to municipal contracts or for C&I contracts (whether for waste or water-related services), are that the Merger will result in less choice for all customers not just the Parties' current customers. In other words, as existing contracts come to an end

²²⁴ For example, the Competition Appeal Tribunal in *Tobii AB v CMA* ([2020] CAT 1 (*Tobii AB*)), accepted that the Survey Guidance is targeted at commissioned statistical sample research surveys of the sort described at paragraph 1.5 of the Survey Guidance and therefore does not apply in respect of the CMA's customer questionnaires, such as those used in this case (*Tobii AB*, paragraph 219).

²²⁵ *Veolia's Response to the CMA's Provisional Findings*, paragraph 14

²²⁶ *Veolia's Response to the CMA's Provisional Findings*, paragraph 160

²²⁷ For example, *Veolia's Response to the CMA's Provisional Findings*, paragraphs 15-17

and customers go out to tender for a new contract the Merger may result in harm to these customers irrespective of who their current supplier is. Veolia submitted that the respondents to our questions were not representative of the markets in question. This is because we only included the Parties' current customers, and that a balanced market test would also be needed to test the views of other customers who have chosen other competitors, self-supply, or appointment of a Teckal as the most attractive option;²²⁸

- (b) These local authorities or businesses have already awarded contracts to one of Veolia and Suez and therefore their questionnaire responses will be biased to Veolia or Suez. Veolia submitted that a more balanced view of how customers will behave in future tenders would be gained from gathering evidence from a broader set of customers; and
- (c) There will be an information asymmetry between what these customers know of the Parties and what they know of other suppliers.

6.46 We consider that our approach is reasonable and appropriate because:

- (a) Current customers of the Parties have chosen Veolia or Suez to provide services specific to their requirements and therefore we consider that it is reasonable to assume that they may be harmed by any adverse effects arising from the Merger;
- (b) Although for municipal customers contracts are typically long-term, in any year some local authorities would have tendered for a new contract or made preparations for an upcoming tender. These customers would have a well-informed view of different suppliers;
- (c) As mentioned above, we approached over 100 local authorities and over 200 commercial and industrial customers (in both waste and water markets) across eight markets. We do not consider this to be an unduly narrow set of customers. We also note that local authorities contract the same broad set of services (waste collection, sorting, recycling and disposal). Therefore, some of the local authorities who received a questionnaire from us – some of which also had follow-up calls with us – will have recent experience of not just one of the Parties but also one or more of their competitors. We consider that the evidence from the questionnaire responses and the various in-depth calls helped to give

²²⁸ Veolia, Supplemental response on evidence on the working papers, 13 May 2022, paragraph 16

us a good understanding of the various suppliers in each relevant market; and

- (d) We have considered such evidence from customers in conjunction with other evidence. For example, where appropriate, we have considered market share data, which reflects the choices of a wider range of customers than just those of the Parties, and bidding data, which reflects competition between the Parties and other suppliers for contracts beyond those that the Parties have won. We have also, where appropriate, considered the views of competitors, who serve different customers from the Parties.

7. COMPETITION AND COMPLEX WASTE MANAGEMENT NEEDS OF LOCAL AUTHORITIES

Introduction

- 7.1 The CMA's Phase 1 Decision found that a subset of waste management contracts that are put out to tender by local authorities are particularly complex and that the Parties have a number of capabilities and attributes that make them particularly strong suppliers of these complex contracts. Moreover, the CMA received a large number of complaints from local authorities, some of whom expressed concerns that the Merged Entity would be the only company that could credibly service complex waste management contracts in the UK.²²⁹ As a result, we sought to consider this issue in further detail during our Phase 2 inquiry.
- 7.2 This chapter examines what role the variation between local authorities in their waste management requirements might play in affecting conditions of competition. Some local authority requirements might be difficult for some suppliers to fulfil and, as a result, these customers might see relatively limited competition when they tender their waste management contracts. Moreover, Veolia and Suez might be close competitors for these types of contracts and the Merger would remove this competition. If this is the case, then these local authority requirements should form a part of our competitive assessments in Chapters 8 to 11.
- 7.3 The aim of this chapter is not to decide whether an SLC is likely to arise in respect of any particular service but rather to examine the role of complexity in the provision of municipal waste management services and, in particular, any impact it may be expected to have on competition across the different services that local authorities procure.
- 7.4 In order to make clear the purpose and structure of this chapter, we set out below a summary of the key questions that this chapter addresses. We also provide a summary of conclusions that we reach based on the assessment in this chapter, by way of preview.
- (a) Is complexity a relevant aspect of competition to supply waste management services to local authorities? We find that complexity is a relevant aspect of competition in the supply of waste management

²²⁹ [Phase 1 Decision](#), paragraphs 11 to 14.

services to local authorities. In particular, some local authorities' requirements are more complex than others. This is for a variety of reasons. The term 'complexity' of customer requirements and/or contracts is widely recognised by suppliers and customers.

- (b) Can complexity be delineated? We find that this complexity is not easily delineated in a way that would allow us to say definitively that any given contract or set of customer requirements would be 'complex' or 'not complex'. This is because (i) there are several different factors that may give rise to complexity, and (ii) these factors typically cannot be easily categorised (for example, there is no obvious cut-off point at which a contract changes from being 'small' to being 'large', or from being 'low-risk' to being 'high-risk'). Given this, the complexity of customers' requirements—much like the factors that drive it—appears to us to be better thought of as sitting on a spectrum between 'more complex' requirements and 'less complex' requirements.
- (c) Does this complexity affect competition, in general and between the Parties? We find that the evidence indicates that where a contract involves greater complexity, this can reduce the willingness and ability of some suppliers to compete effectively for those contracts. In that context, the Parties are among the more limited subset of suppliers that are better able to compete to supply local authorities that have more complex requirements; and
- (d) What does this imply for our assessment? Given the above, we consider it important to examine how complexity affects competition for waste management services. We then to take this understanding of the relationship between complexity and competitive conditions into account when undertaking our assessment of whether the Merger gives rise to an SLC in respect of the various markets involving local authority customers for waste management services in which the Parties participate.

7.5 The remainder of this chapter sets out the assessment that led us to reach these conclusions. In particular, in this chapter, we set out our assessment of complex requirements and competition in waste management. There are two main elements to our assessment:

- (a) Factors underlying complex customer requirements: We examined the nature of customer requirements (given those requirements determine how straightforward or complex it is to fulfil the contract) and what specific underlying factors could make customer requirements more difficult for some suppliers to fulfil (and thus their ability to compete

effectively). This is set out in the section ‘Factors underlying complex customer requirements’;

- (b) Competition and complex customer requirements: We considered the evidence on whether complexity of customers’ requirements could affect the conditions of competition, including by considering: evidence from internal documents; third party views; shares of supply among a subset of contracts with characteristics that are likely to reflect more complex requirements; and shares of supply among a subset of contracts identified by the Parties as complex. This is set out in the section ‘Competition and complex customer requirements’.

7.6 In conducting our assessment, this chapter and the subsequent chapters analyse a range of evidence, including the Parties’ internal documents.

Factors underlying complex customer requirements

7.7 In this section, we set out a range of evidence that we have examined on what factors make contracts more complex. Where any such evidence also highlights an impact on competitive conditions, we also make note of that in this section – although the impact of complexity on competitive conditions is considered more fully in the next section (from paragraph 7.59). To do this we have:

- (a) considered the Parties’ submissions;
- (b) reviewed the Parties’ internal documents;
- (c) considered customer views; and
- (d) considered competitor views.

Parties’ submissions

Veolia’s submissions

7.8 Veolia submitted that there is no recognised definition of a complex contract [redacted];²³⁰ [redacted].²³¹

²³⁰ [Veolia’s response to the provisional findings](#), paragraph 25

²³¹ Veolia’s response to CMA phase 2 questionnaire, 21 December 2021, Q70.

- 7.9 Veolia further submitted that [REDACTED].²³²
- 7.10 According to Veolia, the main parameter that could contribute to a contract's complexity is [REDACTED].²³³ Veolia identified two additional parameters which could make a contract more complex:
- (a) [REDACTED].
 - (b) [REDACTED].²³⁴
- 7.11 Veolia submitted that contract size is not in itself an indicator of complexity.²³⁵ Veolia submitted that the services provided are the same regardless of size. Large contracts tend to be in areas with higher household density, which makes these areas more efficient to serve. The value of large contracts makes them attractive to all competitors. The high value of the overall contract means that competitors are willing and able to offer services with slim percentage profit margins compared with smaller contracts, and makes it easier to justify investing in providing the service. Large contracts are won by 'small' suppliers. For example, Countrystyle was awarded its first contract in the London Borough of Bexley, which has 99,000 households.²³⁶ Veolia also submitted that the use of a value threshold is a poor proxy for complexity as it ignores all the qualitative factors that could indicate complexity.²³⁷
- 7.12 Regarding infrastructure requirements as an indicator of complexity, Veolia submitted that the maturity of the UK waste sector (now that significant local authority infrastructure has been built) coupled with the termination of the PFI scheme means that new DBFO (design, build, finance, operate) contracts for waste treatment infrastructure are now rare.²³⁸
- 7.13 Veolia submitted that, irrespective of competitive conditions of past years when local authorities contracted for multiple services in a single contract, today's market conditions are characterised by local authorities increasingly considering options to unbundle more of their contracts and tendering for

²³² Veolia's response to CMA phase 2 questionnaire 21 December 2021, Q70.

²³³ Veolia's response to CMA phase 2 s.109 notice, 21 December 2021, Q70.

²³⁴ Veolia's response to CMA phase 2 s.109 notice, 21 December 2021, Q70.

²³⁵ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 1.20.

²³⁶ This was a five-year contract with an annual value of £1.7 million. Countrystyle's website: [London Borough of Bexley Contract Win \(countrystylerecycling.co.uk\)](https://www.countrystylerecycling.co.uk); accessed by the CMA on 9 May 2022

²³⁷ Veolia's response to the provisional findings, paragraph 56

²³⁸ Veolia's response to the provisional findings, paragraph 31

individual services or smaller contract lots of multiple services than previously.²³⁹

7.14 On the market's evolution, Veolia submitted that:

- (a) The Parties' share of supply for high-value contracts entered into since 2017 is [REDACTED];²⁴⁰
- (b) Veolia's more recent contracts in the dataset of 11 'complex' municipal collection contracts identified in the Provisional Findings comprise [REDACTED].²⁴¹

Suez's submissions

7.15 Suez submitted that it does not commonly use the term 'complex contracts'. However, Suez notes that some contracts may be more difficult to execute and involve a variety of risks as compared to smaller standalone single-service contracts. Suez submitted that there is a spectrum of complexity and different waste service providers are often better placed to service different types of contracts.²⁴² Suez submitted there was a wide range of varying complexities in contracts which could be based on a number of different factors including: the number of services provided, the duration of the contract, the risk profile, and the capital investment required. Suez competes for contracts along this spectrum of complexity. [REDACTED] also submitted that [REDACTED].²⁴³

7.16 Suez submitted that, while it does not specifically categorise contracts as complex, it does maintain a separate reporting record in its management reporting system for high-value public sector contracts (both PFI and non-PFI contracts). The rationale for this is that these contracts are typically longer term and have a high value, generally involving several services. Further, as is common for PFI contracts, a number of these contracts have Special Purpose Vehicle structures which require individual reporting lines. Suez submitted that these high-value contracts were discussed to a greater degree within its internal documents than lower value contracts.²⁴⁴

²³⁹ Veolia response to CMA working paper on services for complex municipal contracts. Veolia also noted that municipal waste collection and street cleansing are often tendered in the same contract as the services are related. [REDACTED]. Source: [Veolia's response to the provisional findings](#), paragraph 95

²⁴⁰ [Veolia's response to the provisional findings](#), paragraph 37

²⁴¹ [Veolia's response to the provisional findings](#), paragraph 37

²⁴² Suez's response to CMA phase 2 s.109 notice, 21 December 2021, Q70.

²⁴³ Transcript of hearing with Suez, 13 April 2022 p10-12.

²⁴⁴ Suez's response to CMA phase 2 s.109 notice, 21 December 2021, Q70.

- 7.17 Suez submitted that among its current contracts it considered [REDACTED]. Suez submitted that contracts of this type covering all or a large part of a local authority's waste needs are limited in number. Suez submitted that its internal documents refer to [REDACTED] as large contracts.²⁴⁵
- 7.18 Suez also submitted that it found the longer-term, larger-value contracts [REDACTED] attractive. This was in part because these types of contract would last long enough to support infrastructure development, [REDACTED]. Suez submitted that it considered the larger contracts, (eg those operating many services or which involve building infrastructure) to be [REDACTED].²⁴⁶ Further, Suez submitted that contracts that are longer term (10 to 15 years or longer) are complex and require the service provider to have good standing, experience and resilience, and a willingness to manage future changes in policy and waste processing techniques in accordance with the contractual terms.

Evidence from internal documents

Veolia's documents

- 7.19 We have found several Veolia documents to be particularly relevant to factors that may underlie more complex customer requirements. We note that in this section we have focused on documents that identify potential underlying factors. Further documents that we have reviewed also suggest that complexity affects the conditions of competition but are not explicit about the factors that drive such complexity – those are discussed elsewhere in this chapter where we discuss the relationship between complexity and competition (from paragraph 7.59). That said, below are several documents relevant to specific factors that increase complexity:

(a) [REDACTED].

[REDACTED].²⁴⁷ [REDACTED].

(b) [REDACTED].²⁴⁸

(c) [REDACTED].²⁴⁹

²⁴⁵ Suez's response to CMA phase 2 s.109 notice, 21 December 2021, Q70.

²⁴⁶ Transcript of hearing with Suez, 13 April 2022, page 12.

²⁴⁷ Veolia's internal document, SON_CMA-0001353-0001, January 2018.

²⁴⁸ Veolia's internal document, SON_CMA_PRIV-0000322-0001.

²⁴⁹ Veolia internal document, SON_CMA-0001353-0001.

- (d) [REDACTED].²⁵⁰
- (e) [REDACTED].²⁵¹
- (f) [REDACTED].²⁵²
- (g) [REDACTED]253 [REDACTED].²⁵⁴
- (h) [REDACTED].²⁵⁵
- (i) [REDACTED]. The document says that [REDACTED] which is consistent with what we have found in Chapter 5 regarding Veolia seeking to leverage its strong positions across the waste management chain (paragraph 5.92).²⁵⁶
- (j) [REDACTED],²⁵⁷ [REDACTED]. Of the [REDACTED] contracts listed in this document, Veolia classified [REDACTED] as 'complex'. Of those [REDACTED] contracts, we have received further information from the local authorities relating to five contracts. All five of these contracts have an annual value in excess of £12 million. These are relatively large contract values: among all the contracts on which we received information from the Parties and their competitors, a minority of 23% exceeded £12 million in value per annum. In addition, all of these contracts are bundled contracts which cover several waste management services. All [REDACTED] contracts that Veolia identified as 'not complex' had an annual contract value of £5 million or less. Among all the contracts on which we received information from the Parties and their competitors, 63% were below £5 million in value per annum.

7.20 We consider that Veolia's internal documents show that it discusses complex contracts in the context of large, municipal contracts; contracts that are integrated (involve multiple services), and/or that involve working with partnerships. Moreover, the documents indicate that Veolia actively targets more complex contracts as part of its strategy, indicating a relationship

²⁵⁰ Veolia's internal document, VECMA00017774, June 2019.

²⁵¹ Veolia's Internal Document, VECMA00017964.

²⁵² Veolia's internal document, VES-000002188, November 2020.

²⁵³ Prudential borrowing is where a LA accesses loans from the National Loans Fund through the Public Works Loans Board. The LA can then use this loan to pay for capital expenditure that is necessary for the performance of a contract. Veolia submitted that [REDACTED].

²⁵⁴ Veolia's internal document, VES-000000951, undated.

²⁵⁵ Veolia's internal document, SON_CMA-0007418-0001, SCC APC Waste Transfer, Transport, Treatment and Disposal Contract(s) 2024 RFI', May 2021.

²⁵⁶ Veolia's internal document, SON_CMA-0006495-0001, February 2021.

²⁵⁷ Veolia's internal document, SON_CMA-0004786-0001, undated.

between these factors and competitive conditions. The documents also indicate that [✂].

Suez's documents

- 7.21 The documents provided by Suez used the term 'complexity' less frequently than Veolia. However, some documents did discuss certain factors that affected competition, and many of those were the same factors identified in other evidence in this section (including not only Veolia's internal documents, but also evidence from customers and competitors set out below). The Suez documents discussing the impact of these factors on competition are considered in the next section (paragraphs 7.74 and 7.75). As is set out in that section, Suez's internal documents are consistent with its representations on complex contracts – that is, they highlight multiservice contracts and those with an infrastructure element as being complex.

Evidence from customers

- 7.22 Customers provided us with evidence relating to which factors indicate complexity. In this section, we first discuss that evidence. Customers also provided evidence on whether one particular factor that could indicate complexity—namely, whether a contract covers multiple services—was likely to become less relevant over time, as submitted by Veolia (paragraphs 6.26 and 7.13). We consider that evidence at the end of this subsection.

Factors indicating complexity

- 7.23 We asked local authorities to explain whether bundling services into an integrated contract, or the overall value of a contract, affects the number of competitors that are willing to bid for a contract. In their questionnaire responses, local authorities suggested several indicators of complex requirements, including the size of a contract, whether a contract is integrated, or whether it involves a partnership of multiple local authorities.²⁵⁸ These references to 'complexity' made by customers were provided without any prompts to discuss complex contracts.

- 7.24 Examples of these responses include:

²⁵⁸ Veolia submitted that we have asked third parties questions about "integrated" contracts, which is likely to be interpreted by many third parties as referring to PFI/PPP style contracts, which would have usually involved the construction of new infrastructure. We consider that the examples listed below demonstrate that this was not the case.

- (a) Solihull Metropolitan Borough Council (Solihull): 'We have recently procured our waste collection contract – this has been combined with operation of the Household Waste Recycling Centre, Transfer Stations, Street Cleansing, Grounds Maintenance, Forestry and Cemetery services. This is a large, complex integrated contract.'²⁵⁹
- (b) Wigan Council (Wigan): 'Generally, partnering with other local authorities would increase the complexity and risk.'²⁶⁰
- (c) Norfolk County Council as a WDA sometimes partners with other WDAs or WCAs depending on the service type. It said that large costs and complex services for which there is limited competition justify the collaboration whereas low cost and less complex services, for which there is healthy competition, do not require partnering.²⁶¹

7.25 During calls with local authorities, we were told the following:

- (a) GMCA told us that a complex contract is one that covers a full range of facilities over a large geographical area.²⁶²
- (b) The National Association of Waste Disposal Officers (**NAWDO**) sees a complex contract as one that:²⁶³
 - (i) handles multiple waste flows (ie residual, recycles and/or organics);
 - (ii) requires interconnectedness between different treatment solutions; or
 - (iii) involves infrastructure that costs millions and requires long-term contracts.
- (c) Westminster City Council (**Westminster**) told us that any supplier needs to 'evidence its track record around delivering contracts that are as complex and large as the City Council's'.²⁶⁴ Westminster also told us its contract is 'the biggest contract in the UK in terms of scale'.²⁶⁵

²⁵⁹ Response to the CMA's phase 2 questionnaire from Solihull, 19 January 2022, Q2. Solihull's collection contract started in April 2022.

²⁶⁰ Response to the CMA's phase 2 questionnaire from Wigan, 6 April 2022, Q10.

²⁶¹ Response to the CMA's phase 2 questionnaire from Norfolk County Council, 13 February 2022

²⁶² Note of call with GMCA, 21 February 2022.

²⁶³ Note of call with NAWDO, 22 February 2022.

²⁶⁴ Response to the CMA's phase 2 questionnaire from Westminster 13 March 2022, Q4.

²⁶⁵ Note of call with Westminster, 15 February 2022.

- 7.26 NAWDO also told us that the general risk profile of waste contracts is increasing. In particular, legislation is leading to greater segregation and separation of waste streams. Some of the materials which are segregated are sold on commodity markets, eg metals, and the prices of these can be volatile. Some local authorities may not be willing to be exposed to the risk that this presents, and in such cases, only the larger waste management companies will have the ability to manage the risks associated with these contracts. Further, NAWDO stated that changes to the Environment Act may lead to the waste collection process becoming more complicated, eg by having to collect several different types of waste separately.²⁶⁶
- 7.27 As is discussed in paragraphs 8.80 and 8.81, a large number of customers raised concerns about the impact of the Merger on competition, in particular for certain types of contract that attracted a more limited numbers of bidders. This included concerns about competition for large contracts and integrated contracts in particular, as well as contracts involving investment in infrastructure.

Use of multiservice contracts in the future

- 7.28 Veolia submitted that today's local authorities were increasingly considering options to unbundle more of their contracts compared to the past (paragraphs 6.26 and 7.13). In this section, we consider this argument in relation to the use of multiservice contracts in future.
- 7.29 We asked customers (i) whether they bundle²⁶⁷ several services into one multiservice contract (and, if so, which services); (ii) why they choose to bundle (or not bundle) several services into single multiservice contracts; and (iii) whether they would consider unbundling some or all of the services in their current contract when it expires, and, if so, their reasons. Veolia submitted that the term 'bundled' has a spectrum of meanings and many of the contracts we analysed in the provisional findings include [X].²⁶⁸ In the questionnaire, 'bundling' was described as meaning several waste management services together in one contract, and the customer responses

²⁶⁶ Note of call with NAWDO, 22 February 2022.

²⁶⁷ The customer questionnaire was 'Please explain how you typically procure your waste management services. In your response, please explain: a. Whether you bundle several waste management services into one contract (i.e. an integrated contract), or whether services are tendered for separately; b. which waste management services you typically bundle in a single contract; c. why you choose to bundle or not to bundle waste management services; and d. whether you would consider unbundling some or all of the services in your current contract when it expires and, if not, why not.'

²⁶⁸ Veolia's [response to provisional findings](#), paragraph 95.

indicate that this definition was understood and employed appropriately in the responses (see paragraph 7.34 for more detail).

- 7.30 Local authorities' responses suggested that including several waste management services in one multiservice contract can be beneficial in terms of:
- (a) making it easier and more efficient for a customer to manage a few bundled contracts rather than many services separated into lots.²⁶⁹
 - (b) minimising 'interface risk'. That is, where a local authority contracts with more than one supplier to provide services at different points in the waste management supply chain, eg one supplier provides collection services and another disposal services. In this case, the local authority has to manage the interface between the two suppliers.²⁷⁰ Several local authorities raised this with us.²⁷¹ Two local authorities told us that where contracts are unbundled, disputes can arise between different suppliers when issues occur and the local authority has to act as referee.²⁷² We were told that managing these interfaces between suppliers requires resources which can lead to poorer value for money.²⁷³ Local authorities told us that bundling creates a more efficient or 'seamless' service.²⁷⁴ One local authority submitted that splitting services according to facility type (eg sorting vs incineration) may not always be possible as this would require splitting environmental permits, with several contractors operating different facilities in one location, which would require separate drainage and spill containment which cannot be retrospectively installed.²⁷⁵
 - (c) providing better value when services are bundled into a single contract.²⁷⁶ In particular, bundling services may generate economies of scale or scope for the supplier, some of which may be passed on to the customer. For example, one local authority submitted that by bundling

²⁶⁹ Responses to the CMA's phase 2 questionnaire from [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted].

²⁷⁰ Responses to the CMA's phase 2 questionnaire from [redacted], [redacted], [redacted], and [redacted].

²⁷¹ A competitor also raised this issue with us – paragraph 6.29

²⁷² Note of call with [redacted] and note of call [redacted].

²⁷³ Responses to the CMA's phase 2 questionnaire from [redacted] and [redacted].

²⁷⁴ Responses to the CMA's phase 2 questionnaire from [redacted] and [redacted].

²⁷⁵ Response to the CMA's phase 2 questionnaire from [redacted] and note of phase 1 call [redacted].

²⁷⁶ Responses to the CMA's phase 2 questionnaire from [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted].

services, the supplier 'would be able to introduce synergies, and there would be economy of scale, which should keep costs low'.²⁷⁷

- 7.31 Some local authorities²⁷⁸ recognised that unbundling could be beneficial to attract more competition in bidding for contracts, especially from smaller waste management companies whereas bundled contracts attract only the larger providers. However, one local authority said that unbundling services did not generate any additional competition.²⁷⁹
- 7.32 We have heard from 24 local authorities that told us that their current contracts contain multiple services. Looking forward to the next procurement, 10 said that they would not divide these services in smaller lots, 11 said that they would consider letting separate contracts and three did not express a preference and stated this would be considered when their contracts come up for tender. In addition, as is set out in paragraph 7.81, a range of customers submitted that they were concerned about the impact of the Merger on competition, specifically in relation to the reduction in the number of firms able to compete to supply integrated or multiservice contracts. We consider this relevant contextual evidence in that we would not normally expect concerns specifically relating to multiservice contracts if customers found it easy to 'unbundle' those integrated contracts.
- 7.33 Overall, local authorities have told us that how complex their requirements are will be reflected in the size of a contract, whether a contract involves multiple services, or involves partnership of multiple local authorities. The evidence from local authorities also suggests that a substantial proportion of local authorities will continue to procure waste management services through multiservice contracts.
- 7.34 In response to our Provisional Findings, Veolia submitted that the local authorities being asked about their preference for bundling or unbundling is 'highly unscientific because "bundling" could mean anything'.²⁸⁰ However, we asked local authorities whether they 'bundle several waste management services into one contract, or whether services are tendered for separately', which we consider clearly relates to the tendering of multiservice contracts or the integration of multiple services into a single contract. In response to this question, several local authorities explained that they had integrated

²⁷⁷ Response to the CMA's phase 2 questionnaire from [redacted].

²⁷⁸ Examples include [redacted].

²⁷⁹ Response to the CMA's phase 2 questionnaire from [redacted].

²⁸⁰ [Veolia's response to the provisional findings](#), paragraph 45

contracts containing several waste disposal services and several responded that they tender for services in separate lots. Therefore, we are confident that respondents understood what we meant by the term ‘bundling’.

- 7.35 Veolia also submitted that the award of integrated contracts had become materially less common over the period from 2000 to 2020.²⁸¹ We consider that the evidence set out in this section indicates that the prevalence of multiservice or integrated contracts is likely to remain significant in the future, whether or not they are less prevalent than in previous years.
- 7.36 Veolia submitted that the 12 complex municipal collection contracts that we identified in Chapter 8 comprise fewer services on average than its older contracts. However, these contracts were identified as complex for reasons other than the number of services included. Paragraph 8.127 includes feedback from customers which indicates the contracts are complex due to factors such as the size and length of the contracts.

Evidence from competitors

- 7.37 Biffa told us integrated contracts that require the acquisition of land, site surveys, planning issues, environmental permits, can be complex.²⁸²
- 7.38 Urbaser told us waste treatment contracts that involve infrastructure are the most complex. Further, it said that multiservice contracts are complex and complexity also arises from having to coordinate with suppliers and employee unions.²⁸³
- 7.39 Amey told us the long-term nature of some contracts makes it difficult to assess risks over the time period and results in less competition for these contracts.²⁸⁴ In particular, Amey identified several risks associated with long-term contracts including:
- (a) how the technology utilised in the infrastructure constructed will perform over time and whether it will become obsolete;
 - (b) the waste composition and whether that will change over time; and

²⁸¹ [Veolia's response to the provisional findings](#), paragraph 37

²⁸² Note of call with Biffa, 15 February 2022.

²⁸³ Note of call with Urbaser, 11 February 2022.

²⁸⁴ Note of call with Amey, 14 February 2022.

- (c) the fact that the contract can include several elements including construction, engineering, procurement, and planning.
- 7.40 Amey explained that local authorities try and push these risks on to the supplier rather than bear the risks itself. Amey said that collection contracts were generally less complex than those involving infrastructure although collection contracts did also involve some long term risks.
- 7.41 Beauparc told us complexity arises due to the inclusion of several waste management services in single tenders, the overall value of the contract, the duration of the contract, or specific local authority requirements.²⁸⁵ It viewed the historical PFI contracts as being most complex where waste companies were bidding to provide all services to a large local authority.
- 7.42 In relation to these historical PFI contracts, Beauparc noted that at the end of the contract an MRF will likely need to be replaced or require significant capital investment to make it fit for purpose where the asset has deteriorated or technological and legislative advancements render it out of date. However, there is some uncertainty surrounding the financing and contractual models that will be required for replacing or upgrading such MRFs.²⁸⁶
- 7.43 Overall, there was consensus among competitors that infrastructure-related contracts were more likely to be complex than other contracts and that multiservice contracts were complex. Some competitors thought long term contracts were more likely to be complex (at least in assessing the risks).

Our assessment

- 7.44 Evidence from the Parties' internal documents shows that Veolia targets contracts that are more complex. The Parties' documents describe opportunities as more complex when they involve partnerships, when there are 'integrated' or multiservice contracts, when contracts are large in value, or where there is a need for innovation. Some internal documents suggest that these types of complexity affect competitive conditions, [REDACTED]. Veolia recognised that its [REDACTED] allow it to compete for large and complex contracts. Veolia has discussed the complexity of contracts alongside the [REDACTED].

²⁸⁵ Note of call with Beauparc, 10 February 2022.

²⁸⁶ Note of call with Beauparc, 17 June 2022

- 7.45 Responses from customers were consistent with these documents in that they suggested that the same or similar factors increased complexity: integration of services in multiservice contracts, the size of contracts, contracts' risk profiles and the involvement of partnerships.
- 7.46 Responses from competitors identified a number of factors that were common to customer views and the Parties' internal documents, including contracts involving infrastructure; multiservice contracts; contracts involving significant risks (including arising from long contract duration) and overall contract value.
- 7.47 To summarise with respect to each factor:
- (a) **Multiservice contracts.** We found that there was widespread consensus across the Parties, customers and competitors that multiservice contracts are more likely to be complex than other contracts. Several customers raised concerns about the Merger, specifically relating to the limited number of suppliers competing for 'integrated' contracts, suggesting that integrated contracts are more difficult to supply. While Veolia submitted that multiservice contracts were likely to become less common in the future, the evidence from local authorities themselves indicated that a very substantial proportion of local authorities would not consider splitting their multiservice contracts the next time those services come up for tender.
 - (b) **Infrastructure.** The Parties and their competitors told us that infrastructure-related contracts were more likely to be complex than other contracts. Veolia submitted that these are likely to become less common in the future given the maturity of the UK's waste infrastructure network. However, we consider that the evidence from some suppliers, including Suez, is that infrastructure-related contracts involving significant capital expenditure are likely to continue—for example, in refurbishing and/or expanding existing infrastructure. Even if it may be at a more limited scale, this does not rule out the possibility that infrastructure related requirements would remain a relevant driver of complexity. Further, we have found evidence from customers and competitors in Chapters 9 and 10 that the O&M of MRFs and ERFs are complex (paragraphs 9.28, 10.19, 10.125).
 - (c) **Partnerships.** Local authorities told us that contracts involving partnerships between multiple local authorities were complex and this was corroborated to an extent by Veolia's internal documents.

(d) **Contract size or value.** Evidence from third parties and internal documents indicated that contract value was another useful indicator of complexity. Third parties and documents both mention contract size and complexity together, in a manner that we interpret as suggesting an association between them. In some cases, the association between them is explicit: for example, Veolia specifically identifies large contracts as an example of [REDACTED]. Veolia's documents have discussed size and complexity together when discussing [REDACTED]. Several customers also discuss size and complexity together in a manner that suggests they are related – for example, discussing limited competition for 'large and complex' contracts.

7.48 Aside from evidence from customers and competitors, we also consider it reasonable to expect a link between the size of a contract and its complexity. The other factors identified here as indicators of complexity are likely, on average, to be correlated with larger contract sizes: contracts covering more services, contracts involving the construction of expensive infrastructure, contracts of lengthy duration, and contracts spanning large geographical areas (including because they relate to partnerships between multiple local authorities). We therefore consider it reasonable to treat contract size or value as an indicator or proxy for complexity.

7.49 Some suppliers, including Suez, suggested that the overall risk profile of the contract affects whether they will bid for the contract. We consider that the risk profile might dissuade some suppliers from bidding for the contract, and therefore have an impact on competition. This is in addition to what we have found in Chapter 5 which is that the costs of bidding dissuade some suppliers from bidding in some tenders (paragraphs 5.50 to 5.52).

7.50 [REDACTED].²⁸⁷

7.51 Likewise, [REDACTED] told us that, regarding long-term contracts, 'it is difficult to adequately value all the risks you could be exposed to'. It elaborated and said to us that there are factors associated to technology, 'how technology is going to perform, how quickly is that technology going to obsolete' and factors associated to the waste itself, 'what is going to be the composition of waste for a long duration of time'.²⁸⁸

²⁸⁷ Suez's response to CMA phase 2 s.109 notice, 16 February 2022

²⁸⁸ Call with [REDACTED]

- 7.52 NAWDO told us that local authorities tend to look to suppliers to absorb risk associated with meeting recycling and landfill targets, turnaround times at transfer stations and to accurately and correctly collect from every house.²⁸⁹
- 7.53 Therefore, the evidence indicates that those suppliers who are best placed to manage the risks in the waste management supply chain are those who have a strong financial standing, considerable operational capabilities, a wide customer base and a broad portfolio of activities (to better spread risk) and scale. Some of these factors are discussed in Chapter 5 where we have shown that Veolia and Suez are two of the more strongly positioned suppliers in the UK.
- 7.54 In some of our analysis we have considered risk as a factor of competition. In Chapter 9 (on the O&M of MRFs) we have considered the ability of suppliers to manage the risk of fluctuations in the commodity prices of recyclables. Different suppliers have different abilities to manage that risk and different risk appetites, which we have considered.
- 7.55 Similarly, in Chapter 10 we have found that the risk of taking on the O&M of an ERF that another supplier has operated affects conditions of competition. We have also considered risk in the context of the O&M of ERFs regarding the disposal options suppliers have if the ERF were to be down for a period.
- 7.56 We consider that the evidence set out in this section suggests that there are several different factors that may give rise to complexity. We consider that many of these factors typically cannot be easily categorised (for example, there is no obvious cut-off point at which a contract changes from being 'small' to being 'large' or a threshold number of services at which a contract changes from having 'few' services to having 'many' services).
- 7.57 We considered Veolia's submission that there was [X] of a 'complex contract' in the waste management sector.²⁹⁰ We acknowledge that the sector has not adopted any such single definition. However, given there are several drivers of complexity, and there is inevitably no obvious cut-off point at which a contract could be expected to pass from being considered 'non-complex' to being 'complex', we consider that it would be unsurprising for no consistent definition of complexity to have emerged. However, the evidence set out in this section also suggests that industry participants are sufficiently able to recognise and assess the complexity of opportunities in the market to

²⁸⁹ Call with NAWDO, 22 February 2022

²⁹⁰ [Veolia's response to the provisional findings](#), paragraph 25

be able to react to that complexity, including in terms of influencing their decisions on where to focus their efforts and whether or not to bid.

- 7.58 We considered Veolia's submission, in response to the Provisional Findings, that the list of factors identified by us is so broad as to capture almost any contract that one might think of. The purpose of this section is to set out the evidence on drivers of complexity. The evidence for some of these factors (paragraph 7.47) is stronger than for others, but it would appear all of these factors potentially contribute to complexity. However, we have not used these factors to classify any contract as complex. Our approach to assessing the impact of complexity on competition has been set out in the following sections.

Competition and complex customer requirements

- 7.59 In this subsection, we consider evidence on whether complexity of customers' requirements affect the conditions of competition. The evidence in this section is based on:

- (a) the Parties' submissions;
- (b) the Parties' internal documents; and
- (c) third party views.

Parties' submissions

- 7.60 Veolia submitted that there was effective competition for all municipal contracts, irrespective of complexity. Veolia also submitted that there were at least three bidders in [X] of the complex municipal contracts for which Veolia had bid in the past five years,²⁹¹ and that there were at least four bidders in [X] of the complex contracts for which Veolia had bid in the past five years.²⁹²
- 7.61 Veolia submitted that even in the 'most complex' cases, where a local authority had decided to tender a large multifaceted contract, there were at least six other significant rivals that can and do compete, as well as multiple smaller suppliers. These included Biffa, Viridor, FCC, Serco, Urbaser, and Beuparc. Veolia submitted that each of these suppliers as well as new

²⁹¹ Veolia defined complex waste management contracts as being those which include at a minimum the provision of treatment and disposal services for two or more different waste streams.

²⁹² Veolia's response to CMA Issues Paper, 17 November 2021.

entrants Countrystyle and Hills Waste, had an extensive track record of bidding for complex waste management contracts. Veolia submitted examples of individual contracts bid for or won by Biffa, FCC, Viridor, Urbaser, and Serco in support of this claim.²⁹³ Suez also identified competitors for contracts that display one or more of the characteristics we identified as potentially complex. It identified [REDACTED].²⁹⁴

- 7.62 **Subcontracting.** Veolia also submitted that suppliers of complex contracts can and do subcontract elements of contracts that they are not able to perform in-house. or enter into partnerships both to bid for and to deliver such contracts. It submitted that subcontracting is common across the waste management sector, even for companies that have large networks of processing facilities.²⁹⁵ Veolia submitted that subcontracting does not make bids higher (ie more expensive) since it [REDACTED].²⁹⁶ Veolia also submitted that any risks that might arise from subcontracting are mitigated by the fact that there are many strong suppliers to choose from, including in specialist areas.²⁹⁷ Veolia provided some examples of subcontracting arrangements for certain complex contracts.
- 7.63 Veolia provided examples of (i) its subcontracting arrangements with other suppliers when [REDACTED]; and (ii) competitors' subcontracting arrangements ([REDACTED]). In some instances, instead of subcontracting, suppliers can enter into partnerships to offer an overall package, although we note that Veolia only cited examples of competitors entering into such arrangements, not itself.
- 7.64 In the analysis below, we have analysed the Parties and their competitors' successes when competing for complex contracts. To the extent that any competitors compete through subcontracting, this will be observed through the third party responses (in particular the data that the Parties and their competitors have provided on their current municipal waste management contracts), the shares of supply, and the internal documents.
- 7.65 Veolia submitted that all suppliers for complex waste contracts have sound financial standing, including access to significant funding and the ability to provide financial guarantees to local authorities.²⁹⁸

²⁹³ [Veolia's response to the provisional findings](#), paragraph 39

²⁹⁴ Suez's response to CMA phase 2 s.109 notice, 21 December 2021, Q70.

²⁹⁵ Veolia's response to CMA Issues Paper, 17 November 2021.

²⁹⁶ [Veolia's response to the provisional findings](#), paragraph 43

²⁹⁷ [Veolia's response to the provisional findings](#), paragraph 44

²⁹⁸ Veolia's response to CMA Issues Paper, 17 November 2021.

Evidence from internal documents

7.66 In paragraphs 7.19 to 7.21 of this chapter, we considered evidence from internal documents relevant to factors that give rise to greater complexity. Many of those documents also refer to an impact of complexity on the conditions of competition. We have taken those documents into account here, in addition the additional documents set out below.

Veolia's documents

7.67 Veolia's internal documents demonstrate that it actively measures its success in respect of contracts that it considers to be relatively complex. [REDACTED],²⁹⁹ [REDACTED]

(q) [REDACTED]

(r) [REDACTED]

(s) [REDACTED]

(t) [REDACTED]³⁰⁰

7.68 In response to the Provisional Findings, Veolia submitted that it was 'not true' that it actively measures its success rate in respect of contracts that it considers to be complex. [REDACTED]. Veolia's submission appears to be contradicted by this document, as set out in paragraph 7.69(b).

7.69 Other internal documents provided by Veolia also suggest that the complexity of a contract may have an effect on the relevant competitor landscape:

(a) [REDACTED]³⁰¹

(b) [REDACTED]:

(i) [REDACTED].³⁰² [REDACTED].³⁰³

(ii) [REDACTED].³⁰⁴

²⁹⁹ Veolia's internal document VECMA00017774

³⁰⁰ Veolia's response to CMA phase 2 s.109 notice, 16 February 2022, page 8.

³⁰¹ Veolia's internal document, SON_CMA-0000933-0001, Strategy Webinar.

³⁰² Veolia's internal document, SON_CMA_PRIV-0000318-0001, VE Investment Committee.

³⁰³ Suez's internal document, VES-000012305, Suez R&R UK Public Sector Pipeline and strategy.

³⁰⁴ Veolia's internal document, SON_CMA_PRIV-0000321-0001, Internal Memo.

(iii) [REDACTED] The memo says that [REDACTED].³⁰⁵

(c) [REDACTED].³⁰⁶

7.70 Veolia submitted that [REDACTED].³⁰⁷ We note that while several of the identified documents relate to municipal collection services, the documents set out here and in paragraph 7.19 that focus on municipal contracts in many cases discuss municipal collection in the context of multiservice contracts or contracts involving integration with other infrastructure.

7.71 Veolia submitted that the documents identified in the Provisional Findings do not suggest that Veolia places any special emphasis on complexity. Rather, Veolia submitted that these documents show that [REDACTED].³⁰⁸ In our view, the documents set out in paragraphs 7.68 to 7.70 and 7.19 clearly suggest that Veolia actively seeks out more complex contracts as part of its strategy. We consider that the observation made by Veolia that factors other than complexity are relevant to Veolia's strategy or competitiveness does not imply that complexity is unimportant or that it has a limited effect on competition.

7.72 In response to the Provisional Findings, Veolia submitted that the documents referred to showed [REDACTED].³⁰⁹ It is unclear to us how the observation that a term is used informally would affect the conclusions we have drawn from Veolia's internal documents.

7.73 Veolia submitted that we relied on just two internal documents in relation to [REDACTED] to support our conclusion that Suez would be one of the only other competitors that is able to compete for 'complex' contracts. It submitted that the evidential weight of these two documents was low: they were two documents out of the many thousands provided to the CMA and were now outdated, being from [REDACTED].³¹⁰

³⁰⁵ Veolia's internal document, SON_CMA_PRIV-0000322-0001.

³⁰⁶ Veolia's internal document, VECMA00017774.

³⁰⁷ [Veolia's response to the provisional findings](#), paragraph 62

³⁰⁸ [Veolia's response to the provisional findings](#), paragraph 62

³⁰⁹ [Veolia's response to the provisional findings](#), paragraph 62

³¹⁰ [Veolia's response to the provisional findings](#), paragraph 230. In response we note that we have not attempted to use every document that might be relevant to this issue. Moreover, given Veolia's large scale and breadth of services it is not surprising that many of its internal documents discuss other issues.

Suez's documents

- 7.74 Internal documents provided by Suez suggest that the complexity of a contract—or factors associated with complexity—may have an effect on the relevant competitor landscape:
- (a) A Suez document states that ‘complex longer term contractual arrangements tend to have a relatively high bar to entry (challenging pre-qualification criteria often based on previous experience and financial standing)’.³¹¹
 - (b) According to another Suez internal document of February 2021, it is advantageous for Suez to be present in all forms of treatment ‘[REDACTED]’.³¹²
 - (c) A Suez internal document of July 2020 sets out updates on developments in certain public sector contracts. Slide 6 of the document notes that there is a ‘recent trend of larger authorities tendering integrated without lots e.g. [REDACTED]’. The document also sets out the rationale for a [REDACTED] street cleansing contract, noting that this contract may assist Suez to ‘qualify for future opportunities’, giving examples of ‘integrated’ contract opportunities with [REDACTED] and [REDACTED] which will require bidders to have street cleansing experience.³¹³
- 7.75 Suez’s internal documents are consistent with its representations on complex contracts – that is, they highlight multiservice contracts and those with an infrastructure element as being complex and risky.

Conclusion on internal documents

- 7.76 The evidence from the Parties’ internal documents indicates that complexity of customer requirements is a factor that affects competitive conditions. Veolia’s documents indicate that it actively targets complex contracts and, for municipal collection contracts, achieves a better success rate competing for complex contracts than it does when it competes for other, simpler contracts. This is consistent with observations made in internal documents that [REDACTED] that we identified in paragraph 7.47, which are based on the views submitted by customers and suppliers.

³¹¹ Suez’s internal document, CMA-SUEZ-00005865.

³¹² Suez’s internal document, VES-000011853, R&R UK.

³¹³ Suez’s internal document, CMA-SUEZ-00004519 / Document 294.

7.77 In the next subsection, we consider third parties' views that are relevant to the relationship between the complexity of customers' requirements and competitive conditions.

Evidence from customers

7.78 In this section, we set out the views of customers that relate to the effect of complexity on competitive conditions.

7.79 We asked local authority customers to list the suppliers they would consider to be credible if they were to re-tender their current waste management contracts in the near future. In response, three local authorities indicated that their requirements were complex and, in explaining the credibility of the Parties, referred to their ability to deliver complex contracts. In particular:

- (a) Westminster: 'Veolia have a strong record around delivering contracts that are as large and complex as the City Council's'.³¹⁴
- (b) GMCA: 'They [Veolia and Suez] are the two companies with the experience and competence to deliver complex and necessarily integrated contracts'.³¹⁵
- (c) Sheffield City Council: Suez have a 'known track record across integrated contract delivery'.³¹⁶

7.80 In addition, other local authorities that responded to our questionnaire suggested, in response to different questions, that few providers are able to bid for multiservice contracts or contracts with greater complexity. In particular:

- (a) [X]: 'we believe that for residual waste disposal contracts, complex waste contracts (e.g. integrated contracts) and those contracts involving large capital expenditure Suez and Veolia are 2 of a very small number of bidders and in our own experience the 2 strongest bidders. Removing one of these would reduce competition'.³¹⁷
- (b) [X]: 'The market for an integrated waste treatment contract is currently very limited. There are currently specialists for delivery of an O&M contract for operation of an EfW/ERF, but the market narrows

³¹⁴ Response to the CMA's phase 2 questionnaire from Westminster.

³¹⁵ Response to the CMA's phase 2 questionnaire from GMCA.

³¹⁶ Response to the CMA's phase 2 questionnaire from Sheffield.

³¹⁷ Response to the CMA's phase 2 questionnaire from [X].

significantly for operation of further waste treatment facilities whereby operations and management of waste flows can be quite complex as the national strategy pushes local authorities towards waste minimisation and maximising recycling at higher cost'.³¹⁸

(c) [REDACTED].³¹⁹

7.81 We received concerns about the Merger from 31 local authorities. Of these, nine specifically raised concerns because their particular requirements (which we note are broadly consistent with possible indicators of complexity that we identify in paragraph 7.47) led to a reduction in the pool of potential suppliers.³²⁰ These concerns included the following.

(a) GMCA: '[The Merger] will significantly reduce the market for large, integrated waste disposal contracts... In effect there would be only one viable bidder which would be Veolia for large integrated contracts'.³²¹ GMCA procured its waste management services in 2019. It bundled services into three lots: Lot 1 was the largest lot and comprised the operation of the main waste management sites (such as transfer loading stations, HWRCs, railheads, mechanical treatment facilities, ERF, MRF); Lot 2 was a standalone lot for 11 HWRCs; and Lot 3 was for construction of biowaste treatment facilities on existing sites. GMCA stated that the issue with breaking contracts up into smaller lots would be the increased interface risk between the additional contractors.³²²

7.82 GMCA mentioned that the size/scale of its contract requires a contractor with good financial standing.³²³ It also mentioned that 'given tonnage of waste, complexity of service, geographical area covered', a contractor with a proven track record of delivering quality services on a similar sized contract was essential. GMCA also mentioned that the value of its contracts are significant

³¹⁸ Response to the CMA's phase 2 questionnaire from [REDACTED].

³¹⁹ Response to the CMA's phase 2 questionnaire from [REDACTED].

³²⁰ Local authorities were provided with yes and no boxes along with the question: *Do you have any concerns about the impact on competition of this acquisition? Please explain your answer.* Where we have not received an updated response at Phase 2, we have used the Phase 1 response, where local authorities were provided with yes/no box with the question: *Please indicate whether you have any concerns about the effects of this merger on competition. Please explain the reason for your answer.*

³²¹ Response to the CMA's phase 2 questionnaire from GMCA.

³²² Response to the CMA's phase 2 questionnaire from GMCA. Lot 1 had a total contract value of £315 million (spanning 2019-2026). Lot 2 had a total contract value of £105 million (spanning 2019-2026) and Lot 3 had a total contract value of £36 million (spanning 2022-2026).

³²³ The contract was for at least 1.1 million tonnes per annum of waste.

which means ‘there are limited market players with the financial standing to take on a contract of this scale’.³²⁴

7.83 This suggests that GMCA considers its requirements to be relatively more complex and that this limits the suppliers likely to be able to satisfy it. GMCA listed only Veolia and Suez as credible suppliers for its first and largest lot, while it listed additional suppliers for HWRCs and composting services.³²⁵

- (a) Kensington & Chelsea: ‘We are very concerned about this acquisition. The recent tender process highlighted the lack of genuine competition in this market, with only SUEZ and Veolia submitting a bid’.³²⁶
- (b) Devon County Council submitted that there was already only a handful of contractors that had the capability and capacity to deliver large scale waste contracts and that the Merger would make that pool even smaller.³²⁷
- (c) Hampshire County Council (Hampshire) submitted that the Merger would lead to fewer major players in the market and ultimately lead to a reduction in competition particularly for large integrated waste management contracts.³²⁸
- (d) [X]: ‘The market for an integrated waste treatment contract is currently very limited’.³²⁹
- (e) As noted above, [X] submitted that for residual waste disposal contracts, complex waste contracts (eg integrated contracts) and those contracts involving large capital expenditure, Suez and Veolia were two of a very small number of bidders and in their experience the two strongest bidders. Removing one of these would reduce competition.³³⁰
- (f) Essex County Council (Essex): ‘Should we wish to procure an integrated (bundled) contract in the future the market is already very limited due to the size of our requirement. Removing Suez from the marketplace further restricts the competition and risks a monopoly situation. Veolia and Suez are both active bidders for residual disposal

³²⁴ Response to the CMA’s phase 2 questionnaire from GMCA.

³²⁵ Response to the CMA’s phase 2 questionnaire from GMCA.

³²⁶ Response to the CMA’s phase 2 questionnaire from Kensington and Chelsea.

³²⁷ Response to the CMA’s phase 2 questionnaire from Devon County Council.

³²⁸ Response to the CMA’s phase 2 questionnaire from Hampshire.

³²⁹ Response to the CMA’s phase 2 questionnaire from [X].

³³⁰ Response to the CMA’s phase 2 questionnaire from [X].

contracts, again due to the size of our requirement this removes a major competitor in the markets and could result in increased costs'.³³¹

(g) West London Waste Authority: 'To our knowledge only Suez and Veolia are providing fully integrated Local Authority services eg collection of food waste, green waste, dry recycling, residual waste, HRRC management, transfer stations and disposal of food waste, green waste, dry recycling and residual waste'.³³²

(h) Brighton and East Sussex: 'When we retender for services in the future, we may find that there is even less competition in a market where historically there has not been many suppliers, especially for larger contracts where investment in infrastructure is required'.³³³

7.84 Local authorities said in calls that Veolia and Suez are the key suppliers able to offer services across the waste management supply chain and take on large scale contracts. For instance, Essex said 'Certainly when you start looking at the players in the market that are able to handle the full range of waste processes, whether that be collection, operating recycling centres, residual waste treatment, biowaste treatment, Suez and Veolia are probably the key ones that sit within that space. The others operate within parts of the waste management field. When we start talking about the likes of [X], they are operating in segments of the waste management field rather than the full range of collection, treatment and disposal'.³³⁴

7.85 Similarly, GMCA mentioned that it was looking for a supplier that had the 'knowledge and experience of operating on that sort of scale' and 'in reality, it only comes down to Veolia and Suez that could do it'. While GMCA received interest in its contract from Biffa and FCC in its most recent (2019) procurement exercise, both subsequently withdrew from the process, 'largely on the grounds of capacity to bid and capacity to take on contracts of that size'.³³⁵

Evidence from competitors

7.86 We asked competitors to list the suppliers which they would consider to be their strongest competitors for local authority contracts that include several

³³¹ Response to the CMA's phase 2 questionnaire from Essex.

³³² Response to the CMA's phase 2 questionnaire from West London Waste Authority.

³³³ Response to the CMA's phase 2 questionnaire from Brighton and East Sussex.

³³⁴ Note of call with Essex, 10 Feb 2022, p19.

³³⁵ Note of call with GMCA, 21 February 2022.

services, across the waste management supply chain.³³⁶ Six competitors responded to this question.³³⁷ These are six of the largest players in the waste management sector.

- 7.87 While these views are not explicitly about complex contracts, the evidence set out in paragraphs 7.23 to 7.36 shows that multiservice or 'integrated' contracts represent an important component of complexity. Moreover, several views provided by competitors either refer to complexity unprompted, or refer to other characteristics for which there is also evidence of a relationship with complexity, such as contract value. We therefore consider the evidence set out in this section to be relevant to the assessment of a relationship between complexity and competition.

Table 7.13: Competitor views on credible suppliers for multiservice local authority contracts

<i>Supplier</i>	<i>Number of mentions</i>	<i>Average rating of suppliers</i>
Veolia	6	5.0
Suez	6	4.3
FCC	6	3.3
Biffa	4	2.8
Viridor	3	2.0
Serco	2	1.2
Urbaser	2	1.2

Source: CMA analysis of responses to CMA competitor questionnaire

Note: Non-mentions are treated as a score of zero. Self-ratings by competitors are excluded.

- 7.88 The results show that Veolia and Suez are considered to be the two strongest suppliers for multiservice contracts by competitors followed by FCC, Biffa, and Viridor. Veolia, Suez and FCC were identified by competitors more frequently than any of the other suppliers. Serco and Urbaser received

³³⁶ Question wording: 'Using the table below, please list the suppliers you would consider to be your strongest competitors for local authority's integrated contracts (ie contracts that include several services) across the waste management supply chain. In doing so, please: (a) Rank the suppliers in order of overall competitive strength (including yourself); (b) Indicate the strength of each competitor on a scale from one to five (where one is not very strong and five is very strong); and (c) Provide an explanation for your rating and how the competitors differ from each other.'

³³⁷ Amey, Biffa, Beuparc, Serco, Urbaser, Viridor.

few mentions and low scores of 1.2. Six other competitors received even lower ratings.³³⁸

7.89 Veolia was seen as a strong supplier in the area of multiservice contracts due to its large market share, its track record, and the scale and breadth of its services. For example:

- (a) Urbaser said that Veolia '[h]as the largest number of local authority waste collection (excluding recycling collection, street cleansing etc.) contracts – circa 32. Has significant presence throughout the UK providing all waste services'³³⁹
- (b) Amey said Veolia has a 'Large market share with strong track record and operational knowledge, strong financial covenant';³⁴⁰
- (c) [X] said that Veolia has a 'Significant range of municipal contracts and economies of scale allied to waste treatment infrastructure'.³⁴¹

7.90 Suez is similarly seen as strong by competitors. Suez was seen as strong for similar reasons to Veolia, namely because Suez had a large market share and track record, and had scale and breadth of capabilities. For example:

- (a) Amey said that Suez has a 'Large market share with strong track record and operational knowledge, strong financial covenant';³⁴²
- (b) Biffa said that Suez 'Operates a PFI in Manchester that sees it provide EfWs, HWRCs and MRFs. Scale and breadth of service capabilities to compete for bundled operations';³⁴³
- (c) Urbaser said that Suez 'Has a large number of contracts across the UK, including local authority waste collection, C&I waste, and waste treatment';³⁴⁴ and
- (d) [X] said that Suez has a 'Successful commercial and disposal portfolio, as well as established municipal business'.³⁴⁵

³³⁸ These competitors were Amey, Beauparc, Cory, Covanta, Enfinium and Renewi.

³³⁹ Response to the CMA's phase 2 questionnaire, from Urbaser.

³⁴⁰ Response to the CMA's phase 2 questionnaire, from Amey.

³⁴¹ Response to the CMA's phase 2 questionnaire, from [X].

³⁴² Response to the CMA's phase 2 questionnaire, from Amey.

³⁴³ Response to the CMA's phase 2 questionnaire, from Biffa.

³⁴⁴ Response to the CMA's phase 2 questionnaire, from Urbaser.

³⁴⁵ Response to the CMA's phase 2 questionnaire, from [X].

- 7.91 FCC was listed by all six respondents, however it is rated as being weaker than Veolia and Suez. The feedback from competitors provides no indication as to why FCC is considered to be weaker than the Parties. However, competitors say FCC is strong in disposal,³⁴⁶ has a large number of contracts across the UK,³⁴⁷ has a large market share, and a strong track record³⁴⁸.
- 7.92 Biffa was listed by four of the six respondents although it was rated as being significantly weaker than the Parties. Viridor said Biffa is less focussed on integrated contracts but has a strong collection business.³⁴⁹ Biffa confirmed that it had not bid for an integrated contract since 2010.³⁵⁰ Urbaser said that Biffa has the second largest number of local authority contracts and has a significant presence across the UK.³⁵¹ Finally, [X] said that Biffa has a large commercial, disposal, and municipal portfolio.³⁵²
- 7.93 Viridor was also listed by three of the six respondents, but was rated as being significantly weaker than the Parties. Viridor told us that it is now focussed on ERF after selling its collection business and MRFs to Biffa.³⁵³ Biffa noted that Viridor has recently lost an integrated contract with the GMCA.³⁵⁴
- 7.94 Urbaser was listed by only two respondents and rated as being significantly weaker than the Parties. Biffa said Urbaser is an operator of an existing PFI and has the breadth and scale to offer integrated services.³⁵⁵ Urbaser said it has a large number of contracts across the UK.³⁵⁶ Finally, [X] said Urbaser has a growing municipal portfolio and access to disposal infrastructure.³⁵⁷
- 7.95 Along with evidence from questionnaires, we also held calls with several competitors. Biffa told us that it sees itself as credible when bidding for PFI contracts alongside Veolia and Suez.³⁵⁸ However, Biffa also noted its lack of capability in EfW incineration, so it would need to partner with a firm [X] if it

³⁴⁶ Response to the CMA's phase 2 questionnaire, from [X].

³⁴⁷ Response to the CMA's phase 2 questionnaire, from [X].

³⁴⁸ Response to the CMA's phase 2 questionnaire, from [X].

³⁴⁹ Response to the CMA's phase 2 questionnaire, from Viridor.

³⁵⁰ Note of call with Biffa, 15 Feb 2022, p9.

³⁵¹ Response to the CMA's phase 2 questionnaire, from Urbaser.

³⁵² Response to the CMA's phase 2 questionnaire, from [X].

³⁵³ Response to the CMA's phase 2 questionnaire, from Viridor.

³⁵⁴ Response to the CMA's phase 2 questionnaire, from Biffa.

³⁵⁵ Response to the CMA's phase 2 questionnaire, from Biffa.

³⁵⁶ Response to the CMA's phase 2 questionnaire, from Urbaser.

³⁵⁷ Response to the CMA's phase 2 questionnaire, from [X].

³⁵⁸ Note of call with Biffa, 15 February 2022.

bid for a contract with this service. Biffa also believes that FCC would be able to bid for integrated contracts.

- 7.96 FCC also considers that Veolia, Suez, Biffa, and FCC would be capable of bidding for complex contracts.³⁵⁹ FCC told us that Viridor used to be able to bid for these contracts, but it has subsequently restricted its business to EfW incineration and plastic reprocessing. FCC also said it sometimes sees bids from Renewi and Urbaser.
- 7.97 [X] told us that it has not bid for a major infrastructure project (which it considers complex) since 2011,³⁶⁰ except for the recent [X] for which it was unsuccessful.³⁶¹
- 7.98 [X] told us that for large integrated contracts, the main players are Veolia and Suez.³⁶² [X]. It also said that FCC bid for some of these contracts and that Biffa would not necessarily bid for an integrated contract because it does not have the infrastructure, but might be part of the solution.
- 7.99 [X] indicated that it is not likely to tender for a contract where suppliers like Suez and Veolia have local assets.³⁶³
- 7.100 Overall, the competitor views on suppliers for multiservice contracts suggest that Veolia is a very strong supplier of multiservice contracts based upon its strength scores, followed relatively closely by Suez. The other competitors mentioned are FCC, Biffa, Viridor and Urbaser but, in general, they are not seen to be as strong as Veolia and/or Suez. Among these, [X] will not be bidding for integrated contracts going forward. [X] has not bid for a major infrastructure project (which it considers complex) since 2011, with the exception of the [X], where it was unsuccessful. None of the competitors considered Beuparc to be a strong competitor.

Shares of supply

- 7.101 In this subsection, we analyse competitive conditions for complex contracts by examining the shares of supply among a subset of contracts with characteristics that are associated with greater complexity.

³⁵⁹ Note of call with FCC, 25 February 2022.

³⁶⁰ Note of call [X].

³⁶¹ [X].

³⁶² Note of call [X].

³⁶³ Note of call [X].

- 7.102 In light of the availability of data on contract value, and evidence of a link between contract value and other factors that have been identified as likely to drive complexity (paragraph 7.48), we have calculated and analysed shares of supply of the Parties among contracts with an annual value of at least £10 million. Contracts with an annual value in excess of £10 million account for the largest 20-25% of contracts by volume.
- 7.103 In response to the Provisional Findings, Veolia submitted that the use of a value threshold directly contradicts our statement in the Provisional Findings that, since contractual complexity is varied, it would be misleading to attempt to introduce any threshold. It submitted that there was no basis for ‘creating a market that consists solely of the highest value contracts’.
- 7.104 We consider that complexity is varied and it would be misleading to introduce a threshold that would seek to define each contract as ‘complex’ or ‘non-complex’. However, this does not imply that the analysis of contracts with characteristics consistent with greater complexity is not informative. Rather, we consider that such an analysis is informative of the relationship between complexity (or characteristics associated with complexity) and competitive conditions, including for contracts on either side of that threshold. An analysis of any subset of contracts towards one end of the spectrum (including an analysis that considers shares of supply) does not imply that there is a need to define a separate segment or market. By their nature, market shares require bright line judgements to be drawn, which the other pieces of evidence do not. Market shares are only one piece of evidence which should be considered alongside all the other evidence. Veolia submitted that annual contract value is a poor proxy for complexity as it ignores all of the factors that the CMA believes indicate complexity.³⁶⁴ While we are mindful that contract value is not the only criterion identified as driving complexity in our assessment, we believe there is a reasonable basis for considering value as an informative proxy for the purpose of collating market shares. In particular:
- (a) As discussed in paragraph 7.47, there is evidence that large contracts contribute to complexity, and in other evidence there is also an association between a contract’s size and its complexity.
 - (b) In addition, we consider it reasonable to expect that other factors associated with complexity—including factors for which there was

³⁶⁴ Veolia’s response to working paper on services for complex municipal contracts, page 30.

relatively strong evidence of their impact on complexity, such as contracts involving the construction of infrastructure or multiservice contracts—would result in larger contract sizes.

- (c) We have interpreted this evidence alongside other evidence that takes account of other factors that affect complexity.
- (d) In that context, other evidence set out in the remainder of this chapter suggests that the Parties are likely to be closer competitors (because of their willingness and ability to compete for customers that have complex requirements) and that suppliers without the same capabilities to compete for complex requirements are likely to be weaker constraints. As such, to the extent these shares of supply fail to take into account other factors of complexity, they may understate the competitive position of the Parties in relation to complex contracts generally.
- (e) Annual contract value is objective and measurable, unlike the other factors which the evidence indicates influence complexity. Since contract value is related to, and a proxy for, the other factors which influence complexity, we believe the shares of supply may be a useful indicator to inform our assessment of the competitive conditions.

7.105 We requested data from the Parties and their competitors on the municipal contracts that they currently hold in the UK, including information on the contract value.³⁶⁵ We constructed a dataset of 292 contracts, of which 67 had an annual contract value greater than £10 million.

7.106 We have excluded Teckals and in-house supply although these are taken into account in our competitive assessments in Chapter 8. Although our indicative shares of supply are based on contracts with an annual value of at least £10 million we are also mindful that an important indicator of how complex customer requirements are is the presence of multiservice contracts. This would rule out many contracts involving Teckals and self-supply.

7.107 The subset of contracts with an annual value in excess of £10 million comprises 63 contracts. Within this subset, 22 contracts started since 2017.

³⁶⁵ We note that all third parties and the Parties were asked for information on the contract value and this is the metric used as the basis of the shares of supply based on value. We consider that the data from the various suppliers is reported on the same basis.

We considered that more recent subset separately.³⁶⁶ The shares of supply for all contracts are set out in Table 7.2, while the shares of supply for contracts starting since 2017 are set out in Table 7.3.³⁶⁷

Table 7.14: Share of supply for contracts with an annual value greater than £10 million

<i>Supplier</i>	<i>Number of contracts won</i>	<i>Share of supply (based on number of contracts won)</i>	<i>Annual value of contracts won (£m)</i>	<i>Share of supply (based on annual value of contracts won)</i>
Veolia	[X]	[30-40]%	[X]	[30-40]%
Suez	[X]	[20-30]%	[X]	[30-40]%
Parties combined	[X]	[60-70]%	[X]	[70-80]%
Biffa	[X]	[0-5]%	[X]	[0-5]%
FCC	[X]	[0-5]%	[X]	[0-5]%
Serco	[X]	[5-10]%	[X]	[5-10]%
Viridor	[X]	[10-20]%	[X]	[10-20]%
Total	[X]	100.0%	[X]	100%

Source: CMA analysis of Parties and competitor questionnaire responses.

³⁶⁶ We note that Suez's contract values have been updated following Veolia's submission in response to the Provisional Findings.

³⁶⁷ Veolia submitted its own estimated shares of supply in which it believes [X] and [X] have secured more contracts than Suez since 2017. We have not placed weight on Veolia's estimates since the data it used was not gathered directly from, or verified with, third parties and differs significantly from our data which has been obtained from and verified by the relevant third parties.

Table 7.15: Share of supply for contracts with an annual value greater than £10 million since 2017

<i>Supplier</i>	<i>Number of contracts won</i>	<i>Share of supply (based on number of contracts won)</i>	<i>Annual value of contracts won (£m)</i>	<i>Share of supply (based on annual value of contracts won)</i>
Veolia	[redacted]	[40-50]%	[redacted]	[30-40]%
Suez	[redacted]	[10-20]%	[redacted]	[20-30]%
Parties combined	[redacted]	[50 - 60]%	[redacted]	[60-70]%
Biffa	[redacted]	[0-5]%	[redacted]	[0-5]%
FCC	[redacted]	[0-5]%	[redacted]	[0-5]%
Serco	[redacted]	[5-10]%	[redacted]	[5-10]%
Viridor	[redacted]	[30-40]%	[redacted]	[20-30]%
Total	[redacted]	100%	[redacted]	100%

Source: CMA analysis of Parties and competitor questionnaire responses.

7.108 The above shares of supply show that the Parties had a combined share of [70-80] in terms of annual value of contracts when considering all contracts with an annual value greater than £10 million and [60-70%] in terms of annual value of contracts when considering contracts with a start date since 2017.³⁶⁸

7.109 Among competitors:

- (a) After Veolia and similar to Suez, Viridor was the largest competitor and had a share of supply of [20-30%] when considering the annual value of contracts that started since 2017. However, [redacted].³⁶⁹
- (b) Serco had a [5-10%] share of supply when considering contracts which started since 2017; however Serco focuses on providing collection-only contracts.
- (c) Biffa and FCC have been successful in winning a small proportion of contracts with an annual value greater than £10 million in the past;

³⁶⁸ The Parties' shares of supply are slightly lower, but remains high, if the number of contracts won is considered ([60-70%] and [50-60%] respectively).

³⁶⁹ Note of call [redacted].

however they have not won any contracts since 2017 according to our dataset.

7.110 As Veolia indicated, the Parties' combined share by value is lower when recent contracts are considered. It is unclear whether this lower share over a shorter period is driven by a meaningful downward trend or simply by fluctuations over time. In any event, the combined share of [60-70%] is still high and consistent with competition concerns. Considering only contracts won since 2017, all [X] contracts are accounted for by only four suppliers: Veolia, Suez, Serco and Viridor. This is a small number, particularly considering Serco's focus on collection-only contracts, and [X]. This suggests that Serco [X] would exert limited or no constraint on the Parties and other suppliers in relation to integrated contracts.

7.111 Veolia submitted that shares of supply are a static view of competition and a 'snapshot' largely of competition that took place many years ago. It submitted that they do not reflect the 'dynamic context of vibrant competition at the time of tendering for every contract', including the largest municipal contracts and those that we characterise as complex.³⁷⁰ In this respect, we make the following observations.

- (a) Some of the historical competition we have considered includes recent instances of competition since 2017 and we consider them to be a relevant indicator of future competition. In addition, we did not find evidence of trends that would significantly reduce the relevance of these historical instances of competition. In particular paragraphs 7.28 to 7.36.
- (b) Local authorities have told us that for several waste management services, a strong track record is an important factor when deciding which supplier to use (for example, paragraphs 7.25 and 7.82). Therefore, historical experience and success is likely to be relevant when suppliers compete for future tenders.

7.112 Veolia further submitted that the value of contracts provided by Suez refer to the total value generated by the contract, which is larger than Suez's revenue from those contracts. Veolia's advisors understand that Suez's revenue for contracts with an annual value in excess of £10 million is likely to

³⁷⁰ [Overview submission](#) from Veolia, paragraph 51, 7 March 2022.

be no higher than in the region of [§]. Veolia therefore questioned whether we had collected data from third parties on a consistent basis.³⁷¹

7.113 Further, Veolia submitted that regardless of the threshold used to identify complex contracts, the evidence shows that Veolia faces strong competition in all tenders and will continue to do so post-transaction.³⁷²

7.114 Regarding the consistency of the measure used, we note that we asked the Parties as well as third parties for information on the contract values and this is the metric used to estimate the shares of supply by value. [§].³⁷³

7.115 In this section, we have used contract value as a proxy for complexity to allow us to examine competitive conditions for a subset of contracts that are, based on their characteristics, more likely to be relatively complex. In particular, we used a threshold contract value to distinguish between contracts that are more versus less complex. In the following section, we use an alternative approach to analyse contracts that are more likely to be relatively complex, by drawing on internal documents from the Parties, where they characterise specific contracts as being complex.

Qualitative review of contracts described by the Parties as complex

7.116 The Parties' internal documents describe several local authority contracts as complex (paragraphs 7.68 to 7.76).³⁷⁴ We have analysed this subset of contracts to assess the impact of complexity on competitive conditions.

7.117 This section is set out as follows. First, we present information on the relevant contracts. Second, we analyse the number of bidders for those contracts, based on information provided by the relevant local authority customers. Third, we analyse those customers' views on how many (and which) suppliers are credible suppliers for the relevant services. Fourth, we consider submissions the Parties made in relation to this analysis. Finally, we conclude with our assessment of the evidence.

³⁷¹ [Veolia's response to the provisional findings](#), paragraph 60

³⁷² Veolia's response to CMA working paper on services for complex municipal contracts.

³⁷³ The market size also decreases with the decline in Suez's revenues as the remaining revenues flow to outside the market. More specifically, Suez's Annex 85.1 reads 'The contract value reported for some contracts relates to the total revenue generated by the contract, mainly through the SPV entity in charge of the contract, and includes, among other types of revenue, third party revenue from the operation of the contract, electricity revenue, revenue from the sale of commodities and revenue from the sale of IBA materials.'

³⁷⁴ Suez internal document, CMA-SUEZ-00017984 and Veolia internal documents, SON_CMA-0001353-0001, SON_CMA-0004786-0001, and SON_CMA-0006495-0001.

Information on the contracts

- 7.118 The relevant documents identified 60 contracts as complex. As previously discussed in this chapter, we requested further information on individual contracts from all of the Parties' customers and, as part of that process, we received further information in relation to 15 out of these 60 contracts.³⁷⁵ The analysis set out later in this subsection focuses on these 15 contracts.³⁷⁶ Note that the Parties' customers in some cases provided information on contracts they had agreed with suppliers other than the Parties. As a result, one of the contracts considered is a contract belonging to a third party supplier, namely [REDACTED].
- 7.119 The relevant Veolia documents identifying these contracts appear to have been generated in the ordinary course of business. The Suez document refers to the CMA process and therefore we recognise that Suez's efforts to identify complex contracts may have sought to reflect CMA thinking on complexity. Nevertheless, we consider it useful to consider these contracts, given they represented Suez's attempt to identify complex contracts based on its own definition.
- 7.120 The data provided by the relevant local authority customers included information on:
- (a) how many bidders the customer identified as having bid for the contract when it was last tendered;³⁷⁷
 - (b) how many suppliers (and which suppliers) the customers identified as credible in a scenario where the customer would re-tender the services covered by that contract in the near future;
 - (c) the customers' perceptions of the competitive strength of the suppliers they listed as credible; and
 - (d) the extent to which these customers had concerns about the Merger.

³⁷⁵ We did not receive information on the remaining 45 contracts either because: (i) the local authority did not respond to our questionnaire; (ii) the local authority did not provide data on the specific contract referenced in the internal document; or (iii) the local authority is a customer of a competitor.

³⁷⁶ In the provisional findings, we identified 13 contracts. However, since the provisional findings, we have identified two further contracts: the London Borough of Brent and the Royal Borough of Kensington and Chelsea.

³⁷⁷ For each contract currently held, local authorities provided the name of the winner and 'other bidders'. It is possible that some LAs may have interpreted 'other bidders' to refer to the set of suppliers who qualified and submitted a bid while others may have included suppliers who were interested but did not ultimately qualify.

7.121 We make the following overarching observations on this subset of contracts:

- (a) In total, 11 of the 15 contracts started before 2017. This means that many of them have been in place for several years, and therefore may not be as reflective of recent competitive conditions as more recent evidence reviewed in this chapter. However, we still consider that evidence from these contracts is informative of competitive conditions because (i) Veolia's submission in relation to an expected reduction in the relevance of multiservice contracts is in our view not sufficiently supported by the evidence (paragraph 7.33); and (ii) evidence we have received indicates that experience and track record matter, and strong performance in relation to past contracts is therefore likely to be indicative of competitive strength in the present. Nevertheless, we acknowledge the age of these contracts and therefore take care to interpret this evidence alongside other more recent and forward-looking evidence.
- (b) A subset of 15 complex contracts represents a small proportion of the Parties' 131 contracts combined. We also recognise it also represents a small number compared to the number of contracts identified in the previous section as likely to be relatively complex. The contracts identified here are not likely to be exhaustive of all contracts featuring complexity, particularly given these are contracts identified in just one internal document and because we did not receive responses from all customers. Nevertheless, we consider it informative to analyse these documents. The objective of this analysis was not to create a representative sample, but rather to serve as a piece of qualitative evidence providing a 'sense check' on the other evidence and analysis in this chapter, including the analysis of relatively large contracts .

7.122 Information on each of the 15 contracts is set out in Table 7.4.

Table 7.16: List of local authority contracts considered in analysis

<i>Local authority</i>	<i>Contract start date</i>	<i>Total contract value</i>	<i>Services included</i>	<i>Contract duration (years)</i>	<i>Contract winner</i>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Responses to the CMA's phase 2 questionnaire

Number of bidders identified

- 7.123 For each contract, we asked the relevant local authority to identify the winner as well as the 'other bidders' for the relevant tender. We received this information for 12 of the 15 contracts.
- 7.124 On average, customers identified approximately three bidders per tender (the median and mode were three bidders; the arithmetic average was 3.3 bidders). The maximum number of bidders identified by one of the customers was eight and the minimum number was two.
- 7.125 In terms of interpretation of this evidence, we note that in identifying other bidders, local authority customers may not have included suppliers that participated in the tender but ultimately did not submit a 'final bid'. If any

suppliers had been credible bidders but were eliminated purely for administrative reasons (eg because the customer only had capacity to review a limited number of bids), then the number of bidders identified would understate the true number of credible suppliers. However, we consider that this is unlikely to affect the estimate set out above for the following reasons.

- (a) We sent follow-up questions to the relevant customers, asking them to clarify their responses with respect to how they counted the number of bidders they identified in their responses. The large majority of respondents to these follow-up questions said that they had included all participants or had only excluded suppliers that did not qualify, were eliminated in early stages of the process, or voluntarily withdrew.³⁷⁸
- (b) Several customers within this subset are concerned about the impact of the Merger on competition and raised specific and detailed concerns in relation to complex contracts (paragraph 7.81), including in relation to the small number of bidders. It appears to us unlikely that these customers would have excluded bidders purely for administrative reasons.
- (c) We understand that in practice many of these contracts include services for which some suppliers do not compete. For example, [X] of the [X] municipal contracts held by [X] include collection and [X] includes a disposal service which it subcontracted to another supplier and only [X] of the [X] municipal contracts held by [X] include EfW incineration.³⁷⁹
- (d) The evidence shows that suppliers do not pursue all possible opportunities. For example, third parties told us that bidding costs can be substantial, both in absolute terms and relative to the contract that is being tendered (paragraphs 5.50 to 5.52). The observation that there are few bidders per contract is therefore consistent with this other evidence.

7.126 While the average number of bidders for these 12 contracts (where respondents identified the relevant bidders) was approximately three per tender, we take into account the potential for this to underestimate the average, albeit to a limited extent, for the reasons set out above. We

³⁷⁸ Out of 12 responses, 10 included all participants or only excluded suppliers that did not qualify, were eliminated in early stages of the process, or voluntarily withdrew.

³⁷⁹ Response to the CMA's phase 2 questionnaire from [X] and [X].

therefore interpret this evidence as suggesting that there is typically a relatively limited number of bidders for these tenders, consistent with other evidence set out in this section. We also note that this number is an average, and for several contracts the customer identified only two or three bidders. For example, [X] identified only two bidders for its contract.

- 7.127 While Veolia and Suez do not bid against each other in all tenders – including in tenders for complex contracts – the Parties have competed against each other in approximately one third of the contracts listed above. This is a significant proportion.
- 7.128 Subsequent to Provisional Findings, we identified two further contracts relevant to this analysis: the London Borough of Brent and the Royal Borough of Kensington and Chelsea. The addition of these contracts has reduced the average number of bidders from 3.7 (as presented in the Provisional Findings) to just over 3.

Credible suppliers for complex contracts

- 7.129 We asked customers to list the suppliers they would consider as credible if they were to re-tender the services in their current waste management contracts in the near future, as well as provide strength ratings for each supplier on a scale from 1 to 5 (where 1 is not very strong and 5 is very strong).
- 7.130 We received ratings from the relevant customers for 12 of the 15 contracts. Of these, six provided ratings for the overall integrated contract (contract scope shown in the table above), and four provided ratings for the individual components of the contract. Because some respondents provided ratings for individual components of their contracts, the total number of ratings we analysed is larger than 12. On average, local authorities listed approximately four credible bidders for a contract (or a lot), ranging between a minimum of two credible bidders and a maximum of six credible bidders.³⁸⁰
- 7.131 The results of this analysis are presented below in Table 7.5.³⁸¹ This table includes only those suppliers that were mentioned more than once, on the basis that suppliers that were mentioned less frequently were likely to exert a

³⁸⁰ The arithmetic average was 4.2 credible bidders.

³⁸¹ While we analysed fifteen contracts for this analysis, in some cases suppliers have been listed more than fifteen times. This is because, as mentioned, some local authorities rated suppliers for each service within a bundle of services. Therefore, the local authority could list a supplier more than once. When calculating the average ratings for each supplier, non-mentions of a supplier have been treated as zero.

competitive constraint only in more limited circumstances. These other suppliers are discussed in paragraph 7.133.

Table 7.17: Credible suppliers for complex contracts

<i>Supplier</i>	<i>Number of mentions</i>	<i>Average rating of suppliers</i>
Veolia	22	3.5
Suez	18	2.8
FCC	16	2.2
Biffa	13	2.1
Viridor	7	1.0
Cory	5	0.6
Grundon	3	0.4
Serco	3	0.4
Amey	3	0.3
Biogen	2	0.3
Envar	2	0.3

Source: CMA analysis of local authority questionnaire responses

Note: Non-mentions are treated as a score of zero.

7.132 The results show Veolia and Suez are listed most often and rated highest in the opinion of local authorities which hold complex contracts. The responses from local authorities indicate that they value both Veolia and Suez's experience in the waste management industry. FCC, Biffa and Viridor are also seen as credible suppliers by local authorities, although they are rated lower than the Parties.

7.133 In addition to these suppliers, there was also a tail of 18 competitors with five or fewer mentions. These suppliers included suppliers such as the following and other smaller suppliers that supply single services and were only mentioned by a single customer:

- (a) Cory (five mentions) which competed only for contracts in London and the South East of England;
- (b) Amey (three mentions) which is not pursuing growth in this market;
- (c) Envar (two mentions) which competed for composting-only contracts;
- (d) Serco (one mention) which focusses on municipal collection;

- (e) Biogen (two mentions) which focusses on food waste collection;³⁸²
- (f) Agripost (one mention) which focusses on composting and anaerobic digestion;³⁸³
- (g) Moodys (one mention) which focusses on sewage waste disposal and infrastructure;³⁸⁴
- (h) MVV (one mention) is primarily an energy company with a focus on generating energy from waste;³⁸⁵
- (i) N+P (one mention) which focusses on decarbonizing major industries;³⁸⁶
- (j) Potters (one mention) is only active across Wales and West Midlands with a focus on recycling.³⁸⁷

7.134 We conclude from this analysis that for complex contracts, both of the Parties are seen as among the most credible and most highly-rated suppliers. There are only three other competitors that frequently appear to be considered credible for these contracts – FCC, Biffa and Viridor. The suppliers which received five or fewer mentions either tend to specialise in one part of the supply chain, eg municipal collection, or tend to be regional business that don't compete across the whole of the UK.

7.135 We note that since the contract data was provided by local authority customers of the Parties, it is likely to reflect a segment that has a relative preference for the Parties. These customers are likely to be most affected by the Merger because they are likely to have a reduced choice of credible supplier for their contract requirements. Insofar as other customers had similar characteristics they also would be affected.

Parties' submissions

7.136 In response to the Provisional Findings, Veolia submitted that it is inappropriate to focus only on the Parties' own customers as these customers are protected by contracts with set durations, defined prices and

³⁸² Biogen website: [What we do \(biogen.co.uk\)](https://www.biogen.co.uk), accessed by the CMA on 5 July 2022

³⁸³ Agripost website: [About Us - Agripost](https://www.agripost.co.uk), accessed by the CMA on 5 July 2022

³⁸⁴ Moody website: [Learn About Moody Sewage & Our Liquid Waste Services](https://www.moody.co.uk), accessed by the CMA on 5 July 2022

³⁸⁵ MVV website: [MVV Environment Ltd - MVV Energie AG](https://www.mvv.co.uk), accessed by the CMA on 5 July 2022

³⁸⁶ N+P Group website: [Waste to Value \(npgroup.com\)](https://www.npgroup.com), accessed by the CMA on 5 July 2022

³⁸⁷ Potters website: [About Us | Potters](https://www.potters.co.uk), accessed by the CMA on 5 July 2022

detailed KPIs. The merger concern applies equally (if it applies at all) to all local authorities in their next tender process, and all of their views should be taken into account.³⁸⁸

- 7.137 It submitted that the basis on which the 13 contracts have been selected is opaque.³⁸⁹ [X]. Veolia believes there are at least 54 current contracts worth £100 million or above held by the Parties' competitors.³⁹⁰
- 7.138 Veolia submitted that most of these contracts are too old to be relevant to future procurement - 10 of 13 contracts started before 2017. It submitted that since most of the contracts do not expire for seven or more years, the local authorities cannot reasonably be expected to have a well-informed view on how the contracts will be procured or who will be a suitable bidder.³⁹¹
- 7.139 In response to the Provisional Findings, Veolia submitted that the Parties bid against each other in only around a third of the tenders suggesting that around two third of the contracts would not have been affected by the transaction, and that there were other credible bidders (probably at least two or three) in each of those who could also have bid. It further submitted that the fact that a supplier is mentioned by only a small number of local authorities does not undermine its credibility when competing for future contracts offered by that local authority.³⁹²

Conclusion on review of contracts

- 7.140 We have responded to Veolia's submission on the appropriateness of focusing only on the Parties' own customers in Chapter 6.
- 7.141 The fact that we have analysed only a subset of contracts within the relevant documents is driven largely by the fact that not all customers of the relevant contracts responded with the relevant information necessary to be able to include them in our analysis. While a complete response would be preferable, we nevertheless consider evidence on this subset of contracts to be informative and we attach some weight to it.
- 7.142 We acknowledge that many of the contracts being analysed have been in place for several years. As set out in paragraph 7.121(a), they nevertheless

³⁸⁸ [Veolia's response to the provisional findings](#), paragraph 48

³⁸⁹ In the provisional findings, we included a list of 13 contracts which were mentioned as complex in the internal documents. As mentioned above, we have subsequently included another two contracts.

³⁹⁰ [Veolia's response to the provisional findings](#), paragraph 49

³⁹¹ [Veolia's response to the provisional findings](#), paragraph 50

³⁹² [Veolia's response to the provisional findings](#), paragraph 52

are relevant as we consider that large multiservice contracts will be a continuing feature of the market, and evidence of past track record is relevant to competition for such contracts. We also take this evidence into account alongside other evidence which is more recent and forward-looking.

- 7.143 This analysis has shown that, among a subset of contracts described internally as complex, there is evidence that there were relatively few bidders for those contracts. This suggests that where Veolia and Suez do bid against each other for complex contracts, they are likely to be relatively important constraints on each other. While Veolia submitted that they only bid against each other in around a third of the tenders considered in the analysis, this would be significant in terms of the total value of services tendered for and affected by the Merger.

Our assessment

- 7.144 We have assessed the evidence from the Parties' submissions, their internal documents and evidence from customers and competitors on how complex customer requirements affect competition. We have also estimated indicative shares of supply.
- 7.145 In assessing the evidence set out in this chapter, we also take into account the evidence set out in Chapter 5, which indicates that Veolia and Suez each are present across the waste management chain. As indicated in our review of Veolia's internal documents, Veolia appears to seek opportunities to leverage this position. Given our conclusion that multiservice contracts are one important dimension of complexity in contracts, we consider that having a presence across the waste management chain is likely to confer a competitive advantage in competing for complex contracts.
- 7.146 The evidence from both Parties' internal documents indicates that complexity of customer requirements is a factor that affects competitive conditions. Veolia's documents indicate that it achieves a better success rate competing for complex contracts than it does when it competes for other, simpler contracts. Veolia's stated strategy in several internal documents is to target more complex contracts. For example, we have seen one document noting that it is in Veolia's strategic interest to target large, multiservice contracts that include a wide range of treatment services which Veolia has demonstrable experience in operating successfully. Both Parties' documents give examples where they consider that they will only face each other in tenders.
- 7.147 Veolia submitted that we relied on a small number of documents to support our provisional conclusion that Suez would be one of the only other

competitors that is able to compete for ‘complex’ contracts and that these are only two of many thousands of documents submitted by the Parties. In this respect we note that the evidence from internal documents formed only part of the overall evidence base for the conclusions drawn, and all evidence is considered in the round alongside other evidence.

- 7.148 Both Veolia and Suez have submitted that there are several suppliers who are able to fulfil complex requirements for local authorities. These include Biffa, Viridor, FCC, Serco and Urbaser as well as the Parties themselves. With respect to the Parties’ competitors, one Veolia internal document said that [REDACTED] and another document said that a particular contract will be a challenge for [REDACTED].
- 7.149 Based on the views of third parties, we consider that local authorities also distinguish between complex and more simple requirements. A number of local authorities have told us that there is only a small number of bidders for their complex requirements. Some have told us that Veolia and Suez are two of this small number. As one local authority put it, the greater the complexity of the contract, the lower the number of bidders there is likely to be.
- 7.150 Local authorities did not just comment in general terms, but also in specific terms about the Merger. Of the 31 local authorities that raised concerns about the Merger, 10 were concerned about competition for their complex requirements. These concerns frequently related either to the scale of the customer’s requirements or to the fact that their contracts include a number of different services (or sometimes both). In addition NAWDO, which represents approximately 80% of the UK’s waste disposal authorities, likewise raised concerns about the Merger. Specifically, it told us that there are not many suppliers beyond Veolia and Suez that could integrate several services into one contract. Further, NAWDO said that local authorities do not necessarily want to split services into separate contracts ‘because they want incremental benefits and continuous improvement’, and ‘it is easier to achieve this when there is one contractor’.³⁹³
- 7.151 We consider that the evidence from local authorities strongly indicates that Veolia and Suez compete for complex local authority contracts and that local authorities are concerned about the impact of the Merger on competition for these contracts. The evidence from third parties suggests that the Parties are among a small number of potential suppliers that can compete effectively

³⁹³ Note of call with NAWDO, 15 June 2021.

for these contracts. We consider that their presence across the supply chain means they are in a better position to compete for these contracts than other suppliers.

- 7.152 Competitors that responded to our questionnaire indicated that Veolia and Suez are the two strongest suppliers for multiservice contracts. Other suppliers rated by competitors were FCC, Biffa, Viridor and Urbaser. Competitors noted the Parties' strengths in being able to provide services across different parts of the waste management chain. Most competitors are unable to match the Parties' strengths in this regard. For example, competitors noted Viridor's strength in operating ERFs but that it is not present in collection, whereas Biffa is present in collection but does not operate ERFs. Urbaser was, on average, rated by competitors as weaker than FCC, Biffa and Viridor and much weaker than either Veolia or Suez in terms of credible suppliers for multiservice local authority contracts.
- 7.153 Competitors, including some of the six competitors for complex contracts identified by the Parties, have indicated that they are unlikely to bid for some complex or integrated contracts, indicating that the pool of active bidders for such contracts may be very small.³⁹⁴
- 7.154 We have examined shares of supply based on contracts with an annual value of at least £10 million per year. We consider that this approach provides some indication of which suppliers are best able to compete for contracts with complex requirements. We have found that the Parties have a combined share of [70-80%] (incorporating an increment of [30-40%]) of the value of all such contracts. Considering contracts awarded since 2017, the Parties have a combined share of [60-70%] (incorporating an increment of [20-30%]). The only other supplier with a share of more than 5% was Serco. We did not find any examples of relevant contracts that Biffa or FCC had won since 2017.
- 7.155 Notwithstanding this analysis, our service-specific analyses in Chapters 8 to 14 take into account relevant providers and competitive dynamics specific to those services.
- 7.156 In response to our Provisional Findings, Veolia submitted that by taking the approach we have taken, we could assert that there was a segment within each relevant market for which competition is limited without actually defining that segment. Veolia submitted that we did not carry out any

³⁹⁴ Paragraphs 7.96 to 7.101

systematic assessment of demand-side or supply-side factors that would justify defining a 'complex' market segment.³⁹⁵

- 7.157 As explained in paragraph 7.57, complexity is driven by multiple factors and is not easily categorised. Because there is no obvious bright line one could identify that would neatly categorise contracts as 'complex' or 'not complex', we have sought to take account of the likely impact of complexity on competitive conditions. In this chapter, we have done this by considering evidence from various sources: documents which discuss complexity and competitive conditions; views from customers and competitors on the role of complexity and its implications for the availability and credibility of suppliers; an analysis of contracts above a certain threshold of value as a means to try to analyse contracts likely to be characterised by more complex requirements; and an analysis of contracts described internally by the Parties as complex. We note the CMA's guidance that the CMA may take into account not only segmentation within markets, but also other ways in which some constraints may be more important than others.³⁹⁶
- 7.158 We disagree with Veolia's submission that we have given insufficient consideration to demand-side and supply-side evidence. We consider that the evidence that we present in this chapter provides both demand-side evidence showing that some customers have more complex requirements than others, and the reasons for this, as well as evidence from the supply-side that shows that some suppliers are better placed to compete for customers with complex requirements than other suppliers and evidence for why this is the case.

Services included in complex contracts

- 7.159 We have found that some customer requirements are more complex than others. We have also found that there is no single characteristic, or set of characteristics, that makes a local authority's requirements complex. What makes serving the requirements of one local authority complex or risky might not be the same for the next local authority who might also have complex requirements. For example, some local authority needs will be complex because they involve the operation and maintenance of significant infrastructure over a long time period and the ability to manage large volumes of waste flows in relation to that infrastructure. Other local authority

³⁹⁵ [Veolia's response to the provisional findings](#), paragraph 27

³⁹⁶ [CMA 129](#), paragraph 9.4.

needs might be complex on account of the number of different services involved in an integrated contract which might require the supplier itself to be active across the waste management chain.

- 7.160 Given that, on average, there are few suppliers able to compete effectively for and win contracts with complex requirements (paragraph 7.151), we consider that we need to take the range of complexity of local authority requirements into account when we assess the competitive effects of the Merger on the individual waste management services supplied to local authorities. We note that the variation between local authority requirements, and the fact that over time their requirements might change (eg services that were bundled together in a contract may not be bundled together the next time the local authority puts its requirements out to tender), mean that it is inherently difficult to list which services underpin complexity. However, we note that the complex contracts considered in this chapter typically include one or more of municipal collection, O&M of MRFs, O&M of ERFs, and Disposal by incineration.³⁹⁷

Conclusion

- 7.161 The evidence set out above shows that complexity may result from a variety of different characteristics whether alone or in combination with other factors. Evidence shows that contributory factors include multiservice contracts, infrastructure, partnerships, and contract size or value— and may be thought of as lying on a spectrum, ranging from the least to the most complex.
- 7.162 In this chapter, we considered evidence on the impact of complexity on competitive conditions and on closeness of competition between the Parties. We noted a range of evidence that was consistent with there being closer competition between the Parties for customers of complex contracts, and weaker constraints from rivals. For example:
- (a) Internal documents from the Parties show that Veolia [X]; that the Parties are more successful when bidding for complex contracts; and that the competitive landscape is different for complex contracts. In relation to the competitive landscape, some documents note in

³⁹⁷ The operation and maintenance of HWRCs might also be considered as complex on some factors. However, we do not examine this service any further in our report. This is because we have not received any concerns relating to this service, and the Parties' combined share of supply is modest.

particular that [X]; and that [X] would find it challenging to credibly compete for larger and more complex contracts;

- (b) Customers for complex contracts most frequently considered Veolia to be a credible supplier of those contracts, followed by Suez, FCC and Biffa. More generally, such customers expressed concerns about a reduced set of potential suppliers, as a result of the Merger, for their relatively complex requirements;
- (c) Overall, competitor views suggested that Veolia was the strongest supplier of integrated contracts, followed by Suez, FCC, Biffa, and Viridor. Some competitors, including some of the six competitors for complex contracts identified by the Parties, indicated that they were unlikely to bid for some complex or integrated contracts, showing that there may be a reduced number of bidders for such contracts. In [X] case, it indicated that it would not in future be bidding for integrated contracts;
- (d) We consider that contract size is also a useful indicator of, and proxy for, complexity. Among a subset of high-value contracts, the Parties had a very large combined share of supply, including in respect of contracts tendered since 2017. [X] and [X] have not recently won a high-value contract according to their own data, which suggests that these two competitors may now provide a limited constraint on the Merged Entity;

7.163 The purpose of this chapter is not to decide whether an SLC is likely to arise in respect of any particular service but rather to assess any particular competitive conditions in waste management services supplied to local authority customers that have more complex requirements than other customers. In this chapter, we have considered cross-cutting evidence relevant to all waste management services. This cross-cutting evidence complements evidence on competitive conditions for each specific service, and this specific evidence is considered separately in the relevant chapters.

7.164 Given this, we consider that a range of evidence shows that the complexity of contracts, and risk profile of contracts, are important factors that affect different suppliers' willingness and ability to compete. The evidence indicates that the Parties are likely to be close competitors for complex contracts and that some of the remaining constraints on the Parties may be weak when competing for complex contracts. The evidence suggests that a limited number of suppliers is capable of bidding for and winning these contracts, with the Parties being seen by customers as two of the most credible and

highly rated providers. The Merger will reduce the number of bidders for these contracts.

- 7.165 We have taken the conclusions drawn from the cross-cutting evidence in this chapter into account in other chapters that consider the effect of the Merger on competition for the individual waste management services. In particular, where the contracts for specific waste management services involve complex requirements (whether for some customers or all customers), we consider that the Parties are likely to be closer competitors (because of their willingness and ability to compete for customers that have complex requirements) and that suppliers without the same capabilities to compete for complex requirements are likely to be weaker constraints. In making our assessments, we take this evidence into account alongside the market-specific evidence set out in those chapters.

8. THE SUPPLY OF NON-HAZARDOUS MUNICIPAL WASTE COLLECTION SERVICES

Introduction

- 8.1 The Parties overlap in the supply of non-hazardous municipal waste collection services. This service includes the collection of recyclable waste, food waste, garden waste and residual waste through kerbside collection rounds.
- 8.2 Municipal customers are local authorities in Scotland, Wales and Northern Ireland, and district, borough, city councils and unitary authorities in England (paragraphs 5.97 and 5.98). Municipal collection contracts are awarded via public tender and need to comply with public procurement regulations (paragraphs 5.38 and 5.94). Veolia, Suez and other suppliers bid to compete for these contracts which are often long term – Veolia told us that non-hazardous municipal waste collection contracts are typically for around 10 years although we have seen in our inquiry that some are for over 25 years.³⁹⁸ Sometimes contracts for non-hazardous municipal waste collection services also include other services.
- 8.3 We have investigated whether the Merger is likely to give rise to horizontal unilateral effects in the supply of this service.
- 8.4 We first define the relevant market.
- 8.5 We then present the evidence on competition for all non-hazardous municipal waste collection services.
- 8.6 This assessment of competition for any non-hazardous municipal waste collection contract is followed by our assessment of the evidence on competition for complex non-hazardous municipal waste collection services. As we explained in the previous chapter, the evidence that we have seen suggests that there are local authority customers for whom the Parties are

³⁹⁸ [Veolia Overview Submission](#), 7 March 2022, paragraph 53

close and strong suppliers because the requirements that they put out to tender are more complex than the requirements of other local authorities.

Market definition

Product market

Parties' views on product market

- 8.7 At a high level, Veolia submitted that the appropriate product market is the supply of non-hazardous municipal waste collection services.³⁹⁹ Veolia also submitted that supply from customers self-supplying should be included in the market.⁴⁰⁰
- 8.8 Veolia's more detailed submissions, together with our discussion of them, are set out below.

Our assessment

- 8.9 The starting point for our assessment of the relevant product market is the overlap between the Parties in the supply of non-hazardous municipal waste collection services.⁴⁰¹ The relevant product market is identified primarily by reference to demand-side substitution.⁴⁰² On the demand-side, local authorities cannot switch away from non-hazardous municipal waste collection services. However, we have considered whether switching could take place; namely, whether local authorities would self-supply in the event of a worsening of terms from third party suppliers. Self-supply in municipal waste collection can be from a local authority self-providing the service or receiving the service from a Teckal that it controls.⁴⁰³
- 8.10 We have not found that in practice local authorities that self-supply also supply (or can meet) the full collection requirements of other local authorities.

³⁹⁹ FMN, NHW Chapter, paragraph 13.5.

⁴⁰⁰ [Veolia's Response to the Provisional Findings](#), paragraph 71

⁴⁰¹ [CMA129](#), paragraph 9.6

⁴⁰² [CMA129](#), paragraph 9.7

⁴⁰³ As noted at paragraph 5.13, a Teckal does most of its work (at least 80%) for the public sector body it is owned by. In respect to the collection of non-hazardous municipal waste, a local authority can self-supply by either using its in-house resources or by setting up its own dedicated trading company (a Teckal) (paragraph 5.13). In this Chapter the term 'self-supply' can mean either method of self-supplying.

Parties' views on self-supply

- 8.11 Veolia submitted that self-supply of collection services either through in-house teams or Teckals is a viable alternative for local authorities, which is used in practice.
- 8.12 It submitted that assets, staff and relevant experience are not barriers. Veolia submitted that even if a local authority does not have experience in waste collection, it can engage a Teckal or in-house team and transfer employees through Transfer of Undertakings, Protection of Employment Regulations 2006 (**TUPE**).⁴⁰⁴ Veolia submitted that the main assets required for municipal waste collection services are collection vehicles. In many cases – [X] – the local authority funds the purchase of the collection vehicles to be operated by the supplier through low-cost prudential borrowing. It is therefore easy for local authorities to obtain collection vehicles for the purposes of self-supply.⁴⁰⁵
- 8.13 Veolia submitted that the product market should include self-supply by local authorities as well as supply through Teckals because:
- (a) it believes that approximately [X] of households are served by local authorities that undertake waste collection in-house and that a further [X] are served through Teckals. Veolia submitted that these figures provide evidence that self-supply is commercially justifiable and provides value for money;⁴⁰⁶
 - (b) the majority of local authorities questioned by us on it have considered self-supplying collection services;⁴⁰⁷
 - (c) local authorities can choose to self-supply, including the use of a Teckal, even after launching a formal tender. For this reason, the constraint of self-supply remains throughout the tender process. Given bidders know that local authorities could self-supply but do not know what cost level would make them decide to self-supply, bidders must submit a competitive offer;⁴⁰⁸

⁴⁰⁴ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 3.3. Veolia's [response to the Provisional Findings](#), paragraphs 68.69

⁴⁰⁵ Veolia's response to the Working Paper on Supply of Municipal Collection Services, page 6; [Veolia's response to the Provisional Findings](#), paragraph 73

⁴⁰⁶ [Veolia's response to the Provisional Findings](#), paragraph 74

⁴⁰⁷ [Veolia's response to the Provisional Findings](#), paragraph 72

⁴⁰⁸ [Veolia's response to the Provisional Findings](#), paragraphs 73, 77 to 79

- (d) local authorities are increasingly willing to take their waste collection back in-house. Veolia provided [REDACTED] instances in the past five years where this happened;⁴⁰⁹
- (e) Teckals are important competitors in the municipal collection market and Veolia did not believe that there were structural limitations to their ability to compete. Veolia provided examples of contracts awarded to Teckals.⁴¹⁰ The Parties' internal documents sometimes include Teckals when discussing their competitors for municipal collection. This, Veolia submitted, confirms that Teckals impose a genuine constraint on commercial suppliers.⁴¹¹
- (f) Self-supply is used by both large and small local authorities, including eight of the 15 largest authorities and nine of the 20 smallest local authorities;⁴¹² and
- (g) Government guidance encourages local authorities to consider the benefits of supplying services in-house.⁴¹³

8.14 Veolia submitted that it was not necessary to show that all local authorities would consider self-supply, that they would perceive no associated risks, or that there is a "radical" movement toward self-supply, in order to conclude that self-supply imposes a meaningful competitive constraint on commercial suppliers.⁴¹⁴

8.15 Suez told us that while some local authorities are taking municipal collection in-house, it did not expect this to be a significant trend.⁴¹⁵ Suez considered that the proportion of local authorities that conduct collection in-house has stayed relatively stable at fifty per cent and it expects it to remain stable. Suez also stated that on occasion some local authorities switch from outsourcing to in-house supply. It cited the example of [REDACTED] which switched to a Teckal when [REDACTED], since (according to Suez) on the basis of only one bid

⁴⁰⁹ Veolia's response to CMA Issues Paper, 17 November 2021 and related Parties' Confidential Annex, paragraph 3.3. Veolia's [response to the Provisional Findings](#), paragraph 71

⁴¹⁰ [Overview Submission by Veolia](#), paragraphs 38-40. Veolia's Response to the Provisional Findings, paragraph 76

⁴¹¹ Veolia's [response to the Provisional Findings](#), paragraph 80

⁴¹² Veolia's [response to the Provisional Findings](#), paragraph 73

⁴¹³ Veolia's [response to the Provisional Findings](#), paragraph 73

⁴¹⁴ Veolia's [response to the Provisional Findings](#), paragraph 71

⁴¹⁵ Transcript of hearing with Suez, 13 April 2022, pp79-80.

the council could not gauge whether it would get value for money by procuring outsourced supply.⁴¹⁶

Third party views on self-supply

- 8.16 As set out in CMA guidance, one framework the CMA may use to consider demand-side substitution is to consider evidence on the response of customers to a small but significant increase in price (or equivalent reduction in the value offered to customers in terms of quality, range or service) of the products of the merger firms.⁴¹⁷ However, in the context of a bidding market where prices for the duration of the contract are stipulated in the contract and customers do not know what prices suppliers will offer in future tenders, we asked customers about the likelihood of self-supplying when they next tender for their collection services. We have also considered qualitative evidence on demand- and supply-side responses from customers as well as the extent to which self-supply could exert a competitive constraint on suppliers after a tender is launched.
- 8.17 We asked the Parties' local authority customers for their views on switching from outsourcing to self-supply their collection services (either using in-house supply or using Teckals), including:
- (a) whether they had considered it;
 - (b) why they had chosen not to self-supply; and
 - (c) any barriers to doing so.⁴¹⁸
- 8.18 We also asked about the extent to which Teckals participated in tender processes and whether the cost of self-supply functioned as a benchmark. Out of 19 local authority respondents who responded, 14 had considered

⁴¹⁶ Transcript of hearing with Suez, 13 April 2022, p78.

⁴¹⁷ [CMA129](#), paragraph 9.7

⁴¹⁸ Questionnaire to local authorities – 'Please explain whether you have considered switching from outsourcing to self-supplying (either in-house or Teckals) your municipal waste collection services. In this regard, please explain the following: (a) If this has been considered, please explain the decision to self-supply or not; (b) Whether in-house teams or Teckals participate in the tendering process to win your contract; (c) If the above switch has not been considered, please explain what barriers and costs you perceive your local authority would face if it tried to self-supply its waste collection service; (d) If you chose to outsource your waste collection services, how likely are you to use the cost of self-supplying as a benchmark or affordability target while choosing a third-party supplier.'

self-supplying (either through in-house or Teckals) their municipal waste collection services.⁴¹⁹

- 8.19 Out of these 14, only one local authority had moved from outsourcing to self-supply. Blackburn with Darwen (a UA) moved its municipal waste collection services in-house. This local authority told us that it moved the collection of recycling in-house from Biffa due to performance issues.⁴²⁰
- 8.20 Some local authorities (13) had considered self-supply but decided against it. The reasons that were put to us across these local authorities were:
- (a) lack of expertise, skills and resources to self-supply. For instance, one local authority stated that self-supply required various resources including collection vehicles, facilities and infrastructure to run those refuse collection vehicles, and labour.⁴²¹ Other local authorities highlighted lack of sufficient support services eg HR, Finance⁴²² and lack of expertise and/or experience;⁴²³
 - (b) lack of political buy-in within the local authority;⁴²⁴
 - (c) the risk profile for the local authority;⁴²⁵
 - (d) insufficient benefits.⁴²⁶ The costs of self-supply are considered to be high due to staff costs;^{427,428} and
 - (e) the complexity of self-supplying.⁴²⁹
- 8.21 Expertise was commonly highlighted by local authorities.
- (a) [redacted] said that it had considered the option of taking collection services in-house but the cost and complexity of the exercise, and that it lacked the necessary in-house expertise, meant it was not pursued.⁴³⁰

⁴¹⁹ The 19 local authorities consisted of 4 waste collection authorities (WCAs) and 15 unitary authorities (UAs). The 14 that had considered self-supplying consisted of 4 WCAs and 10 UAs.

⁴²⁰ Blackburn with Darwen's response to the CMA's phase 2 questionnaire, 28 January 2022, Q11.

⁴²¹ Response to the CMA's phase 2 questionnaire from: [redacted]. Similar points made by [redacted] and [redacted].

⁴²² Responses to the CMA's phase 2 questionnaire from: [redacted], [redacted] and [redacted].

⁴²³ Responses to the CMA's phase 2 questionnaire: [redacted], [redacted], [redacted], [redacted] and [redacted]

⁴²⁴ Response to the CMA's phase 2 questionnaire from: [redacted].

⁴²⁵ Responses to the CMA's phase 2 questionnaire from: [redacted] and [redacted].

⁴²⁶ Responses to the CMA's phase 2 questionnaire from: [redacted], [redacted], [redacted] and [redacted].

⁴²⁷ Responses to the CMA's phase 2 questionnaire from: [redacted], [redacted] and [redacted].

⁴²⁸ Responses to the CMA's phase 2 questionnaire from: [redacted] and [redacted].

⁴²⁹ Responses to the CMA's phase 2 questionnaire from: [redacted] and [redacted].

⁴³⁰ Response to the CMA's phase 2 questionnaire from: [redacted]

- (b) Maldon District Council told us that it considered procuring collection services in-house when its outsourced provider was unable to continue providing the services at the agreed price but it concluded that it did not have sufficient expertise.⁴³¹
- (c) St Albans City and District Council told us that it is likely to consider whether to bring collection services in-house when its current contract with [X] expires.⁴³² It said that the most challenging aspect of this will be gaining the required expertise.
- (d) Stafford Council⁴³³ told us that the return to in-house provision and the scope of the tender (which currently includes collection as well as processing of dry recyclates) was considered prior to the previous tender process but was not pursued primarily on the basis of lack of expertise remaining in the local authority and the magnitude of the capital investment required.⁴³⁴

8.22 Broadland District Council stated that it undertook a joint project in 2020-2021 with South Norfolk Council (with support from a consultancy) to explore the creation of a Teckal to provide non-hazardous waste collection and street cleaning services across both authorities.⁴³⁵ They decided not to proceed because the benefits that would be realised were not sufficient to warrant setting up a Teckal. Broadland subsequently tendered for its collection services, which Veolia won and the contract was due to start in April 2022.⁴³⁶

8.23 In regard to the customer views that we have received, Veolia submitted that the respondents to our questionnaire should have been asked whether they would consider self-supplying waste collection services for upcoming

⁴³¹ Note of call with Maldon District Council, 19 May 2021.

⁴³² Note of call with St Albans City and District Council, 12 May 2021.

⁴³³ Question wording:

Consider the next time you put your collection services out to tender. Appreciating that this is subject to some uncertainty, please indicate below the relative likelihood of you outsourcing versus self-supplying (either in-house or by setting up a Teckal) your collection service: Definitely would outsource; Outsourcing significantly more likely; Outsourcing marginally more likely; Both evenly likely; Self-supplying marginally more likely; Self-supplying significantly more likely; Definitely would self-supply. Please explain your answer. To what extent would you consider the reasons you have given to be common to many local authority contracts, or specific to yours? Please explain.

⁴³⁴ Response to the CMA's phase 2 questionnaire from: Stafford Council.

⁴³⁵ South Norfolk County currently performs collection in-house.

⁴³⁶ Response to the CMA's phase 2 questionnaire from: Broadland District Council.

contracts.⁴³⁷ We consider this in our competitive assessment at paragraph 8.100. Veolia further submitted that we need to assess substitution by reference to economic evidence, not qualitative evidence on risks of self-supply (which it also says is one-sided as it does not consider risks of outsourcing).⁴³⁸

- 8.24 We do not agree that our questionnaire produces one-sided results. This is because some local authorities have considered self-supply (and as reported above, one did move to self-supply) and it is likely that in considering self-supply these local authorities would have considered the costs, benefits and risks associated with outsourcing. We disagree that qualitative evidence from local authorities on whether they had considered self-supply and the factors that they took into account is not a part of the economic evidence available to us. We have considered the competitive constraints of self-supply and Teckals in our competitive assessment and in doing so we have placed more weight on that assessment than on market definition.⁴³⁹

Conclusion on self-supply and Teckals

- 8.25 Based on the above evidence, we consider that self-supply (whether provided by local authorities in-house or through Teckals) does not fall within the relevant product market because:
- (a) the reasons given by local authorities for not self-supplying – even after considering the possibility – demonstrate a degree of difficulty that many local authorities face in self-supplying. We note that local authorities currently have 98 contracts with suppliers (Table 8.3) meaning that a significant number of local authorities have chosen not to self-supply. This suggests that a significant proportion of local authorities will not easily switch to self-supply following a relatively small price increase or corresponding worsening of service levels;
 - (b) the reasons given by local authorities that do self-supply suggest that some local authorities were doing so for reasons other than relatively small price increase or corresponding worsening of service levels (eg, policy positions of the local authority); and

⁴³⁷ Veolia's Response to the Provisional Findings, paragraph 72

⁴³⁸ Veolia's Response to the Provisional Findings, paragraph 75

⁴³⁹ [CMA129](#), paragraph 9.2

- (c) we have found only one example of a local authority moving to self-supply as a result of poor performance.

Conclusion on product market

- 8.26 Based on the evidence set out above, we have found that the relevant product market is the supply of non-hazardous municipal waste collection services, excluding self-supply and provision by Teckals. We have considered the constraint that self-supply and Teckals exert on the Parties in our competitive assessment.

Geographic market

Parties' submissions

- 8.27 Veolia submitted that the appropriate geographic frame of reference for the supply of municipal waste collection services is national.⁴⁴⁰ Although it did not make any further submissions on this point during our Phase 2 inquiry, in the CMA's Phase 1 investigation Veolia submitted that:
- (a) vehicles are mobile assets and sites which can be used as vehicle depots are generally easy to find;⁴⁴¹
 - (b) although there are economies of scale in serving neighbouring local authority areas, large waste collection companies generally bid for contracts regardless of their location; and
 - (c) barriers to entry are low for collection companies that are already active in other parts of the same country, especially for the municipal waste collection market where tenders are competitive and are subject to public procurement rules.⁴⁴²
- 8.28 Suez separately submitted that it may be appropriate also to consider the supply of municipal waste collection services on a regional basis.⁴⁴³ Veolia noted that it did not consider a regional analysis to be appropriate as suppliers are able easily to bid for a collection contract in any part of the UK,

⁴⁴⁰ FMN, NHW Chapter, paragraph 13.19.

⁴⁴¹ FMN, NHW Chapter, paragraph 13.16.

⁴⁴² FMN, NHW Chapter, paragraph 13.17.

⁴⁴³ Suez response to CMA phase 2 s.109 notice, 21 December 2021, paragraph 1.13.

and that it was straightforward to acquire vehicles and a vehicle depot in any part of the UK.⁴⁴⁴

Our assessment

- 8.29 The OFT previously considered the market for the collection of municipal waste on a national level, although it ultimately left the geographic frame of reference open.⁴⁴⁵ EC decisional practice has also considered municipal waste collection at the national level given the tendering processes used by local authorities and that environmental legislative frameworks are national in scope.⁴⁴⁶
- 8.30 Several local authorities submitted that it would be possible for waste collection companies that operate outside their local area to provide them with municipal waste collection services.⁴⁴⁷ Two local authorities submitted that it would be important that a waste collection company had a proven track record elsewhere in the UK,⁴⁴⁸ and another said that the waste collection company would need a contract manager and supervision team in the local area.⁴⁴⁹ Local authorities also highlighted that if they were to switch supplier of municipal waste collection services, the new supplier would be using the same facilities and infrastructure⁴⁵⁰ and existing staff would transfer to the new supplier under TUPE.⁴⁵¹
- 8.31 Bid data submitted by the Parties also shows that several competitors (including the Parties, Biffa, and Serco) competed for contracts across the UK (as discussed below).

Conclusion on geographic market

- 8.32 For the reasons set out above, we have concluded that the relevant geographic market is national.

⁴⁴⁴ FMN, NHW Chapter, paragraphs 13.19 and 15.62.

⁴⁴⁵ [OFT's decision of 4 June 2013 in case ME/6040/13](#), anticipated acquisition by Kier Group plc of May Gurney Integrated Services plc, paragraphs 21.

⁴⁴⁶ EC's decision of 30 July 2009 in case [COMP/M.5464](#), *Veolia Eau/Société des Eaux de Marseille/Société des Eaux d'Arles/Société Stéphanoise des Eaux*, paragraph 30; EC's decision of 3 August 2010 in case [COMP/M.5901](#), *Montagu/GIP/Greenstar*, paragraph 17; EC's decision of 3 April 2007 in case [COMP/M.4576](#), *AVR/Van Gansewinkel*, paragraph 15; EC's decision of 19 December 1997 in case COMP/M.1059, *Suez Lyonnaise des Eaux/BFI*, paragraph 17.

⁴⁴⁷ Notes of calls with [REDACTED], [REDACTED] and [REDACTED].

⁴⁴⁸ Notes of calls with [REDACTED] and [REDACTED].

⁴⁴⁹ Note of call with [REDACTED].

⁴⁵⁰ Notes of calls with [REDACTED] and [REDACTED].

⁴⁵¹ Notes of calls with [REDACTED] and [REDACTED].

Conclusion on the relevant market

- 8.33 We have concluded that relevant market is the supply of non-hazardous municipal waste collection services, excluding self-supply, in the UK.

Indicators of competition

- 8.34 Our competitive assessment first examines competition for all non-hazardous municipal collection contracts.
- 8.35 In assessing the horizontal unilateral effects in the supply of non-hazardous waste collection services, we have considered:
- (a) market structure using shares;
 - (b) the evidence from bid data supplied to us by the Parties and their rivals;
 - (c) evidence from customers on which suppliers they consider to be credible for their requirements;
 - (d) evidence from customers on their views regarding the Merger;
 - (e) evidence from competitors on who they consider to be strong suppliers; and
 - (f) evidence from the Parties' internal documents.
- 8.36 Having considered 'in-market' constraints on the Parties we also consider competition from 'out-of-market' constraints via local authority self-supply.
- 8.37 But first we have considered how local authorities select suppliers.

How local authorities select suppliers

- 8.38 This subsection discusses the criteria that local authorities use when choosing a supplier of non-hazardous municipal waste collection services. It is applicable to our analysis of all non-hazardous municipal collection contracts as well as our analysis of complex collection contracts, which is discussed later in this chapter. We have identified the main parameters of competition by asking local authorities to rank the factors that they consider important when deciding which supplier(s) to use for their waste

management contracts.⁴⁵² They were asked to rank a list of factors from 1 (low importance) to 5 (very important). We have then assessed the relative strength of suppliers in meeting local authority requirements based on these parameters of competition.

- 8.39 Eight local authorities (three WCAs and five UAs) that responded to our relevant questionnaires and that currently outsource collection services indicated that they assess bidders on quality and price.⁴⁵³ These broad criteria are given different weightings by different local authorities in their scoring of bids. For example, a local authority might give a collective weighting to the various factors that are included in 'quality' of 60% and price a weighting of 40%. Various factors lend themselves to the ability to offer better quality and price. For example, one local authority told us that extended geographical reach normally provides 'additional resilience';⁴⁵⁴ while another local authority rated certain innovations highly under its quality criteria as it considered relevant innovations reduce cost⁴⁵⁵.
- 8.40 The criteria used by local authorities to assess bidders (as reported in their questionnaire responses) are shown in Table 8.1.

⁴⁵² Question wording: *please list the factors you believe are the most important factors when deciding which supplier(s) to use for the waste management contracts. To the extent the factors already listed [in the table] are relevant, please (a) Indicate the importance of each factor on a scale from 1-5 (where 1 is not important and 5 is very important); (b) Explain why the factor is important / not important. In particular, please explain whether the factor differs in importance between the different contracts outlined in question 3 [list of current contracts] above and refer to any specific criteria and weighting you use when assessing bids.*

⁴⁵³ These include local authority that hold either collection-only contracts or multiservice contracts that specify waste collection services and other services (although not disposal or treatment services since we consider that the responses from local authorities that have included collection with disposal or treatment would not be straightforward to interpret for the purpose of assessing collection services on their own).

⁴⁵⁴ Response to the CMA's phase 2 questionnaire from [redacted].

⁴⁵⁵ Response to the CMA's phase 2 questionnaire from [redacted].

Table 8.18: Criteria used by local authorities to assess bidders for collection contracts

<i>Criteria</i>	<i>No. of local authority respondents</i>	<i>Average score of importance (out of 5)</i>
Reliability of service	8	4.6
Quality of service	8	4.5
Financial standing	7	4.1
More environmentally friendly/sustainable services	8	4.1
Price	8	4.0
Innovation capabilities	8	3.9
Track record	8	3.8
Access to infrastructure	7	3.3
Geographical reach	7	2.9
Provider's size	7	2.7

N = 8 (5 UA, 3 WCA)

Source: CMA analysis of local authority responses. This analysis excludes the response from Watford (WCA) due to lack of ranking data.

8.41 Veolia submitted that the sample of local authorities from our questionnaire is not likely to be representative of the current market for municipal waste contracts. Veolia said that it is likely that at least some of the customer respondents based their responses on a single procurement exercise that occurred many years ago. Further, Veolia submitted that only eight out of some 300 relevant local authorities in England alone have indicated that they assess bidders for municipal waste collection contracts using the criteria listed in Table 8.1 and that this number of responses (which equates to 2% of local authorities) is 'insufficient to draw any robust conclusions on the criteria that local authorities use to assess bidders'. It also submitted that since local authority respondents were asked to rank to a list provided, which had no evidential weight, it would be illogical for a customer not to indicate that it wants a good quality of service.⁴⁵⁶

8.42 In response we note that we have used this evidence to further our understanding of how competition works in the market in a similar way to

⁴⁵⁶ Veolia's response to the Provisional Findings, paragraph 14.

other qualitative evidence (eg hearings held with customers). Therefore, while the number of responses is small, we consider that the consistency and quality of responses (in terms of some customers providing the underlying bid documents and the frequency with which customers mentioned these criteria in the responses more generally)⁴⁵⁷ allow us to place weight on it as evidence indicating the criteria used by local authorities.

- 8.43 Veolia comments that it would be illogical for a local authority not to choose good quality of service from a provided list of criteria. This does not, however, mean that local authorities do not value quality of service.⁴⁵⁸ In our assessment we have used a range of evidence in coming to our decision and we consider that we have not placed undue weight on this particular evidence.

Competition for all non-hazardous municipal collection contracts

Market shares

- 8.44 In this subsection, we consider estimated market shares for the supply of non-hazardous municipal waste collection services, excluding self-supply, in the UK. There are a number of different ways in which market shares can be measured. For example, shares can be measured by revenue, number of households served, number of local authority contracts awarded or the volume of waste collected.
- 8.45 Veolia estimated market shares for municipal collection in terms of:⁴⁵⁹
- (u) the number of local authorities; and
 - (v) the number of households.
- 8.46 Veolia submitted that the Parties' combined share of outsourced municipal waste collection contracts (ie excluding Teckals and self-supply) is [30-40%]

⁴⁵⁷ For example, [X] provided a copy of its 2013 [X] that sets out the evaluation process used to assess bids and recommend a bidder, for its integrated collection and recycling contract - Response to CMA's Phase 2 questionnaire 3 February 2022

⁴⁵⁸ For example, Westminster Council told us in relation to its collection contract: '[B]ecause it is a customer facing contract the quality element is extremely important to us because we just cannot afford ever to have dirty streets in Westminster'. Note of call with Westminster, 15 February 2022.

⁴⁵⁹ FMN, NHW Chapter, paragraph 15.28.

by number of local authorities served and [40-50%] by number of households.⁴⁶⁰

- 8.47 Veolia further submitted that if self-supply and Teckals were included in the market then its own share (based on number of households) would be [5-10%] and Suez's would be [0-5%].⁴⁶¹
- 8.48 Suez estimated the Parties' combined share to be [30-40%] with a [5-10%] increment by volume of waste collected and [30-40%] with an increment of [5-10%] by annual contract value.⁴⁶² These estimates exclude in-house self-supply and collection services from integrated contracts but include supply by Teckals. We consider that including services from integrated contracts and excluding Teckals would likely increase the Parties' share.
- 8.49 Veolia submitted that, on any of these bases, the Merged Entity's share of supply would be below the level at which competition concerns generally arise, and that the increment resulting from the Merger is small.⁴⁶³
- 8.50 Veolia also submitted that waste collection contracts can last between eight and ten years and that competition has [✂] meaning that the current shares do not necessarily reflect competition today.⁴⁶⁴
- 8.51 We have made our own estimate of market shares. We requested data from the Parties and their competitors on the municipal collection contracts that they currently hold in the UK, including information on the number of households served by each contract.^{465,466}
- 8.52 Using this data, we estimated shares of supply in terms of the number of households currently served, excluding self-supply. The shares are presented in Table 8.2.⁴⁶⁷

⁴⁶⁰ Veolia response to CMA Working Paper on Supply of Municipal Collection Services, 22 April 2022.

⁴⁶¹ Veolia response to CMA Working Paper on Supply of Municipal Collection Services, 22 April 2022.

⁴⁶² FMN, NHW Chapter, paragraph 15.34.

⁴⁶³ FMN, NHW Chapter, paragraph 15.29; Veolia's response to CMA Issues paper, 17 November 2021, paragraph 3.4-3.5 and Parties Confidential Annex.

⁴⁶⁴ Veolia's response to CMA Issues paper, 17 November 2021, paragraph 3.6.

⁴⁶⁵ The respondents to our questionnaire were Biffa, Serco, Viridor, FCC, Beuparc, Urbaser, Amey, Renewi, Grondon, Recycling Lives among others. This set of respondents covers suppliers that Veolia submitted accounted for at least [✂] of the supply of municipal collection, plus three additional competitors.

⁴⁶⁶ Veolia's response to working paper on municipal collection. Table on p10 lists Veolia, Suez, Biffa, Serco, Urbaser, FCC, Amey and Countrystyle.

⁴⁶⁷ Amey is excluded from the share estimates because it is not currently pursuing growth in the sector and [✂]. Amey's share is redistributed in proportion to the pre-exit shares of the other suppliers. Note of call with Amey, 14 Feb 2022, p5-6.

Table 8.19: Share of collection of non-hazardous municipal waste (by number of UK households)

		%
<i>Supplier</i>	<i>No of households served</i>	<i>Share</i>
Veolia	[X]	[20-30%]
Suez	[X]	[5-10%]
Parties combined	[X]	[30-40%]
FCC	[X]	[20-30%]
Biffa	[X]	[10-20%]
Serco	[X]	[10-20%]
Urbaser	[X]	[5-10%]
Renewi	[X]	[0-5%]

Note: This table does not account for all UK households. The Office for National Statistics (ONS) reports that the UK has 28 million households ([Families and Households in the UK: 2020](#)). Veolia submitted that [X] of households in England are in local authorities that self-supply for the collection of non-hazardous municipal waste. Further, there are likely to be some discrepancies between the number of households in a local authority area as recorded by the Parties and their competitors on the one hand and by the ONS on the other.

Source: CMA analysis of data provided by the Parties and third parties

8.53 These shares of supply show that the Parties will have a combined share of [30-40%] of the households currently served by the suppliers in the dataset, with a [10-20%] increment brought about by the Merger. Our estimated shares are similar to those submitted by Veolia and not very dissimilar to those submitted by Suez.

8.54 The Merged Entity would entrench Veolia's position as the largest supplier in the market (it would be approximately the same size as the next two competitors combined). FCC, Biffa and Serco each has a significant share of supply ([20-30%], [10-20%] and [10-20%], respectively) and Urbaser would also have a material share of [5-10%], which is comparable to Suez's share of supply.

8.55 We have also considered the market shares in terms of the number of local authorities supplied (Table 8.3).⁴⁶⁸ The results are broadly similar to those in terms of the number of households (Table 8.2).

Table 8.20: Share of collection of non-hazardous municipal waste (by number of contracts)

<i>Supplier</i>	<i>No. of contracts currently held</i>	<i>%</i> <i>Share of supply</i>
Veolia	[X]	[20-30%]
Suez	[X]	[10-20%]
Parties' combined	[X]	[30-40%]
FCC	[X]	[10-20%]
Biffa	[X]	[20-30%]
Serco	[X]	[10-20%]
Urbaser	[X]	[10-20%]
Renewi	[X]	[0-5%]
Recycling Lives	[X]	[0-5%]
Viridor	[X]	[0-5%]
Total	[X]	

Source: Third parties, Parties, CMA calculations

8.56 We consider that both measures of market shares are informative. Market shares expressed in terms of the number of contracts currently held takes into account direct competition (ie suppliers compete for contracts) but does not take account of variations in contract size. Adjusting for the number of households served gives some insight into the scale of contracts won (especially if there are material differences between the two measures). Comparing Tables 8.2 and 8.3, we have found that the Parties' market share is very similar on both measures (as is Serco's), whereas FCC serves proportionately more households than numbers of contracts and, conversely,

⁴⁶⁸ The share estimates do not include non-home Teckals and as such, all the share estimates may be over-estimated. The extent to which they are over-estimated is unclear, but we note that virtually no competitors listed any Teckals as strong competitors for municipal collection.

Biffa and Urbaser serve proportionately fewer households than numbers of contracts.

- 8.57 Both measures indicate that the Merger involves the largest supplier in the market and the fifth largest. The market shares indicate that there are currently six viable suppliers in the supply of non-hazardous municipal waste collection services (Veolia, Suez, FCC, Biffa, Serco and Urbaser). The market shares also indicate that the Merged Entity would be significantly larger than all other providers in the market, entrenching Veolia's existing position as the largest supplier and would lead to significant consolidation. For example, after the Merger the top two suppliers would account for approximately 60% (up from approximately 50% before the Merger) on both measures considered and the top three suppliers, 70-75% (up from 60-65% before the Merger).
- 8.58 Veolia submitted that examining more recent contracts – eg that have started since 2019 – is more relevant to current competition and therefore a better indicator of future competition. On this basis, Veolia submitted that the Parties' combined shares are [30-40%] by number of households and [30-40%] by number of local authorities (the increment from the Merger is [5-10%] on the basis of the number of local authorities served).⁴⁶⁹ Veolia submitted that this demonstrates how competition had been intensifying over the past five years.⁴⁷⁰
- 8.59 Although we do not consider this evidence on its own as being clearly indicative of competition having intensified over the past five years, we have taken this evidence into account in our assessment of the Merger.

Evidence from bidding data

Parties' submissions

- 8.60 Veolia submitted that its bidding data showed that [X].⁴⁷¹ [X].
- 8.61 It submitted that the bidding data analysis showed that Veolia faced Serco, Biffa and Urbaser more often than it faced Suez in tenders and that it also faced FCC and Amey in a similar number of instances to Suez.⁴⁷² It

⁴⁶⁹ Veolia response to CMA Working Paper on Supply of Municipal Collection Services, 22 April 2022.

⁴⁷⁰ Veolia's [response to the Provisional Findings](#), paragraph 85

⁴⁷¹ Veolia response to CMA working paper on supply of municipal collection services.

⁴⁷² Veolia's [response to the Provisional Findings](#), paragraph 82

submitted that the data shows that Suez is at best a moderate constraint on Veolia.⁴⁷³

8.62 Finally, Veolia submitted that it has [REDACTED]. Veolia submitted that it was currently pursuing [REDACTED] municipal collection tenders and [REDACTED]. However, there was no overlap between these tenders.⁴⁷⁴

8.63 Veolia submitted that, given the Parties' bidding data was cross-checked with evidence from other suppliers (as set out below), it forms a sound basis on which to conclude that there cannot be an SLC in the supply of municipal waste collection services. The bidding data is the best available and most direct evidence of closeness of competition between the Parties and it is irrational to prefer weaker, indirect evidence such as market shares and a handful of customer responses.⁴⁷⁵

Our assessment

8.64 Suez and Veolia each provided bidding data on the contracts for which they competed over recent years (four years for Suez and [REDACTED] Veolia).⁴⁷⁶ As part of this data, each of the Parties submitted information on which competitors they believed to have also bid for each contract. Veolia submitted that this information provided its best current view of the participants it faced in these past tenders.⁴⁷⁷ Suez's bidding data contained [REDACTED] tenders for which it competed between 2017 and 2020 and one tender for which it did not compete. Veolia's bidding data contained [REDACTED] tenders in which it participated between 2016 and 2020 and which had an estimated annual value greater than £[REDACTED].⁴⁷⁸

8.65 It is not always transparent which suppliers bid in which tenders. The information on competing bidders for a given contract was based on the Parties' understanding or perception on whether the other Party or any third parties submitted a competing bid. Since the Parties' understandings or perceptions were not always accurate, we sought to improve the data by confirming with competitors and the other Party their actual bidding

⁴⁷³ Veolia's [response to the Provisional Findings](#), paragraph 83

⁴⁷⁴ Veolia and Suez responses to RF11

⁴⁷⁵ Veolia's [response to the Provisional Findings](#), paragraph 11

⁴⁷⁶ Parties' response to CMA phase 2 s.109 notice, 21 December 2021, 21 December 2021.

⁴⁷⁷ Veolia Response to CMA Question of 9 March 2022.

⁴⁷⁸ The Parties' bidding data includes tenders for both standalone collection contracts and contracts where municipal waste collection services were combined with other services such as street cleansing, or HWRC management services. Therefore, this analysis encompasses contracts with a range of complexity. Suez's data was not restricted by value.

activity.⁴⁷⁹ Therefore, if a supplier told us that it bid in a tender we included it in our analysis. If, on the other hand, a supplier told us that it did not submit a bid but the Parties had included it, we removed it from the analysis.

8.66 Competitors' data on tenders will not be recorded in a perfectly consistent way: for example, firms may record a slightly different date for the same tender.⁴⁸⁰ We conducted a manual matching exercise to judge whether suppliers had bid for the same tenders, by referring to the name of local authority, the approximate start date of the contract, the overlap in services listed as included in the contract, the approximate contract value, and the winner of the contract.⁴⁸¹

8.67 We then carried out two types of analysis with these datasets:

- (a) Participation analysis—how frequently each of Veolia and Suez faced different competitors when bidding for contracts; and
- (b) Loss analysis—how frequently each of Veolia and Suez lost tenders to different competitors.

Suez bid data

8.68 The results of an analysis of Suez's data on how frequently it faced Veolia and how frequently it lost to Veolia are described below and presented in Table 8.4. Out of the 14 tenders that contained information on which other competitors competed in the tender, Veolia was identified as having competed in [X]. Suez competed more often against Biffa ([X] tenders) and Serco ([X]) than it did against Veolia. FCC ([X]) competed against Suez the same number of times as Veolia. Urbaser, Amey (both [X] tenders) and

⁴⁷⁹ Only Amey was not able to provide this data, so we relied on the Parties' beliefs on which contracts Amey bid for.

⁴⁸⁰ For example, two suppliers may record a different contract start date or contract value, as each of these values may be approximate until the contract is actually signed (in which case the start date may only be observed by the winner).

⁴⁸¹ When matching, some variation was permitted in the contract value, as bids will naturally have some variation in their valuations, and customer name. For example, "Wycombe, Chiltern and South Bucks" was recognised as referring to the same local authority as "Chiltern, Wycombe and South Bucks joint waste contract". Differences on other factors were perceived to be indicative that contracts were not the same. If the start date was a different year then bids were viewed as not being the same contract. Similarly, if the contract winner was different, this was viewed as an indicator that they were not the same contract, as this information is published so should be common knowledge.

Remondis ([REDACTED]) also competed against Suez but in fewer tenders than Biffa, Serco and FCC.⁴⁸²

8.69 Of the 14 tenders analysed, Suez lost [REDACTED]. [REDACTED]. The results are presented in Table 8.4.

Table 8.21: Suez bidding analysis

<i>Supplier</i>	<i>Number of contracts participated against</i>	<i>Number of contracts lost to</i>
Biffa	[REDACTED]	[REDACTED]
Serco	[REDACTED]	[REDACTED]
FCC	[REDACTED]	[REDACTED]
Veolia	[REDACTED]	[REDACTED]
Urbaser	[REDACTED]	[REDACTED]
Amey	[REDACTED]	
Remondis	[REDACTED]	
Total bids	14	9

Source: Third parties, Parties, CMA calculations

Veolia bid data

8.70 With respect to Veolia's bidding, we have data for 30 tenders from 2016 to 2020.⁴⁸³ It shows:

- (w) Participation analysis: Veolia faced Suez in [REDACTED] tenders. Veolia competed more often with Serco ([REDACTED] tenders), Biffa ([REDACTED]) and Urbaser ([REDACTED]) than it did with Suez. FCC ([REDACTED]) faced Veolia in as many tenders as Suez. Amey ([REDACTED]) bid against Veolia but in fewer tenders than the other suppliers listed; and

⁴⁸² Remondis does not appear in the shares of supply analysis because it did not win any of the contracts according to the bidding datasets of the Parties. Veolia has also not identified Remondis as a supplier more broadly (ie outside of its bidding data) for municipal contracts that started since 2017 and with a value above £10 million. See Veolia's response to CMA working paper on complex contracts, 22 April 2022, Annex 1.

⁴⁸³ Two sets of tenders, where no contract was not awarded at the end of the process, have been excluded from the analysis.

- (x) Loss analysis: Veolia won [X] tenders and did not win [X] (an additional three were not awarded). Veolia lost most frequently to Serco and Urbaser on [X] and [X] occasions each. The full results are in Table 8.5.

Table 8.22: Veolia bidding analysis

<i>Supplier</i>	<i>Number of contracts participated against</i>	<i>Number of contracts lost to</i>
Serco	[X]	[X]
Biffa	[X]	[X]
Urbaser	[X]	[X]
FCC	[X]	[X]
Suez	[X]	[X]
Amey	[X]	[X]
Continental Landscapes	[X]	[X]
Beauparc ⁴⁸⁴	[X]	[X]
Total bids	28	16

Source: Third parties, Parties, CMA calculations

Conclusion on bid data

- 8.71 While we exercise some caution in interpreting the bidding data due to challenges in mapping contracts across various suppliers' datasets (as described at paragraphs 8.65 and 8.66), we still consider that this analysis offers some insight to the competition for municipal collection services.
- 8.72 Both sets of bidding data show that the Parties regularly face competition from each other, as well as competition from Biffa, Serco, FCC and Urbaser. This is consistent with our analysis of market shares.
- 8.73 Further, the bid data shows that both Veolia and Suez have won contracts when bidding against the other and when a third party previously held the

⁴⁸⁴ Beauparc does not appear in the shares of supply analysis because it did not win any of the collection contracts according to the bidding dataset of the Parties. Veolia has also not identified Beauparc separately (although it may be in the "others" category) in its municipal collection shares of supply. See Veolia response to CMA Working Paper on Municipal Collection - 22 April 2022.

contract. Veolia told us that [X] (paragraph 8.60). We consider that the process of competition is broader than whether one of the Merger parties was the previous supplier and the other Merger party won the renewed contract. Rather, put simply, the competitive dynamic is a process of rivalry between firms seeking to win customers' business over time by offering them a better deal.⁴⁸⁵ If one of the Parties did not have the other to bid against it may not need to bid as keenly (to the benefit of the local authority and its residents) in order to win the contract.

- 8.74 We have also found that neither of the Parties has lost a single tender to Remondis, Continental Landscapes, Amey or Beuparc in the period under consideration. In addition to not winning contracts, we have found that Remondis, Beuparc and Continental Landscapes had low participation rates which suggests that they offer a weak competitive constraint on the Parties. We have dismissed the constraint imposed by Amey, as suggested in the data, since it has told us that it is not pursuing growth in the sector and [X].

Evidence from customers

- 8.75 To assess the relative strength of suppliers in a forward-looking manner, we asked those local authorities currently served by the Parties to list the suppliers that they would 'consider credible' if they were to re-tender their services in the near future.⁴⁸⁶ They were also asked to indicate the strength of each supplier on a scale from 1 to 5 (where 1 is not very strong and 5 is very strong).
- 8.76 For collection contracts, we received responses from 14 local authorities (two WCAs and 12 UAs). Along with Biffa, Veolia and Suez were the most frequently mentioned suppliers. Veolia was mentioned by 13 local authorities, Biffa by 10 and Suez by nine. Serco was mentioned eight times, FCC seven, and Urbaser five. Although local authorities mentioned Amey and Viridor three times each, as already set out, Amey has told us that it does not plan to bid for new local authority contracts in the short term and

⁴⁸⁵ CMA129, paragraph 2.2

⁴⁸⁶ Question wording: *Please list the suppliers you would consider as credible if you were to re-tender the services listed in question [] in the near future (please pick up to three contracts that need to be re-tendered soonest). In doing so, please: (a) List the services you would include in each tender; (b) List the criteria you would use to assess bidders; (c) Rank the suppliers in order of overall preference; (d) Indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong); and (e) Provide an explanation for your rating. In doing so, please refer to the selection criteria you would consider to be important in such a tender.*

Viridor exited the municipal collection market several years ago.⁴⁸⁷

Countrystyle, Cory and Grundon were each mentioned only once. We note that Cory's collection business has been sold to Biffa and therefore we do not consider it to be a competitor separate from Biffa.⁴⁸⁸

- 8.77 One local authority mentioned Ubico and Norse but did not provide a rating for them as it said it had 'insufficient knowledge of the company' to do so.⁴⁸⁹
- 8.78 Some customers have given certain third-party suppliers (not the Parties) low scores even though they do not consider them credible suppliers as revealed in the explanation of their ratings.⁴⁹⁰ This means that the average score of third-party suppliers may be over-estimated.
- 8.79 Based on customer views and mentions, local authorities rated Veolia, Biffa, Suez, FCC, Serco and Urbaser highly. This is consistent with both the bidding data analysis and our market share analysis. Countrystyle and Grundon were mentioned by one local authority each, indicating that they would be weaker constraints.

Customer concerns about the impact of the Merger on collection services

- 8.80 Of the 41 UAs and WCAs that responded to the CMA questionnaire during the CMA's Phase 1 investigation or our questionnaire at Phase 2, 26 had concerns about the Merger, one local authority did not respond to this question,^{491,492} and 14 did not have concerns about the Merger. Of these 26, five local authorities explicitly mentioned concerns in collection. They said:
- (a) Bracknell Forest (UA) – 'The reduction of one supplier would be a significant detriment to competition in the waste collection market. This could lead to increased costs for tax payers and a worse service'.⁴⁹³

⁴⁸⁷ Response to the CMA's phase 2 questionnaire from [redacted].

⁴⁸⁸ Cory Group website: [Cory Environmental sells collection business to Biffa Waste Services | Cory Group](#), accessed by the CMA on 14 April 2022

⁴⁸⁹ Response to the CMA's phase 2 questionnaire from [redacted].

⁴⁹⁰ These include [redacted] score of Biffa, [redacted] score of FCC and Cory, [redacted] score for Urbaser.

⁴⁹¹ Local authorities were provided with yes and no boxes along with the question: *Do you have any concerns about the impact on competition of this acquisition? Please explain your answer.* Where we have not received an updated response at Phase 2, we have used the Phase 1 response, where Local authorities were provided with yes/no box with the question: *Please indicate whether you have any concerns about the effects of this merger on competition. Please explain the reason for your answer.*

⁴⁹² [redacted] collection local authority.

⁴⁹³ Response to the CMA's phase 2 questionnaire from Bracknell Forest Council, 26 January 2022, Q15.

- (b) Newcastle-Under-Lyme (WCA) – ‘If this merger takes place it will mean we only have two large waste management companies operating throughout the UK. There are many other smaller players, but not necessarily national players, which could reduce competition especially when contracting collection contracts’.⁴⁹⁴
- (c) Stafford (WCA) – ‘Whilst competition is healthy, I am concerned about the apparent reducing choice of suitable providers especially in relation to the collection and processing contracts’.⁴⁹⁵
- (d) [X] – ‘This could limit competition for waste contracts, particularly waste collection’.⁴⁹⁶

8.81 In addition, there were 34 other customers (including four WCAs) that raised concerns about the Merger generally. While these customers were not specific about the services that gave rise to their concerns, we infer that some may relate to collections given the nature of the services that are purchased by these customers.⁴⁹⁷

8.82 The above evidence shows that some customers are concerned about the impact of the Merger on the number of suppliers for municipal collection contracts.

Evidence from competitors

8.83 To assess the relative strength of suppliers in a forward-looking manner, competitors were asked to list (including themselves) who they considered as their strongest competitors in non-hazardous municipal waste collection contracts in the UK. They were also asked to rank these suppliers (out of 5, with 5 being the highest score).

8.84 Table 8.6 shows the average scores from competitors.⁴⁹⁸

⁴⁹⁴ Response to the CMA's phase 2 questionnaire from Newcastle Under Lyme, 31 January 2022, Q11.

⁴⁹⁵ Response to the CMA's phase 2 questionnaire from Stafford Borough Council, 27 January 2022, Q8.

⁴⁹⁶ [X] response to the CMA's local authority customer questionnaire at Phase 1 of the merger investigation.

⁴⁹⁷ For example, [X] raised the concern that ‘Veolia’s acquisition of the one of its top 5 competitors is clearly going to reduce competition across the waste sector (commercial and municipal markets). This will only increase pricing and reduce investment in facilities’.

⁴⁹⁸ The ratings are weighted by the number of mentions.

Table 8.23: Supplier ratings

<i>Supplier</i>	<i>Number of mentions</i>	<i>Average score out of 5 (weighted by the number of mentions)</i>
Veolia	5	5.0
Suez	4	3.2
Biffa	4	3.8
Urbaser	4	2.4
FCC	3	2.0
Serco	2	2.0
Beauparc	1	0.2
Amey	1	0.4
In-house	1	0.8

Source: CMA analysis of relevant customer questionnaire responses

Note: All competitors had ranked themselves but Biffa and Serco did not include themselves, so its score may be underestimated in the table. The Parties have also not ranked themselves.

8.85 Competitors identified Veolia, Biffa and Suez as the most credible competitors for municipal collection contracts and, on average, gave them the highest ratings. Competitors mentioned Veolia, Suez, Biffa and Urbaser more frequently than other suppliers. Veolia was comfortably rated more highly than other suppliers. Although they received an average rating lower than Veolia, the average ratings for Suez and Biffa were materially better than for other suppliers. This is consistent with the other evidence already discussed in this chapter.

8.86 In addition to ranking the suppliers, competitors also provided an explanation for the ratings. The criteria that competitors based the above rankings on were:

- (a) Track record/well established;⁴⁹⁹ and
- (b) Access to treatment/disposal infrastructure.⁵⁰⁰

⁴⁹⁹ Responses to CMA Phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

⁵⁰⁰ Responses to CMA Phase 2 questionnaire from [REDACTED], [REDACTED] and [REDACTED].

8.87 Below is a summary of competitors' views on each of the suppliers:

- (a) Biffa. A competitor⁵⁰¹ submitted that while Biffa does not have as much disposal infrastructure, it has lots of know-how and can exploit synergies with its C&I collection business.
- (b) Serco. A competitor⁵⁰² mentioned that Serco has strengthened its position in the past three years and won numerous new and large contracts.
- (c) FCC. A competitor⁵⁰³ mentioned that FCC has a large number of contracts across the UK, including local authority waste collection, C&I waste, and waste treatment. Another⁵⁰⁴ noted that FCC has a sizeable disposal network and limited municipal portfolio. One competitor noted that FCC occasionally bid for collections contracts but less frequently than three years ago.⁵⁰⁵
- (d) Urbaser. Urbaser considers municipal services, street cleansing and waste collection contracts as its core activity, representing over 50% of group revenue.⁵⁰⁶ [REDACTED].⁵⁰⁷ [REDACTED].⁵⁰⁸ A competitor⁵⁰⁹ mentioned that Urbaser is increasing its presence in the UK.
- (e) Countrystyle. While identified by two competitors as an entrant by winning the London Borough of Bexley contract for collection⁵¹⁰, it was viewed by one competitor as 'a regional player who are unable to provide national coverage'.⁵¹¹

8.88 Overall, the evidence from competitors indicates that the strongest competitors are Veolia, Suez and Biffa with Urbaser, FCC and Serco also offering a competitive constraint. Competitors have viewed Beauparc and Countrystyle as weak constraints.

⁵⁰¹ Note of call [REDACTED].

⁵⁰² Response to the CMA's phase 2 questionnaire from [REDACTED].

⁵⁰³ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁵⁰⁴ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁵⁰⁵ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁵⁰⁶ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁵⁰⁷ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁵⁰⁸ Note of call with [REDACTED].

⁵⁰⁹ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁵¹⁰ Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

⁵¹¹ Response to the CMA's phase 2 questionnaire from [REDACTED].

Evidence from internal documents

- 8.89 The Parties generally refer to the same or a similar pool of competitors in their internal documents. This generally includes the other Party, Biffa, Serco, FCC and Urbaser.
- 8.90 For example, an internal Suez presentation from December 2020 notes Veolia, Biffa, Serco, Suez, Amey, Urbaser and FCC ([REDACTED]) as key players in the municipal waste collection market, where Veolia is described as the 'clear market leader'.⁵¹²
- 8.91 Regarding Veolia's internal documents:
- (y) [REDACTED];⁵¹³
 - (z) A Veolia strategy document from [REDACTED].⁵¹⁴
 - (aa) In a note to Veolia's Board of Directors [REDACTED].⁵¹⁵ The note also lists [REDACTED].
 - (bb) A Veolia internal strategy document dated January 2018⁵¹⁶ provides an overview of competitors in respect of municipal bidding where it lists [REDACTED].
 - (cc) A Veolia presentation (July 2019) to its [REDACTED].⁵¹⁷
 - (dd) A Veolia strategy document from [REDACTED].⁵¹⁸

Competition from self-supply

Parties' views on competition from self-supply

- 8.92 The Parties have submitted that self-supply of collection services (through in-house provision or Teckals) is an option for local authorities (paragraph 8.13). Indeed, Veolia submitted over half of UK households ([REDACTED]) are served by local authorities self-supplying non-hazardous municipal waste collection via in-house capabilities ([REDACTED]) and around a further [REDACTED] are served by Teckals (paragraph 8.13). Veolia also submitted that eight of the largest 15

⁵¹² Suez's internal document, Document 071 / VES-000005725.

⁵¹³ Veolia's internal document VECMA00017774.

⁵¹⁴ Veolia's internal document VECMA00017774

⁵¹⁵ Veolia internal document, VES-000001047 / VECMA00006387

⁵¹⁶ Veolia internal document, SON_CMA-0001353-0001.

⁵¹⁷ Veolia's internal document VES-000002622 / VECMA00018203

⁵¹⁸ Veolia's internal document VES-000002607 / VECMA00017774

local authorities and nine out of the 20 smallest local authorities collect waste in-house.⁵¹⁹

- 8.93 Veolia submitted that Local Authority Trading Companies (**LATCos**) are entities wholly owned by a local authority (or group of local authorities). A LATCo can either offer or be invited to provide services to another local authority. Veolia submitted that, if accepted, the LATCo can establish a Teckal (either on its own or as a joint venture with another local authority).⁵²⁰
- 8.94 Veolia submitted that Norse, a LATCo owned by Norfolk County Council, provides municipal waste collection services to six local authorities:
- (a) Amber Valley Borough Council;
 - (b) East Suffolk Council;
 - (c) Great Yarmouth Borough Council;
 - (d) Medway Council;
 - (e) Havant Borough Council; and
 - (f) West Northamptonshire Council.⁵²¹
- 8.95 In addition, Veolia submitted that Ubico, a Teckal jointly owned by seven local authorities, provides municipal waste collection services to Gloucester City Council.⁵²²
- 8.96 Veolia submitted nine instances over the past five years in which local authorities have stopped outsourcing their waste collection requirements and self-supplied instead (paragraph 8.13).
- 8.97 We have therefore considered the evidence on whether local authority self-supply competitively constrains the Parties (noting that we have found that self-supply does not form a part of the relevant market).

Evidence from customers

- 8.98 As set out above, we have asked local authorities and competitors who they see as credible suppliers for their contracts (paragraphs 8.75 to 8.79). The

⁵¹⁹ [Veolia Overview Submission](#), paragraph 36.

⁵²⁰ Veolia Supplemental Response on Teckals, 27 April 2022

⁵²¹ Veolia Supplemental Response on Teckals, 27 April 2022

⁵²² Veolia Supplemental Response on Teckals, 27 April 2022

large majority of local authorities did not identify self-supply generally, or a Teckal specifically, as a credible supplier for them. One local authority listed Teckals but could not give a rating because it had insufficient knowledge about them (paragraph 8.77).

- 8.99 It might be that local authorities do not identify self-supply as a credible supplier for their contracts since local authorities (or their Teckals) do not participate in tenders. While some local authorities told us that they could use or have used the cost of self-supply to benchmark third party suppliers, local authority respondents noted that in-house teams and Teckals do not bid in tendering processes.⁵²³
- 8.100 However, we also asked local authorities that currently outsource their collection services how likely they would be to outsource or self-supply the next time they put their collection services out to tender. Out of seven local authority respondents who currently outsource collection:⁵²⁴
- (a) five local authorities stated that they would either definitely outsource or that outsourcing was significantly more likely than self-supply.⁵²⁵ This included Blackburn with Darwen which had taken its collection of recycling in-house when it had issues with its current provider, with no interest in collection and processing of recyclates (see also 8.19). However it stated that it had no capacity to self-supply the next time it needed to renew its household waste recycling centre contract. The London Borough of Camden and London Borough of Brent both indicated that they had considered self-supply but it was not viable and that they were both significantly more likely to outsource than self-supply the next time they procure collection services. Stafford Council had considered self-supply when it last procured collection services and chose to outsource (paragraph 8.21(d)). It also stated that it was significantly more likely to outsource rather than self-supply because outsourcing was ‘a cost-effective way to operate the service’ and it was happy with the quality of service provided (currently provided by Veolia).⁵²⁶ Similarly, Broadland District Council said that it was

⁵²³ Among the 14 local authorities that considered self-supplying as an option, [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted] indicated that either they already have or may use self-supply to benchmark third-party supplier bids submitted in a tender process.

⁵²⁴ Two local authorities chose not to answer the question as it was hypothetical and/or some time before the local authority would tender for its collection services. Response to the CMA’s post-PF questions from: Central Bedfordshire; Chesterfield.

⁵²⁵ Response to the CMA’s post-PF questions from: Blackburn with Darwen, London Borough of Camden, London Borough of Brent, Broadlands and Stafford.

⁵²⁶ Response to the CMA’s phase 2 questionnaire from: Stafford Council.

significantly more likely to outsource rather than self-supply because its new contract with Veolia ‘delivered significant savings’ (the contract is contemporaneous – it started in April 2022);

- (b) Two local authorities, Westminster and Somerset, indicated that self-supply was marginally more likely than outsourcing collection services once their current contracts end.⁵²⁷ Both councils cited a recent change in local authority administration as a reason for a possible move to self-supply.⁵²⁸ Somerset explained its response by telling us that ‘a new Liberal Democrat administration was elected in May 2022. They will lead a new unitary council in Somerset from 2023. They expressed a manifesto commitment to review poorly performing contracts and consider whether to bring them in-house. So, IF our contract was poorly performing at the time of contract review this MAY make it marginally more likely we self-supply’.⁵²⁹ Somerset also told us that ‘the scale of takeovers/potential/attempted takeovers in the waste sector (Viridor, SUEZ, now Biffa) and uncertainty on the long term intentions of commitments of private equity backed providers may make us more nervous about out-sourcing into a long-term contract in what is clearly a market in flux’.⁵³⁰

- 8.101 We have also found earlier in this Chapter that some local authorities face a degree of difficulty in self-supplying that prevents them from doing so (paragraph 8.25). In particular, local authorities have told us that (amongst other reasons) they do not have the requisite expertise to self-supply or that moving to self-supply would be too risky (paragraph 8.20).
- 8.102 The evidence set out above suggests that there are local authorities which currently outsource their collection services and are also likely to outsource their collection services the next time they procure them. Some local authorities were definitive in their answers that they would not self-supply.
- 8.103 Where we did receive responses suggesting that self-supply was likely, this appeared to be driven in part by a change in the customer’s circumstances (in particular, a change in the local administration that has a policy position

⁵²⁷ Response to CMA questions from Westminster City Council, 31 May 2022; and response to CMA questions from Somerset County Council, 9 June 2022.

⁵²⁸ Other reasons provided by Somerset as to why the authority was marginally more likely to self-supply than outsource included that recent consolidation in the waste management market and uncertainty on the long term commitments of private equity backed providers made it ‘nervous’ about outsourcing a long-term contract; and uncertainty around the national policy may change the risk profile of outsourcing versus self-supply.

⁵²⁹ Response to CMA questions from Somerset County Council, 9 June 2022.

⁵³⁰ Response to CMA questions from Somerset County Council, 9 June 2022.

regarding self-supply / outsourcing). This suggests that decisions on self-supply versus outsourcing may be influenced by policy preferences, which may change as administrations change.

Evidence from internal documents

- 8.104 The Parties' internal documents recognise that there has been an increase in local authorities' use of in-house services (particularly through Teckals):
- (a) An internal Suez presentation from December 2020 shows that, the proportion of waste collection authorities using outsourced contracts decreased by four percentage points in the six year period from 2013 to 2019, (from 45% to 41%).⁵³¹
 - (b) An internal Veolia risk register⁵³² noted that insourcing by local authorities to Teckals was [REDACTED].
- 8.105 We consider that this document indicates that at least one reason Veolia monitors the success of self-supply / Teckals is to monitor the share of outsourced services. In other words, self-supply reduces the number of contracts available for it to compete for.
- 8.106 Further, when the Parties discuss their competitors in the municipal waste services market, the competitor set is generally limited to out-sourced suppliers (although it sometimes includes Teckals). For example a Veolia internal strategy document dated January 2018 provides an overview of competitors in respect of municipal collection bidding where it described Teckals as [REDACTED].⁵³³

Conclusion on competition from self-supply

- 8.107 There is a proportion of local authorities that self-supplies non-hazardous waste collection services. Veolia has estimated this is currently at [REDACTED] of households. However, that these local authorities self-supply may not prevent the Merged Entity from bidding at prices higher than the Parties would without the Merger, or worsening service levels compared to the situation without the Merger, for other local authorities.

⁵³¹ Suez's internal document VES-000005725 / Document 071 - RD Engagement, PSD Municipal.pptx.

⁵³² Veolia's internal document VES-000002631 / VECMA00018348.

⁵³³ Veolia internal document, SON_CMA-0001353-0001.

8.108 We have found that:

- (a) for some local authorities, the decision to self-supply or not is based on policy positions that might change with different local authority administrations. Conditions of competition – and subsequent effects such as increased bid prices – are not the key determinant for these local authorities. Administrations, of course, change and so local authorities currently self-supplying might outsource in the future and vice versa;
- (b) some local authorities face a degree of difficulty in self-supplying that prevents them from doing so – particularly a lack of expertise;
- (c) the Parties' internal documents monitor self-supply by local authorities (and its trend over time). While it is possible to interpret this as evidence of a competitive interaction between the Parties and self-supply as an alternative, it is also possible to interpret this as evidence of self-supply growing gradually over time, reducing the number of tenders available in which the Parties can compete, without necessarily being a threat in the context of competing for individual contracts. In other evidence we have reviewed in this chapter, we note evidence that self-supply does not normally 'participate' as an alternative in a tender. Rather, once a customer launches a tender, it has normally revealed a preference for outsourcing, limiting the scope to use self-supply as a threat. While it is possible that some tenders will be cancelled in favour of self-supply, we have seen limited evidence of this occurring in practice. Taking all of this into account, we interpret self-supply as an overall limiting factor on the total opportunities available to the Parties, but consider that in the context of competition for individual opportunities it is likely to be a weak constraint; and
- (d) local authorities looking to outsource rely on the competition between private suppliers (like Veolia and Suez) to get a good deal for their waste collection services on behalf of local rate payers.

Conclusion on competition for all non-hazardous municipal collection contracts

8.109 The evidence set out above considered competition for all non-hazardous municipal waste collection contracts. The evidence that we have considered – submissions from the Parties, the Parties' own internal documents, the market structure, bidding data, views of customers and competitors, – indicates that the Parties compete against each other for the supply of non-hazardous municipal waste collection contracts. Veolia is currently the

largest supplier in the market and the Merger will strengthen its position further.

- 8.110 The evidence that we have examined is consistent in indicating that the Merged Entity would face competitive constraints from Biffa, FCC, Serco and Urbaser.
- 8.111 We have found that self-supply of municipal collection services including Teckal exerts a limited constraint on suppliers. Although a significant number of local authorities do self-supply, this does not mean that self-supply competitively constrains suppliers or that local authorities who outsource have a preference for, or can, self-supply. Those local authorities that self-supply cannot compete against private sector suppliers to supply other local authorities that have decided not to self-supply (or cannot self-supply). Of the local authorities that currently outsource their non-hazardous waste collection services, the majority to whom we spoke said that they are either definitely or likely to continue to outsource once their current contracts expire. We have found in our discussion of market definition that many local authorities do not have the expertise to self-supply.
- 8.112 We now consider the evidence on competition for complex non-hazardous municipal waste collection contracts.

Competition for complex collection contracts

- 8.113 As discussed in Chapter 7, we have identified that the characteristics of some municipal waste contracts make them more complex. This complexity may result from a variety of different characteristics and factors, including whether the supplier was required to deliver multiple services, whether the contract was let by several authorities working in partnership and whether the contract was especially large value or the scale of the service to be provided is large. These (and other factors identified at paragraph 7.54) increase the risk profile of some municipal waste management contracts.
- 8.114 The degree to which a local authority's non-hazardous waste collection requirements are complex covers a spectrum of complexity. The evidence in Chapter 7, which looked at competition for complex contracts generally, indicated that a relatively small number of competitors are capable of bidding for and winning complex contracts. Veolia and Suez are two of the most credible and highly-rated providers.

8.115 In this section, we have considered the evidence on competitive conditions for customers with more complex requirements in collection of non-hazardous municipal waste.⁵³⁴ For this assessment we have:

- (a) examined the evidence from the Parties' internal documents;
- (b) analysed the Parties' contracts;
- (c) asked local authorities about credible suppliers for these specific contracts; and
- (d) assessed views of customers about the Merger.

Parties' submissions

8.116 Veolia submitted that the evidence does not support the existence of a subset of complex municipal waste collection contracts for which only Veolia and Suez are credible bidders. Rather, it submitted that the evidence showed that there were at least eight credible suppliers for contracts with complex requirements, those being: the Parties, Biffa, FCC, Serco, Urbaser, Countrystyle, and Grundon.⁵³⁵

Evidence from internal documents

8.117 A number of the Parties' internal documents discuss the competitive landscape of the municipal collection market in the UK. We consider that the documents identified below are particularly insightful given their status as either strategy documents, strategic planning documents, documents prepared in the context of a potential sale of Suez, or an RFI response from senior management.⁵³⁶

8.118 A Veolia internal strategy document from 2018,⁵³⁷ [REDACTED], discusses upcoming opportunities in the next two years (2018-2019), noting in that context that there are on average [REDACTED] bids per municipal collection procurement. Further, in the context of noting [REDACTED], the document states that competition is [REDACTED].

⁵³⁴ The provision of municipal waste collection services to local authorities with complex requirements is within the overall market of the supply of non-hazardous municipal waste collection services.

⁵³⁵ Veolia's response to CMA working paper on municipal collection services.

⁵³⁶ CMA guidance says that when examining internal documents the CMA may also consider the purpose and effect of the internal document (for example, whether it was a document for the board or executive decision-making). When considering the weight to place on internal document evidence the CMA will consider that evidence alongside all of the evidence that it has (CMA129, paragraph 2.30).

⁵³⁷ Veolia internal document, SON_CMA-0001353-0001.

8.119 The same document provides an overview of [REDACTED], sometimes noting how these [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED];
- (d) [REDACTED];⁵³⁸
- (e) [REDACTED];
- (f) [REDACTED]

8.120 The above internal document suggests that [REDACTED]. Other Veolia internal documents suggest that competition might be weaker for complex contracts than for non-complex contracts. In a [REDACTED].⁵³⁹

8.121 A Suez document from February 2021, [REDACTED], sets out Suez's position in 'Recycling and Recovery' in the UK and lists Veolia, [REDACTED], Suez and [REDACTED] as four of the top five competitors in municipal collection (noting that municipal collection is not a core activity for [REDACTED]).⁵⁴⁰ The document also estimates that Suez serves c. 7m municipal households. Suez provides direct and indirect services to around 25% of UK households. It also describes Suez as having a 'market leading position' in UK waste management.⁵⁴¹

8.122 Another Suez internal document from Suez senior management notes that there was a number of new entrants five years ago (listing May Gurney, Kier, Serco, Urbaser and Amey) which, alongside the traditional waste management companies and the Teckal companies (eg Norse and Ubico), led to a very competitive market. It further notes that, 'however, some of these companies may [REDACTED] as there is now a significant consolidation of the

⁵³⁸ The document also [REDACTED], [REDACTED]

⁵³⁹ Veolia's internal document, VECMA00017774.

⁵⁴⁰ Suez's internal document, VES-000011853 [REDACTED]

⁵⁴¹ This document is not just discussing collection services for municipal waste but municipal services generally. Therefore, that Suez serves around 7 million households in the UK includes not just municipal waste collection serves but also other services for local authority customers.

market' (noting in particular Kier's exit from the market and Urbaser taking on six Amey contracts).⁵⁴²

8.123 Among internal document evidence that we have seen, some are relevant to complex collection customer requirements, and are particularly insightful given their status as strategic planning and roadmap documents:

- (a) In Veolia's Municipal Roadmap from June [REDACTED].⁵⁴³ For both contracts, Veolia also lists 'Likely other bidders' and only lists one other likely bidder for each contract. This suggests that these two contracts are not only complex, but also unlikely to attract much competition in Veolia's opinion.
- (b) Veolia's [REDACTED].^{544,545} This suggests that Veolia faces more competition for non-complex municipal collection contracts compared to complex municipal collection contracts. Therefore, it is targeting more complex contracts where it feels there is less competition and it has a more likely chance of success.
- (c) In a [REDACTED] document [REDACTED].⁵⁴⁶ This document first suggests that the bundling of other services with collection increases the complexity of a contract. Second, it also suggests that Veolia believes it faces more competition for non-complex contracts compared to complex contracts.

Contracts analysis

8.124 We sent requests to the Parties' customers to provide information on their current waste management contracts. In this subsection, we identify a number of these contracts that have characteristics that are associated with greater complexity, as set out in Chapter 7; and then analyse evidence on competitive conditions for the relevant customers. In particular, we consider evidence on the number of bidders identified for the contracts, the customers' views on the number and identity of future credible suppliers and

⁵⁴² Suez internal document, CMA-SUEZ-00005865 (CMA-s109 RFI response - Internal SUEZ request for information questionnaire AP PSD.docx)

⁵⁴³ Veolia's Internal Document VECMA00017964.

⁵⁴⁴ Prudential borrowing is where a LA accesses loans from the National Loans Fund through the Public Works Loans Board. The LA can then use this loan to pay for capital expenditure that is necessary for the performance of a contract. Veolia submitted that these loans are low-interest loans that lower the price of waste contracts because the cost of borrowing is lower than funding the commercial cost of capital that would have to be included in any commercial bid. Veolia submitted this facilitates competition rather than adds to a contract's complexity.

⁵⁴⁵ Veolia's internal document, SON_CMA_PRIV-0000452-0001.

⁵⁴⁶ Veolia's internal document SON_CMA-0000933-0001, Strategy Webinar.

the relevant customers' views on the Merger. Below, we first set out some details of the contracts that were reviewed for this analysis, before setting out the analysis itself.

8.125 We asked local authorities to provide various types of information about their municipal waste collection contracts. Among the contracts for which we received data from customers, we first identified a subset of 12 contracts that included non-hazardous municipal waste collection services (either as a standalone service or alongside other services).⁵⁴⁷ We have assessed which of these contracts had characteristics that were likely to be associated with more complex requirements. In particular, we considered whether the:

- (a) contract included other services with non-hazardous municipal waste collection;⁵⁴⁸
- (b) contracts were large in annual value; and
- (c) customers themselves considered that their requirements were complex (and the reasons they considered them so).

8.126 We have used these factors as indicators of complex municipal collection requirements rather than a bright line definition of complex contracts. Customer requirements can be relatively complex either on any single indicator or in combination with other dimensions of complexity. There are some underlying factors of complexity identified in paragraph 7.46 that are not relevant to our assessment of non-hazardous municipal waste collection services. Municipal waste collection does not involve infrastructure (of the kind of relevance to Chapter 7) and although having several local authorities contract for a service is potentially relevant to municipal waste collection, none of the contracts that we identified, below, involved local authorities working in partnership. Finally, we note that we only used factors the local authorities themselves identified if those factors were consistent with our findings in Chapter 7.

8.127 A large proportion of the customer contracts for which we received information had characteristics associated with complexity. Of the 12

⁵⁴⁷ We initially identified 14 relevant contracts but excluded two on the basis that the information provided by the customers was incomplete for the purpose of our analysis.

⁵⁴⁸ Collection is often bundled with other public-facing services such as street cleansing and grounds maintenance, eg the London Borough of Camden's contract with Veolia bundles waste collection with street cleansing and graffiti and fly-posting removal. Waste collection can also be bundled with disposal services which are not public facing, eg Sheffield City Council's contract with Veolia bundles collection with sorting of recyclates, disposal by EfW incineration, disposal by landfill, and disposal of organic waste.

contracts, almost all (11) had an annual contract value in excess of £5 million. These are relatively large contract values: among all the contracts on which we received information from the Parties and their competitors, approximately a third exceeded £5 million in value per annum. Further, 10 of the 12 contracts included services other than collection as shown in the table below. For six of the 12 contracts, customers themselves considered and explained that their requirements were complex or difficult to deliver. These included the following customers:⁵⁴⁹

- (a) Westminster considered its collection contract to be complex due to the scope of the services required. In relation to its collection contract, it said that its waste collection and cleansing contract was probably the biggest in the UK in terms of the sort of scale and range of what it does and there were 36 discrete services specified in that contract, ranging from collect the waste to hazardous waste removal; special events and protests, the winter gritting services; and various other things.⁵⁵⁰ Variable demand on services from changes in the economy, tourism, events/demonstrations and social issues made the contract complex.
- (b) Sheffield City Council described its requirements as ‘vast scope and significant scale of an integrated waste contract’;
- (c) Shropshire described its contract as ‘a high value, long term, integrated, contract (32 years)’ which increased the complexity and financial risk of changing contractor;
- (d) Somerset Waste Partnership identified its contract as large in size whose procurement was ‘complex’;
- (e) Solihull refers to its collection contract as ‘a large, complex integrated contract’ for which they have ‘just completed a long and complex procurement’;
- (f) RB Kensington and Chelsea describes its contract as being so large that, at the time of the procurement of the contract in 2019, it considered only four suppliers could undertake it – Suez, Biffa, Veolia and Serco.

⁵⁴⁹ Response to CMA Phase 2 questionnaire from: Sheffield, Shropshire, Somerset, Solihull, RB Kensington and Chelsea

⁵⁵⁰ Note of call with Westminster, 15 February 2022.

8.128 Table 8.7 lists the 11 contracts that are part of this assessment. While six of the 11 contracts started before 2017, we consider that they are still informative about the competitive conditions for complex contracts due to previous experience of customers while choosing a supplier. In our assessment, we consider any relevant changes over time in the different players' competitive strengths, as suggested by other pieces of evidence.

Table 8.24: Local authority contracts for collection services which have complex characteristics

Local authority	Services included	Total contract value (£m)	Annual contract value (£m)	Other bidders	Contract start	Duration (years)
[REDACTED]						
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: local authority responses to the CMA's questionnaire

* Amey has sold six waste management contracts to Urbaser. The six contracts involve the provision of waste and recycling collection, street cleansing and grounds maintenance services for Solihull Metropolitan Borough Council (SMBC), Gloucester City Council, Selby District Council and Eden District Council, as well as the management of nine Household Waste and Recycling Centres (HWRCs) for Northamptonshire County Council and four HWRCs for Central Bedfordshire Council. The contract with SMBC also includes the management of an HWRC and a Waste Transfer Station (Urbaser press release, [Urbaser expands UK portfolio with six new contracts](#), 14 January 2021).

8.129 With respect to these contracts, in the following subsections we consider evidence on:

- (a) how many bidders the relevant customers identified as having bid for the contract when it was last tendered;

- (b) how many suppliers (and which suppliers) customers identified as credible in a scenario where the customer would re-tender the services covered by that contract in the near future;
- (c) the customers' perceptions of the competitive strength of the Parties; and
- (d) the extent to which these customers had concerns about the Merger.

- 8.130 Among the 11 contracts listed above, local authorities identified no more than four bidders for the contract when it was originally tendered. On average, customers identified 2.5 bidders in the tender, including the winner. Veolia and Suez competed against each other in [REDACTED] of the [REDACTED] contracts.⁵⁵¹ [REDACTED] of these [REDACTED] instances were relatively recently (in 2020 and 2021) and the [REDACTED] was in 2015.
- 8.131 We note that the local authority customers were asked to provide the name of the winner and 'other bidders' for the relevant tender. Three local authorities told us that they responded on the basis of bidders who made it to the final round, five local authorities told us they included all bidders (irrespective of whether a bidder made it to the final round) and three did not clarify their approach.
- 8.132 Given the number of bidders for each local authority contract listed in Table 8.7 was small (no local authority tender listed had more than four bidders), the evidence does not show that local authorities which answered our questionnaire on the basis of all bidders had materially more bidders in their dataset than local authorities which answered our questionnaire on the basis of final round bidders. Indeed, the evidence indicates that the limited number of bids in these tenders listed in Table 8.7 is likely to be explained by the lack of bidders rather than by local authorities choosing to limit the number of bidders in their process. As such, we do not consider that it is material whether or not the bidders listed were final round bidders and that this evidence is probative regarding the strength of competition for these types of contracts.
- 8.133 Regarding the identity of bidders, we note that of the more recent contracts – those that have started over the past five years – the pool of bidders across all of the contracts comprises Veolia, Suez, Biffa, Serco and Amey (which has told us that it does not plan to bid for new local authority contracts in the

⁵⁵¹ [REDACTED], [REDACTED], and [REDACTED]. [REDACTED].

short term). This pool of competitors is reasonably consistent with the information and statements in the Parties' internal documents. Regarding the contracts that started before 2017, the pool of bidders across all of the contracts was Veolia, Suez, Biffa, FCC, Serco, Forsca, Cory, Amey and Suez/SITA.

8.134 By way of further contextual evidence on the number of bidders, we note in particular:

- (a) A number of these 11 customers are concerned about the impact of the Merger on competition and raised specific and detailed concerns in relation to collection (see paragraph 8.156). Two customers specifically indicated that the number of bidders they could choose from was small;
- (b) One Veolia internal strategy document [REDACTED].⁵⁵² [REDACTED];
- (c) Third parties told us that bidding costs could be substantial, both in absolute terms and relative to the contract that is being tendered (paragraph 5.50 to 5.52). In this setting, not all credible bidders may bid for all opportunities, and this is consistent with third party submissions: some suppliers told us that they do not bid for some contracts or select tenders carefully;
- (d) When asked to list the suppliers that they would consider credible if they were to re-tender their current waste contracts, the local authority customers with the 11 complex contracts identified fewer than four credible suppliers on average; and
- (e) Some suppliers have told us that they rarely bid or are unlikely to bid for some contracts (eg paragraphs 7.153 and 8.165).

8.135 In response to our Provisional Findings, Veolia submitted that the contract evidence suffers from 'serious limitations'.

8.136 First, the CMA only selects 'three indicators of complexity' and this is a 'partial view of competition' for complex contracts.⁵⁵³

8.137 We disagree with Veolia's view. We do not consider that the indications of complexity discussed in Chapter 7 are strict criteria that need to be met for a customer's requirements to be complex. Rather, these are dimensions of

⁵⁵² Veolia internal document, SON_CMA-0001353-0001, page 18.

⁵⁵³ Veolia's [response to the Provisional Findings](#), paragraph 94

competition that, depending on the context, individually or in combination, suggest that a customer's needs are complex and that the customer might have fewer credible suppliers (including Veolia and Suez) able to bid for the work compared to customers with less complex needs. This raises the likelihood that the Parties will be comparatively closer competitors in these circumstances than they are for simpler contracts.⁵⁵⁴

8.138 Second, Veolia submitted that each indicator of complexity has limitations:

- (a) 'that 11 of the 12 contracts identified in the Provisional Findings have an annual value above £5 million does not evidence that valuable contracts (in general) are complex, but only that complex contracts (according to the view of local authorities) are valuable';
- (b) 'bundled' has a spectrum of meanings. Many of the contracts in the table include [X], which are closely linked and often contracted together';

8.139 In response we note that:

- (a) in general, we would expect complex contracts to be valuable to reflect their risk profile and/or the number of services and scale involved. Our analysis of the contracts in Table 8.7 has shown that these customers faced few competing bidders for their contracts. Whether the contracts were identified as being 'complex' or as 'valuable' does not detract from this finding;
- (b) we have found that there is widespread consensus across the Parties, customers and competitors that multiservice contracts are more likely to be complex than other contracts (paragraphs 7.44 to 7.47); and

8.140 Third, Veolia submitted that the data used in our contracts analysis relates exclusively to the Parties' customers who 'will not be affected in the short term because they are protected by contracts with set durations, defined prices and detailed KPIs'.⁵⁵⁵

8.141 We have responded to this point in paragraph 6.45. We also note that in relation to all non-hazardous municipal waste collection services, the Parties' customers account for around 40% of the market (Tables 8.2 and 8.3) which

⁵⁵⁴ The smaller the number of significant players, the stronger the prima facie expectation that any two firms are close competitors (CMA129, paragraph 4.10).

⁵⁵⁵ Veolia's [response to the Provisional Findings](#), paragraph 96

we consider to be a significant proportion of the market – there is no reason why we would not place weight on the views of these customers.

- 8.142 Fourth, Veolia noted that ‘there are likely to be a number of similar contracts that were not considered in the CMA’s analysis’. Veolia submitted that ‘these 11 contracts have a total contract value above £100 million and Veolia has identified at least 24 other such contracts, held by Biffa, Serco, Urbaser, FCC, and Countrystyle, as well as the Parties’. Veolia also submitted that ‘at least 10 of these 11 contracts are combined with services other than street cleansing. Veolia has identified 54 other contracts that combine collection with services other than street cleansing’.⁵⁵⁶
- 8.143 In response we note that we have assessed this evidence on competition for complex municipal waste collection contracts with other evidence discussed in this chapter, including evidence on Biffa, Serco, Urbaser, FCC and Countrystyle as competitors. We do, however, place weight on the evidence that for the complex contracts analysed in Table 8.7, there were, on average, very few bidders (including Veolia and Suez).
- 8.144 Fifth, Veolia submitted that our analysis is ‘backward-looking’. It submitted that ‘at least four of the 11 contracts started in [2017]. The analysis therefore contains limited information about current and future competitive conditions. It also means that, since many of these customers have not tendered for a number of years, they may not have a clear view of the market, which is evolving quickly’.⁵⁵⁷
- 8.145 In response we note that we have examined competition for contracts since 2017 and for those before 2017 (paragraph 8.133). We have found that there were fewer bidders in the aggregate pool of bidders for the more recent contracts. We have taken this into account in our decision.
- 8.146 Sixth, Veolia submitted that there are multiple credible bidders for the contracts listed above.⁵⁵⁸ Veolia also submitted that both Parties are only listed as credible for six contracts in Table 8.7. Veolia submitted that this demonstrates that the Parties ‘cannot be close competitors’.⁵⁵⁹
- 8.147 In response we note that we have examined the evidence in the round on credible bidders including from the Parties’ internal documents, views of

⁵⁵⁶ Veolia’s [response to the Provisional Findings](#), paragraph 98

⁵⁵⁷ Veolia’s [response to the Provisional Findings](#), paragraph 99

⁵⁵⁸ Veolia’s [response to the Provisional Findings](#), paragraph 100

⁵⁵⁹ Veolia’s [response to the Provisional Findings](#), paragraph 101

customers and competitors and our analysis of the 11 contracts. We consider that this evidence – discussed throughout this chapter – indicates that the Parties are close competitors for these contracts and face few other competitors.

- 8.148 Seventh, Veolia submitted that ‘local authorities identified fewer than four credible suppliers on average but the CMA does not explain why more than this amount of bidders is necessary for a competitive market’.⁵⁶⁰ It submitted that a low number of bidders is a function of the tender process, often due to narrowing by the local authorities themselves - local authorities will engage in pre-discussions (or soft market testing) with a number of bidders and usually identify four or fewer suppliers with whom they wish to engage in more meaningful negotiations. Therefore, several suppliers do not participate at the bidding stage.⁵⁶¹
- 8.149 In response we note that we have assessed competition in the market using a range of evidence. We have responded to Veolia’s representation that the low number of bidders is a function of the tender process in paragraph 8.132. Given the small number of bidders for each contract, any two bidders are likely to be sufficiently close competitors such that the elimination of competition between them would raise competition concerns.⁵⁶² While Veolia and Suez do not bid against each other in all tenders for complex contracts, the evidence available indicates that absent the Merger they would be two of a relatively small number of credible bidders for these contracts. We note, by way of example, that in Table 8.7 the Parties were the only two bidders for the recent ([REDACTED]) [REDACTED] tender.

Credible suppliers

- 8.150 We asked the customers who let these 11 contracts to identify suppliers they would consider credible were they to re-tender the services covered by the contracts in the near future. The number of mentions for different competitors received from these customers is set out in Table 8.8.

⁵⁶⁰ Veolia’s [response to the Provisional Findings](#), paragraph 102

⁵⁶¹ Veolia’s [response to the Provisional Findings](#), paragraph 102

⁵⁶² [CMA129](#), paragraph 4.10.

Table 8.25: Credible suppliers identified by Local Authorities for complex municipal collection contracts

<i>Competitor</i>	<i>Number of mentions</i>
Veolia	11
Biffa	9
Serco	7
Suez	6
FCC	6
Amey	3
Urbaser	3
Grundon	1
Countrystyle	1
Number of contracts	11

Source: Third parties, CMA calculations

Table 8.9: Credible suppliers identified by Local Authorities for complex municipal collection contracts, split by current supplier

<i>Veolia Customers</i>		<i>Suez Customers</i>	
<i>Competitor</i>	<i>Number of mentions</i>	<i>Competitor</i>	<i>Number of mentions</i>
		Veolia	2
Biffa	8	Biffa	1
Serco	5	Serco	2
Suez	4		
FCC	6		
Amey	3		
Urbaser	3		
Grundon	1		
Countrystyle	1		
Number of contracts	9	Number of contracts	2

Source: Third parties, CMA calculations

- 8.151 Veolia was listed as credible for all nine of the contracts that it currently holds and the two contracts that Suez currently holds (and which it bid for at the time) listed in Table 8.7. Suez was listed as credible for six contracts, comprising the two contracts that it currently holds and four that Veolia currently holds (Table 8.9). Based on their responses, local authorities who listed the Parties as credible primarily valued their track record.
- 8.152 The other bidders identified by a comparable number of customers were Biffa, Serco and, to a lesser extent, FCC. Urbaser was identified as being credible by only three local authorities out of the 11. While Amey was also mentioned by a minority of customers, it is not pursuing growth in the sector and [X] and therefore will not be expected to exert a competitive constraint in the future.

- 8.153 Grundon informed⁵⁶³ us that it has an interest in entering municipal collection services but it was precluded from doing so owing to the high cost of bidding relative to the chance of winning (which it perceived to be low).
- 8.154 This evidence suggests that absent the Merger Veolia and Suez would be directly competing for complex contracts that include non-hazardous municipal waste collection services. It also suggests that the Merged Entity will primarily face Biffa, Serco and, to a lesser extent, FCC when competing for complex contracts that include collection services. This corroborates the evidence from internal documents that suppliers such as Urbaser tend to [X] and that FCC is seen to [X].
- 8.155 When interpreting this evidence, we take into account that not all suppliers that are credible will ultimately bid for a given contract (see paragraphs 7.115 and 7.116).

Evidence from customers

- 8.156 Evidence from customers (set out in Chapter 7) is particularly relevant to competition for complex municipal collection contracts. The customer evidence includes:
- (a) Suffolk County Council: ‘we believe that for residual waste disposal contracts, complex waste contracts (e.g. integrated contracts) and those contracts involving large capital expenditure Suez and Veolia are 2 of a very small number of bidders and in our own experience the 2 strongest bidders. Removing one of these would reduce competition’.⁵⁶⁴
 - (b) WLWA: ‘To our knowledge only Suez and Veolia are providing fully integrated Local Authority services eg collection of food waste, green waste, dry recycling, residual waste, HRRC management, transfer stations and disposal of food waste, green waste, dry recycling and residual waste’.⁵⁶⁵
 - (c) Several local authorities noted that Veolia and Suez are the key suppliers able to offer services across the waste management supply chain and at a large scale. For instance, Essex Council said ‘Certainly

⁵⁶³ Note of call with Grundon, 8 April 2021 (phase 1).

⁵⁶⁴ Response to the CMA’s phase 2 questionnaire from Suffolk.

⁵⁶⁵ Response to the CMA’s phase 2 questionnaire from West London Waste Authority, 14 February 2022, Section C, Q15.

when you start looking at the players in the market that are able to handle the full range of waste processes, whether that be collection, operating recycling centres, residual waste treatment, biowaste treatment, Suez and Veolia are probably the key ones that sit within that space. The others operate within parts of the waste management field [X], they are operating in segments of the waste management field rather than the full range of collection, treatment and disposal'.⁵⁶⁶

- (d) Westminster told us that for its collection contract 'Veolia have a strong record around delivering contracts that are as large and complex as the City Council's'.⁵⁶⁷
- (e) Somerset Waste Partnership (UA) – 'It would have reduced our recent tendering exercise by 1 meaning we would have had only 2 successful bidders to consider when awarding the contract. As a large provider focused on kerbside sort there are inherently a small number of potential bidders for our collections services already'.⁵⁶⁸

8.157 Out of the 11 customers in our contract analysis, four raised concerns about the Merger. In particular:

- (a) RB Kensington and Chelsea submitted that it was very concerned about the acquisition. It said its tender process 'highlighted the lack of genuine competition in this market with only Suez and Veolia submitting a bid... to allow the two largest companies within the UK waste industry to merge will be a disaster for competition within the industry'.⁵⁶⁹
- (b) Sheffield City Council raised a concern that Veolia's acquisition of one of its top five competitors was clearly going to reduce competition across the waste sector (including commercial and municipal markets), and that this would increase pricing and reduce investment in facilities;⁵⁷⁰
- (c) Southend Borough Council raised the concern that the Merger may reduce competition in the waste collection market and lead to difficulties in achieving best value. It noted that the local authority is

⁵⁶⁶ Note of call with Essex County Council, 10 February 2022, p19.

⁵⁶⁷ Response to the CMA's phase 2 questionnaire from Westminster, Q5.

⁵⁶⁸ Response to the CMA's phase 2 questionnaire from Somerset Waste Partnership, 20 January 2022, Q12.

⁵⁶⁹ Response to the CMA's phase 2 questionnaire from Royal Borough of Kensington and Chelsea

⁵⁷⁰ Response to the CMA's phase 2 questionnaire from Sheffield City Council

likely to be re-tendering its waste collection services within the next 18 months and has recently had soft market engagement meetings with both Veolia and Suez⁵⁷¹.

- 8.158 These views reported in paragraphs 8.156 and 8.157) represent a substantive level of well-articulated concern about the Merger from knowledgeable customers. The views are corroborated by other evidence that we have examined. Accordingly, we have given these views significant weight.
- 8.159 Seven of the 11 local authority customers submitted that they did not have specific concerns about the Merger. Two of these local authorities nevertheless noted competition risks around this Merger, specifically:
- (a) West Berkshire Council said that ‘Generally we do not have any concerns about this proposed acquisition. However, there are clear risks that may arise from the dominant size of the combined company’;⁵⁷² and
 - (b) Solihull said that ‘The acquisition of Suez by Veolia does reduce the potential for competition when tendering but in our recent experience bidders are selective regarding what contracts they will bid for so more market providers does not guarantee more competition when bidding for contracts’.⁵⁷³
- 8.160 Westminster City Council simply stated that it has no concerns around the Merger and the London Borough of Brent said the Merger gives its current provider greater access to wider waste infrastructure will help it meet its waste objectives.⁵⁷⁴ The remaining three respondents did not provide explanations for why they had no concerns with the Merger.
- 8.161 The concerns raised by several customers are consistent with wider concerns raised by third parties in relation to the impact of the Merger on competition for customers with complex requirements, as set out in Chapter 7.
- 8.162 We note that our contracts analysis is not intended to be exhaustive but it does provide some evidence of competition concerns. Importantly, the

⁵⁷¹ Response to the CMA’s phase 2 questionnaire from Southend

⁵⁷² Response to the CMA’s phase 2 questionnaire from West Berkshire.

⁵⁷³ Response to the CMA’s phase 2 questionnaire from Solihull.

⁵⁷⁴ Responses to the CMA’s phase 2 questionnaire from Westminster City Council and the London Borough of Brent.

contracts analysis needs to be considered in conjunction with the other evidence presented in this section.

Evidence from competitors

8.163 The evidence from competitors on integrated contracts (paragraphs 7.37 to 7.43 and 7.95 to 7.100) is also relevant to competition for complex municipal collection contracts.

8.164 Having seen our Provisional Findings, [X] told us that it is clear that some local authorities are concerned about the Merger but ‘we have seen lots of evidence of these authorities either being able to procure those services from the likes of [X] or others, or to carve up those services into different lots and procure the services they need and get the solutions they need through other means’.⁵⁷⁵

8.165 Regarding which suppliers could compete for complex contracts, competitors said the following about their rivals:

- (a) Veolia was described by one competitor as having ‘significant presence throughout the UK providing all waste services’.⁵⁷⁶ Veolia was also described by another competitor as one of the main players for large integrated contracts (along with Suez).⁵⁷⁷
- (b) Biffa was described by one competitor as being less focussed on integrated contracts, but has a strong collection business.⁵⁷⁸ The same competitor said it did not think Biffa would necessarily bid for an integrated contract because it does not have the infrastructure, but might be part of the solution.⁵⁷⁹ Biffa confirmed that it had not bid for an integrated contract since 2010.⁵⁸⁰
- (c) FCC was described as able to bid for some integrated contracts.⁵⁸¹ It said that it is selective of the tenders in which it submits a bid based on what it considers its chances of success are and whether the collection area is near to where it has existing infrastructure.⁵⁸² FCC submitted to us a list of contract opportunities that included 12 contracts involving

⁵⁷⁵ Call with [X]

⁵⁷⁶ Response to the CMA’s phase 2 questionnaire [X].

⁵⁷⁷ Note of call [X]

⁵⁷⁸ Response to the CMA’s phase 2 questionnaire from [X].

⁵⁷⁹ Note of call [X]

⁵⁸⁰ Note of call [X]

⁵⁸¹ Note of call [X]

⁵⁸² Note of call [X] and response to the CMA’s phase 2 questionnaire [X].

municipal waste collection services. It bid in four of these (the most recent example being in 2019).

- (d) Serco submitted that it is active in collection and cleansing services for local authorities and not other areas of waste management.⁵⁸³ We consider that as a result Serco is likely to be weak competitor with respect to complex contracts that include non-hazardous municipal collection services and other services.

Our assessment

- 8.166 For the supply of non-hazardous municipal waste collection services as a whole, we have estimated that the Merger will result in the Merged Entity accounting for approximately [30-40%] 40% of the market (before the Merger, Veolia accounted for approximately [20-30%] 30% of the market). The Merged Entity would be significantly larger than all other providers in the market, entrenching Veolia's position as the largest supplier.
- 8.167 Similarly, Veolia has estimated that the Merged Entity would account for [30-40%] of the market overall and [30-40%] of contracts started since 2019 (which Veolia submitted is a more relevant measure of current competitive conditions).
- 8.168 We have found that four other competitors (Biffa, Serco, FCC and Urbaser) each have a share of supply comparable to or larger than Suez.
- 8.169 The evidence that we have considered – submissions from the Parties, the Parties' own internal documents, the market structure, bidding data, views of customers and competitors – is consistent in indicating that the Parties regularly compete against each other for non-hazardous municipal waste collection contracts. Customers consider Veolia and Suez as being strong and credible suppliers and close competitors. We have received a relatively large number of well-articulated customer concerns about the Merger.
- 8.170 Competitors too have rated Veolia and Suez as being strong and credible suppliers.
- 8.171 The range of evidence that we have examined also indicates that the Merged Entity would face competition from Biffa, FCC, Serco and Urbaser.

⁵⁸³ Response to the CMA's phase 2 questionnaire [X].

- 8.172 We have also found that self-supply of municipal collection services (whether through in-house self-supply or Teckals) exerts a limited competitive constraint on the Parties. Most local authorities that we spoke to and who currently outsource their waste collection requirements, told us that it is likely that they will outsource again once their current contracts expire. We have also found that for some local authorities who do self-supply, it is for reasons other than competition. This indicates that the Merged Entity would not face competitive pressure from self-supply for some local authority contracts (although the set of contestable contracts might fluctuate). Further, we have found that there are some local authorities which face barriers in self-supplying, particularly in not having sufficient expertise to do so.
- 8.173 As discussed in Chapter 7, contracts vary in their service requirements and this affects competition. We have identified that the characteristics of some municipal waste contracts make them relatively complex (paragraph 8.125). We therefore considered competition for complex contracts within the supply of non-hazardous municipal waste collection services.
- 8.174 The evidence from the Parties' internal documents indicates that Veolia and Suez compete for complex contracts and that they view each other as competitors.
- 8.175 Our contracts analysis and the views of local authorities and competitors also strongly indicate that the Parties are direct and close competitors for these types of contracts. We have found in the complex contracts listed in Table 8.7, Veolia and Suez competed against each other in [X] of the [X] contracts, including recently in 2020 and 2021. In one instance the Parties did not face any other bidder and in the remaining two instances they faced only one other bidder. This, we have found, is typical of tenders for complex contracts.
- 8.176 We have also found that for that the complex contracts listed in Table 8.7, there were fewer than three bidders per tender on average (including the winner).
- 8.177 We have found that the local authorities whose contracts are listed in Table 8.7, rated Veolia and Suez as credible suppliers for their complex requirements along with Biffa, Serco and FCC. Four of these 11 local authorities are concerned about the impact of the Merger on competition. Likewise, fellow competitors have commonly rated Biffa, Serco and FCC as credible suppliers in addition to Veolia and Suez. The Parties' internal documents discuss the merits of Biffa, Serco and FCC (as well as each other) specifically in relation to complex contracts.

- 8.178 However, we note that Serco is not active in the downstream waste management activities of sorting and disposal and so to the extent a local authority requires any of these activities to be included in its non-hazardous municipal collection contract, we consider Serco is likely to be a weaker competitor. FCC told us that it bids selectively and it is more likely to bid in areas where it has existing disposal infrastructure. Biffa does not yet have disposal infrastructure and has been less focussed on integrated contracts than Veolia or Suez.
- 8.179 The evidence therefore suggests that Biffa, Serco and FCC would compete against the Merged Entity but that the competitive constraint imposed by each would differ and would also vary across tender opportunities (being stronger in some instances than in others). For the tenders that we have analysed (Table 8.7) Biffa and Serco have bid against Veolia and/or Suez in complex contracts since 2017 (for contracts before 2017, Biffa, Serco and FCC have all bid against Veolia and/or Suez in complex contracts).
- 8.180 Despite the evidence indicating that Veolia, Suez, Biffa, Serco and FCC are all credible suppliers for complex contracts, we have found that not all bid in all tenders. In Chapter 5 we found that, in general, given the costs of bidding suppliers are judicious in choosing which tenders to participate in. We have also received evidence from some suppliers on their bidding. For example, FCC submitted a list of contract opportunities in which it has participated (although not all of these will be for complex contracts). [REDACTED]. Customers therefore must choose from a subset of these and the Merger reduces that choice significantly. The smaller the number of significant competitors, the greater the likelihood that any two of those competitors are close competitors.
- 8.181 The Parties' internal documents, our contracts analysis and views from local authorities and competitors all indicate that, compared to non-complex contracts, Urbaser is a weaker competitor for complex contracts. We have therefore found Urbaser to be a weaker constraint on the Parties for competition for complex contracts.
- 8.182 The evidence available indicates that the only suppliers capable of constraining the Merged Entity in competition for complex contracts would be Biffa, Serco and FCC although the evidence also shows that it is likely that only one or two of these will bid against Merged Entity in any given tender.
- 8.183 We therefore consider, subject to any countervailing factors of entry and/or expansion, the Merger will give rise to an SLC in the supply of non-hazardous waste collection services. We have found that the effect on

competition from the Merger is likely to arise more strongly in relation to competition for complex contracts.

- 8.184 We consider that Merger is likely to lead to adverse effects of higher prices for local authorities and/or a worsening of service levels compared to the situation without the Merger.

Entry and expansion

- 8.185 We have considered whether entry or expansion, as a direct response to the Merger, would prevent the SLC.⁵⁸⁴ The entry or expansion must be: (a) timely; (b) likely; and (c) sufficient to prevent an SLC.⁵⁸⁵ These conditions are cumulative and must be satisfied simultaneously.⁵⁸⁶
- 8.186 We are aware of recent entry of Countrystyle Recycling and Remondis and we have taken into account both of these suppliers in our competitive assessment. In 2021, Countrystyle won a collection contract with London Borough of Bexley for whom it already provided another service (operation of waste transfer service) and therefore had an existing relationship with. Countrystyle was, however, viewed as '*a regional player who are unable to provide national coverage*' by one competitor.⁵⁸⁷ Remondis was shortlisted for one tender in Scotland. It has however not won a single municipal contract.

Parties' submissions

- 8.187 In response to the Provisional Findings, Veolia submitted that barriers to entry are low given the simplicity and low capital requirements of collection services and that this is proven by recent examples of market entry. It listed successful entry by Countrystyle, Remondis, Panda (Beauparc) and Urbaser. Veolia submitted that Remondis is present globally, is the largest municipal waste collector in Germany but has not yet won a single municipal contract in the UK. Countrystyle won the Bexley contract for 99,000 households. Beauparc is active in Ireland and has begun to bid for contracts in England and has acquired a number of waste management companies. Urbaser has a 10% market share already.⁵⁸⁸

⁵⁸⁴ CMA129, paragraph 8.28

⁵⁸⁵ CMA129, paragraph 8.31

⁵⁸⁶ CMA129, paragraph 8.32

⁵⁸⁷ Response to the CMA's phase 2 questionnaire from [REDACTED]

⁵⁸⁸ Veolia's response to the provisional findings, paragraph 104

8.188 Veolia submitted that track record is not a meaningful barrier to entry. It also submitted that the 'recent exits' do not result in any weakening of competition. Viridor sold its C&I collections business to Biffa along with two household waste recycling centre contracts; this is not relevant to competition in the market for municipal collection services. To the best of Veolia's knowledge, Viridor has not been active in the municipal collections market for many years. Veolia understands that at least part of Amey's municipal collections business has been sold to Urbaser. This acquisition has enhanced Urbaser's existing offering for municipal waste collection services, strengthening an already active competitor in this market. The same can be said of the sale of Cory's municipal collection business to Biffa. These events do not demonstrate any trend of market exit.⁵⁸⁹

Our assessment

8.189 We have considered the importance of reliability, financial standing and track record indicate in entry and the relevance of the costs of entry.

8.190 Local authorities have told us that a track record for customers is a very important factor for them when selecting a supplier. Suppliers have submitted:

(a) Grundon (a C&I collection provider) noted that '*reputation and track record are fundamental to municipal service contracts*' and therefore it was not eligible for municipal collection contracts since it has not undertaken a collection contract within the last 5 years.⁵⁹⁰

(b) [redacted] submitted that bidders are required to demonstrate clear experience in providing similar services when they submit their Selection Questionnaire, which shortlists them to Invitation To Tender stage - this is a barrier to new entrants.⁵⁹¹ [redacted] submitted that it is very rare for a new company without municipal contracts to be able to enter the market, with Countrystyle being the exception.⁵⁹²

⁵⁸⁹ [Veolia's response to the provisional findings](#), paragraphs 107 and 108

⁵⁹⁰ Note of Phase 1 call with Grundon, 8 April 2021.

⁵⁹¹ Note of call [redacted]

⁵⁹² Note of call [redacted]

- (c) [[§]] said that 'in order to qualify for the tender, you have to demonstrate you have the knowledge, the know-how, the capability and the financial strength to deliver the service'.⁵⁹³
- (d) A third competitor [[§]] submitted that the key barriers to entry relate to the requirement to demonstrate financial strength and experience, both of which are essential to being shortlisted by local authorities.⁵⁹⁴

8.191 On the costs of entry, as discussed in chapter 5, third party views indicated that municipal bidding costs are not insignificant. For instance, one regional C&I collection competitor (Grundon)⁵⁹⁵ with an interest in entering municipal collection submitted that it was precluded from doing so owing to the high cost of bidding (estimated at approximately £200,000) relative to the chance of winning (low).

8.192 On Veolia's submission about Urbaser's entry, we note that it entered the UK waste management sector in 1998 and as such is not a new entrant in recent years which as Veolia has submitted has evolved since the PPP/PFI contracts a number of years ago.⁵⁹⁶ We further note that Beauparc does not currently hold any municipal collection contract.⁵⁹⁷

8.193 On Veolia's submission about the sale of exiting firms to existing suppliers, we do not view the transfer of ownership as entry that will be expected to constrain the Merged Entity.

8.194 We consider that the evidence does not indicate that entry can be expected to be likely to occur in a timely manner and of a sufficient size to prevent an SLC from arising as a result of the Merger.

Conclusion

8.195 We conclude that the Merger will give rise to an SLC as a result of horizontal unilateral effects within the market for the supply of non-hazardous municipal waste collection services in the UK.

⁵⁹³ Note of call [[§]]

⁵⁹⁴ [[§]] questionnaire response

⁵⁹⁵ Note of call with Grundon, 8 April 2021 (phase 1).

⁵⁹⁶ Response to CMA's Phase 2 questionnaire from Urbaser, question 3

⁵⁹⁷ Response to the CMA's Phase 2 questionnaire from Beauparc, question 5

9. OPERATION AND MAINTENANCE OF MATERIAL RECOVERY FACILITIES

- 9.1 The Parties overlap in the provision of services to operate and maintain MRFs.
- 9.2 In our assessment below, we have considered how closely the Parties compete with one another and whether the removal of the constraint the Parties place on each other is likely to lead to an SLC in the supply of O&M services for MRFs to local authorities (**O&M of MRFs**). As part of this assessment, we have also considered the competitive constraints placed on the Parties by other O&M operators that may bid for future local authority MRF O&M contracts.
- 9.3 The remainder of this chapter is structured as follows:
- (a) Background to services
 - (b) Market definition
 - (c) Indicators of competition
 - (d) Our assessment
 - (e) Barriers to entry and expansion
 - (f) Conclusion

Background to services

- 9.4 In some local authority areas, the household waste collection contracts (known as kerbside sort contracts) require that waste is sorted into different containers before or during collection. In other areas, recyclable waste is sorted after collection, primarily at MRFs that use a combination of technologies. The choice of method is driven by customer demand and recycling targets.

Overview of the operation of MRFs

- 9.5 There were 88 MRFs operational in the UK in 2021.⁵⁹⁸ Of these, 45 MRFs were developed under PPP/PFI scheme for 40 local authorities.⁵⁹⁹ We refer to these PPP/PFI MRFs as 'local-authority-owned MRFs'. The remaining MRFs are privately-owned MRFs (or 'merchant MRFs').
- 9.6 The O&M of MRFs for the 45 local-authority-owned MRFs is provided in-house (either directly by the local authority or through Teckals) or is outsourced to a third party operator:
- (a) 15 local authorities self-supply the O&M of MRFs for 16 MRFs (each local authority has one MRF except for North Yorkshire which has two MRFs);
 - (b) 24 local authorities outsource the O&M of MRFs to third party operators for 27 of the local-authority-owned MRFs; and
 - (c) One local authority (Cheshire West) self-supplies the O&M of MRFs for one of its MRFs while outsourcing to a third party operator for the other MRF.
- 9.7 For those contracts where the O&M of MRFs has been outsourced to a third party operator, the majority of the capacity at local-authority-owned MRF facilities is for the exclusive use of the local authority (or authorities) holding the PPP/PFI contract.⁶⁰⁰ Any remaining capacity at the MRF is made available to the O&M operator and is used by the operator for its own commercial purposes, ie to sell to other customers (including other local authorities, C&I customers, or other waste management companies) or used to service its own waste treatment contracts ('CMC capacity').
- 9.8 We understand that there have been no standalone O&M of MRFs contracts procured by local authorities but instead O&M of MRFs was procured together as part of the original wider PPP/PFI contracts.⁶⁰¹ Veolia submitted that it expects that O&M only contracts would be brought to market when the PPP/PFI contracts expire.⁶⁰² At that time, those local authorities will procure

⁵⁹⁸ Veolia submitted data that was prepared by Tolvik, which is an independent third party consultancy that undertakes market analysis and commercial due diligence to the European waste and bioenergy sectors. We have supplemented information from Tolvik's MRF Databook (8 April 2021) with data from the Parties and third parties on the MRFs that were operational.

⁵⁹⁹ Some local authorities have developed more than one MRF for their area.

⁶⁰⁰ This is similar to the arrangements for ERFs (chapter 10).

⁶⁰¹ Veolia's response to CMA working paper on services for complex municipal contracts, 22 April 2022, page 34.

⁶⁰² Veolia's response to CMA working paper on services for complex municipal contracts, 22 April 2022, page 34.

their O&M services from a third party, or self-supply. We have focused our analysis on those local authorities that currently outsource their O&M provision, as those local authorities that currently self-supply are less likely to retender their O&M services and therefore less likely to be affected by the Merger.

- 9.9 In its response to our Provisional Findings, Veolia argued that there is no distinct market for the O&M of MRFs and that the ‘CMA’s theory of harm is irrelevant’.⁶⁰³ Veolia’s arguments appear to be based broadly on the following four assumptions:
- (a) Local authorities need suppliers to sort their waste and sell recyclates. Competition in this market is to win sorting contracts from local authorities, and not to operate machinery.⁶⁰⁴
 - (b) There is a large degree of uncertainty about whether and in what form MRFs will be needed in future, given the upcoming legislative changes; it is ‘far from likely that such a market will develop’ and there is ‘no certainty as to whether and how local authorities will tender contracts to operate and maintain MRFs as PPP/PFI contracts come to an end’.⁶⁰⁵
 - (c) Not all of the MRFs developed under the PPP/PFI scheme will revert to the local authorities and that those non-reverting assets would effectively become ‘merchant MRFs’, citing one example in which Veolia understood that [redacted].⁶⁰⁶
 - (d) The economic lifetime of an MRF is limited and the MRF itself might be obsolete at that time.⁶⁰⁷
- 9.10 We do not consider that any of Veolia’s points listed above support Veolia’s arguments that there is no distinct market for O&M of MRFs or that this theory of harm is irrelevant. We address each point in more detail in our assessment but provide a brief summary below:
- (a) Veolia submitted that it would expect local authorities to tender for standalone O&M contracts when the PPP/PFI contracts expire (paragraph 9.8). Third parties submitted that they expected that local authorities would likely tender for O&M of MRFs only contracts when

⁶⁰³ Veolia’s [response to the Provisional Findings](#), paragraphs 113 and 132.

⁶⁰⁴ Veolia’s [response to the Provisional Findings](#), paragraph 113.

⁶⁰⁵ Veolia’s [response to the Provisional Findings](#), paragraph 113.

⁶⁰⁶ Veolia’s [response to the Provisional Findings](#), paragraph 132.

⁶⁰⁷ Veolia’s [response to the Provisional Findings](#), paragraph 132.

the current PPP/PFI expire (paragraphs 9.15 to 9.20). Local authorities have told us that when the MRFs revert to them they will either tender for the O&M of MRFs or self-supply, and the majority indicated that they would not be able to self-supply and therefore would likely let O&M contracts for their MRFs (paragraph 9.25).

- (b) With respect to the point set out at paragraph 9.9(a), and as explained in more detail in the 'Market definition' section of this chapter, we consider that Veolia has conflated the supply of O&M of MRFs to local authorities with a wider market for the supply of sorting services to local authorities. We acknowledge that there are some local authorities that do not own MRFs and these local authorities need to procure their sorting requirements from merchant MRFs. However, there are local authorities that do have their own MRFs and these have a different set of requirements for which they can procure services from third parties (ie the O&M of MRFs). The competition for those contracts is different in nature from the competition for the sorting contracts procured by local authorities that do not own MRFs.
- (c) We acknowledge that upcoming legislative changes have created a degree of uncertainty about the future of MRFs, but we have not received any evidence from the Parties or third parties to indicate that MRFs will become redundant or displaced in their entirety as a result of these changes.⁶⁰⁸ Moreover, even if MRFs were to have a reduced function in the future, Veolia has not submitted any evidence on the time scales involved.
- (d) Evidence submitted from third parties indicates that a number of MRFs will likely revert to the ownership of local authorities at the end of the relevant PFI contracts.⁶⁰⁹ We do not consider that Veolia's single unsubstantiated example of a non-reverting asset at the end of a PPP/PFI contract is representative.
- (e) We have gathered further evidence in the light of Veolia's representations on the obsolescence of MRFs. As explained in more detail in the 'Market definition' section of this chapter, we do not consider the evidence supports the view that all or most of the MRFs

⁶⁰⁸ The Environment Act requires recyclable household waste to be collected separately from other household waste, and separately for each recyclable waste stream. These conditions also apply to C&I waste, with the exception of garden waste requirements. Appendix B, paragraph 13.

⁶⁰⁹ All eight local authorities that responded to our questionnaire submitted that their MRF will revert back to them upon expiry of their PPP contract.

will become obsolete. Given that, local authorities that have MRFs that are still operational at the end of the PPP/PFI contract will likely require O&M of MRFs services.

Market definition

Product market

- 9.11 The Parties overlap in the O&M of MRFs, which we take as our starting point for determining the relevant product market.⁶¹⁰ No third party submitted that the relevant market should be narrower than the supply of O&M services of MRFs to local authorities.

Competition for sorting contracts from the merchant market

- 9.12 We have considered whether other significant, demand-side competitive alternatives should be included in the relevant market.⁶¹¹ We considered whether local authorities that have their own MRFs would switch away their demand for O&M of MRFs and source their sorting requirements using merchant capacity, in response to a small but significant price increase for O&M of MRFs.⁶¹² In practice, this would involve local authorities closing down or selling their own MRFs and then procuring sorting services from suppliers that have access to merchant capacity (either at the supplier's own MRFs or third party MRFs).

Parties' views

- 9.13 Veolia submitted that there is 'no distinct market for the O&M of MRFs' and that competition is 'to win sorting contracts from local authorities' and not to 'operate machinery'.⁶¹³ Veolia submitted that suppliers may 'service these contracts using third-party MRF capacity, their own MRF capacity, by operating the local authority's MRFs (if any), or a combination of the above'.⁶¹⁴
- 9.14 Veolia submitted that merchant operators, such as n+p and HW Martin, have contracts directly with local authorities and those contracts are serviced on a

⁶¹⁰ [CMA129](#), paragraph 9.6

⁶¹¹ [CMA129](#), paragraph 9.6

⁶¹² [CMA129](#), paragraph 9.7

⁶¹³ Veolia's [response to the Provisional Findings](#), paragraph 113.

⁶¹⁴ Veolia's [response to the Provisional Findings](#), paragraph 113.

‘fully merchant basis’.⁶¹⁵ Veolia also submitted that there are examples of ‘local authorities that previously had their own MRF, which are now instead procuring sorting services on the merchant market’.⁶¹⁶ It cited one example: ‘Kent County Council’s MRF at Hersden ceased to operate around 2016 and it moved its tonnage to the merchant Crayford MRF’.⁶¹⁷

Third party views

- 9.15 All eight local authorities that responded to our questionnaire submitted that their MRF will revert to local authority ownership after the end of the PPP/PFI contract. At this point, the local authorities will have three options: (i) retender the O&M of their MRF; (ii) self-supply the O&M of their MRF; or (iii) close their MRF and acquire sorting services from the merchant market.
- 9.16 Tolvik confirmed that Kent County Council closed its own MRF and believed that Kent CC switched its sorting of recyclables to the Crayford merchant facility operated by n + p.⁶¹⁸ However, Tolvik stated that Kent’s MRF had been a ‘small, really low grade MRF’, that was not worth investing in.⁶¹⁹
- 9.17 Tolvik also submitted that capacity constraints in the merchant market may mean that some local authorities would have less ability to switch their sorting service requirements to the merchant market, though noting that legislative changes to the recyclates market may change the market.⁶²⁰
- 9.18 Beauparc told us that local authorities would likely go out to tender for O&M of MRFs contracts and that those contracts would likely be expensive, as the existing MRFs would require significant investment or replacement.⁶²¹ Beauparc indicated that local authorities would not likely switch to merchant capacity, noting in particular that there is limited merchant capacity available and that there is limited investment in MRFs. If a local authority were to close down its MRF, it would place pressure on the supply side and prices would increase for disposal.⁶²² Similarly, Grundon submitted that local authority MRFs operated by Veolia and Suez handle significant volumes of tonnage. Given that there is limited to no spare processing capacity within the

⁶¹⁵ Veolia’s [response to the Provisional Findings](#), paragraph 118.

⁶¹⁶ Veolia’s [response to the Provisional Findings](#), paragraph 118.

⁶¹⁷ Veolia’s [response to the Provisional Findings](#), paragraph 118.

⁶¹⁸ [Tolvik Consulting](#) is an expert consultancy firm which provides market analysis of waste and bioenergy sectors.

⁶¹⁹ Transcript of call with Tolvik, 14 June 2022, p7.

⁶²⁰ Transcript of call with Tolvik, 14 June 2022, p7 and p13.

⁶²¹ Note of call with Beauparc, 17 June 2022, p2

⁶²² Note of call with Beauparc, 17 June 2022, p14

merchant MRF market, local authorities would be unable to close MRFs at the end of long term / PFI arrangements and transition into 'sorting only contracts'.. Grundon submitted that local authorities would have to tender the O&M of the MRFs currently operated under these arrangements.⁶²³

- 9.19 HW Martin submitted that the technology within the MRF would still have useful life remaining and stated that some contracts would have dilapidation clauses with specific 'handback criteria', ie for the incumbent operator to return the MRF asset in a suitable operational condition.⁶²⁴
- 9.20 Overall, we consider that the evidence from third parties indicates that local authorities are unlikely to switch to merchant capacity and, in particular, that the lack of capacity in the merchant market means that switching to merchant capacity is not a feasible option for many local authorities.

Self-supply

Parties' views

- 9.21 Veolia submitted that self-supply should be included in the same relevant market.⁶²⁵ Veolia submitted that local authorities have the 'option to operate their MRF in-house' and noted that a number of them already do so, both directly (10 MRFs in the Tolvik databook) and through Teckals (seven MRFs in the Tolvik databook).⁶²⁶
- 9.22 Veolia's argument on the constraint from self-supply notes that 'MRFs are simple, low-tech assets and no particular expertise is required to operate them'.⁶²⁷ Veolia noted that existing staff under contracts with third parties would transfer to the local authorities under TUPE.⁶²⁸
- 9.23 Veolia also indicated that the Provisional Findings had 'insufficient evidence to exclude self-supply', having received responses from 'just eight local authorities', all of which were the Parties' customers.⁶²⁹ In any case, the five that indicated they would not consider self-supply is only a 'very slight' majority, representing under a third of the total number of local authorities that currently outsource the operation of MRFs, and is no basis from which

⁶²³ Note of call with Grundon, 15 June 2022, p13

⁶²⁴ Note of call with HW Martin, 15 June 2022, p17-18

⁶²⁵ Veolia's response to Working Paper on Complex Municipal Contracts, 22 April, page 35.

⁶²⁶ Veolia's [response to the Provisional Findings](#), paragraph 124.

⁶²⁷ Veolia's [response to the Provisional Findings](#), paragraph 124

⁶²⁸ Veolia's [response to the Provisional Findings](#), paragraph 124.

⁶²⁹ Veolia's [response to the Provisional Findings](#), paragraph 125.

to draw the conclusion that the majority of local authorities have neither the willingness nor ability to self-supply.⁶³⁰

- 9.24 Similarly, Veolia submitted that over a third of MRFs were operated by local authorities.⁶³¹ Veolia also argued that the preference of local authorities at the time the PPP/PFI contracts were let did not dictate the preferences of local authorities in future.⁶³² In Veolia's view, it is 'unlikely that there will be any significant number of PPP contracts given the infrastructure already has been constructed, and 'historical data on the popularity of in-house supply does not reflect the future'.⁶³³

Third party views

- 9.25 We asked local authorities to explain whether they would consider and have the ability to self-supply the O&M of MRFs. Eight local authorities responded. Five said that they are unlikely to self-supply the O&M of MRFs.⁶³⁴ These authorities stated that they lack the in-house capacity and operational and engineering expertise to O&M their MRF.
- 9.26 The remaining three local authorities did not rule out self-supply but did not know what they would likely do. They submitted that they would have to undertake detailed analysis at the time of procurement before reaching a decision on self-supply.⁶³⁵ One of these local authorities stated that it did not have the ability to self-supply, but if it was deemed viable, it would TUPE the existing contractor's staff.⁶³⁶
- 9.27 The balance of evidence from local authorities therefore indicates that the majority have neither the willingness nor ability to self-supply O&M of MRFs and the remainder that had not ruled it out submitted that it was subject to analysis (of which the outcome is unclear).
- 9.28 Third parties also told us that there are some simple MRFs but that there are also sophisticated, complex MRFs. Beauparc told us that an MRF is 'very technical, expensive piece of kit' that would require 'highly skilled people'.⁶³⁷

⁶³⁰ Veolia's [response to the Provisional Findings](#), paragraph 125.

⁶³¹ Veolia's [response to the Provisional Findings](#), paragraph 126.

⁶³² Veolia's [response to the Provisional Findings](#), paragraph 126.

⁶³³ Veolia's [response to the Provisional Findings](#), paragraph 126.

⁶³⁴ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

We sent questionnaires to all 11 of the local authorities the Parties provide O&M of MRF services for and received responses from eight local authorities.

⁶³⁵ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED] and [REDACTED].

⁶³⁶ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁶³⁷ Note of call with Beauparc, 17 June 2022, p11

Grundon said that operators would require the experience and understanding of the facility to produce high-quality recyclate outputs.⁶³⁸ Similarly, Renewi and HW Martin disagreed that MRFs are simple, low-tech assets.⁶³⁹

- 9.29 We note that 28 out of the 45 MRFs that are operated under the PPP/PFI contracts use a third-party operator to supply the O&M of MRFs.⁶⁴⁰ The majority of local authorities have, therefore, revealed their preference to outsource the O&M of MRFs at the time of contracting. The fact that some local authorities self-supply O&M of MRFs does not mean it is an option for all local authorities. In particular, given the technical challenges of operating and managing an MRF and the diversity in the complexity of MRFs (see the third party evidence set out at paragraph 9.28), it may be less feasible for those local authorities that currently outsource the O&M of MRFs to a third party specialist to self-supply, if their MRFs are more complex assets.

Conclusion on self-supply

- 9.30 Based on the above evidence, we do not consider that self-supply is a sufficiently viable alternative to the provision of O&M services by specialised third party operators for enough local authorities to prevent a price increase in the O&M of MRFs.

Merchant operators and municipal O&M of MRFs contracts

- 9.31 In general, the boundaries of the relevant product market are determined primarily by reference to demand-side substitution.⁶⁴¹ In certain circumstances, however, we may aggregate markets based on considerations about the response of suppliers to changes in price. For this, we would require evidence that (i) firms routinely use their existing 'production assets' to supply a range of different products that are not demand-side substitutes and that firms shift their existing capacity between these products depending on demand for each; and (ii) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.⁶⁴²

⁶³⁸ Note of call with Grundon, 15 June 2022, p9

⁶³⁹ Note of call with Renewi, 16 June 2022, p29; Transcript of call with HW Martin, 15 June 2022, p12-13.

⁶⁴⁰ 23 out of 38 local authorities outsource their supply of O&M services.

⁶⁴¹ [CMA129](#), paragraph 9.7

⁶⁴² [CMA129](#), paragraph 9.8

9.32 In considering whether merchant operators are viable supply-side substitutes, we have paid particular regard to whether merchant operators could use their existing ‘production assets’ to supply O&M of MRFs to their existing merchant MRFs and to local-authority-owned MRFs, in response to changes in each.⁶⁴³

Parties’ views

9.33 Veolia submitted that there has been significant new entry from merchant MRF operators since the PPP/PFI contracts for local authority MRFs were tendered. Veolia submitted that this entry has expanded the pool of suppliers and that these operators will be ‘well-placed to compete for O&M contracts for local-authority-owned MRFs’.⁶⁴⁴ As regards why merchant MRF operators are viable supply-side substitutes, Veolia submitted:

- (a) Merchant suppliers have the same experience with respect to operating the equipment itself and managing the resale of materials, as suppliers that hold local authority contracts.⁶⁴⁵ It also noted that there are no technical differences between local authority and merchant MRFs.⁶⁴⁶
- (b) Merchant MRFs are often used to sort municipal recyclates;⁶⁴⁷ and merchant MRF operators ‘already serve a large number of local authorities through sorting contracts’.⁶⁴⁸

9.34 Veolia submitted that the Provisional Findings lacked credible evidence to exclude merchant operators from the relevant market.⁶⁴⁹ Veolia considered that our provisional conclusion was based on two pieces of evidence: (i) it was important for the O&M provider to be large to mitigate against the risks associated with volatile prices from the material markets; and (ii) Grundon indicated that it would be unwilling to bid for O&M contracts due to pricing risks.⁶⁵⁰ Veolia submitted that it was unclear on what basis the evidence was collected,⁶⁵¹ that the evidence on the ability to take on recycled material pricing risks was becoming less relevant, and that the ability and/or willingness to take on pricing risks of recycled material was not an important

⁶⁴³ Production assets in this case likely relates to the management personnel with the experience and technical expertise to supply O&M services for MRFs.

⁶⁴⁴ Veolia’s response to CMA working paper on services for complex municipal contracts, 22 April 2022, page 34.

⁶⁴⁵ Veolia’s [response to the Provisional Findings](#), paragraph 117.

⁶⁴⁶ Veolia’s [response to the Provisional Findings](#), paragraph 117.

⁶⁴⁷ Veolia’s response to CMA working paper on services for complex municipal contracts, 22 April 2022, page 34.

⁶⁴⁸ Veolia’s [response to the Provisional Findings](#), paragraph 118.

⁶⁴⁹ Veolia’s [response to the Provisional Findings](#), paragraph 119.

⁶⁵⁰ Veolia’s [response to the Provisional Findings](#), paragraph 119.

⁶⁵¹ Veolia’s [response to the Provisional Findings](#), paragraph 120.

competitive factor.⁶⁵² Veolia told us that, in terms of risk profile, the difference between operating a merchant MRF in comparison to a local authority MRF was not significant.⁶⁵³

- 9.35 Veolia also submitted that local authorities had identified seven merchant operators as potential credible suppliers and these operators received broadly the same ratings as local authority operators like Biffa, FCC and Viridor.⁶⁵⁴ Veolia submitted that this demonstrates that local authorities clearly expect a similar level of service from merchant operators.⁶⁵⁵
- 9.36 Veolia submitted that even if the CMA considers that merchant operators do not exercise a strong competitive constraint on the Parties today, it should take into account the fact that there are 27 potential entrants in the market for the supply of sorting services to local authorities.⁶⁵⁶ Veolia considered that this was all the more important given that the ‘market does not exist’ and that it was too early to draw conclusions about its competitive dynamics.⁶⁵⁷

Third party views

- 9.37 Evidence from third parties indicates that there are technological variations between the MRFs currently operational in the UK. Some MRFs are simple while others are sophisticated, complex assets.⁶⁵⁸ However, these differences exist for both merchant and local-authority-owned MRFs. It has not been possible to determine whether certain suppliers operate simple or sophisticated MRFs. While it may be the case that some merchant MRF operators may only operate simple, low-tech assets, evidence from third parties indicates that the ‘average’ merchant MRF operator would likely possess the technical skills to operate and manage local-authority-owned MRFs.⁶⁵⁹ Similarly, some of the local-authority-owned MRFs may also be ‘simple’ assets, in which case, all merchant operators would likely have the technical capabilities to operate those assets. Overall, the technological barriers for merchant MRF operators to supply O&M of MRFs to local-authority-owned MRFs are likely to be low.

⁶⁵² Veolia’s [response to the Provisional Findings](#), paragraph 121.

⁶⁵³ Veolia’s [response to the Provisional Findings](#), paragraph 121.

⁶⁵⁴ Veolia’s [response to the Provisional Findings](#), paragraph 122.

⁶⁵⁵ Veolia’s [response to the Provisional Findings](#), paragraph 122.

⁶⁵⁶ Veolia’s [response to the Provisional Findings](#), paragraph 123.

⁶⁵⁷ Veolia’s [response to the Provisional Findings](#), paragraph 123.

⁶⁵⁸ Notes of calls with: Beauparc, page 12; Grundon, page 9; Enva page 19

⁶⁵⁹ Notes of calls with: Grundon page 9; Tolvik dated 14 June 2022, pages 8-9

- 9.38 Technological barriers, however, are only one form of barrier that may prevent supply-side substitution or entry by merchant operators into the O&M of MRFs to local authorities.
- 9.39 As explained in paragraph 9.32, we have considered whether merchant operators could use their existing ‘production assets’ to supply O&M services to local-authority-owned MRFs and their existing merchant MRFs.⁶⁶⁰ In this respect, the following evidence supports the view that some merchant operators may be potential supply-side substitutes:
- (a) Five (the Parties and three third parties) out of the 32 merchant operators currently present in the UK supply O&M of MRFs to local authorities and operate their own merchant MRFs. Of the three third parties:
 - (i) Biffa is one of the largest operators of MRFs in the UK. It told us that it would ‘review each contract opportunity on a case by case basis’.⁶⁶¹
 - (ii) In response to the question whether it would bid for local authority O&M of MRF contracts, Renewi also told us it would ‘evaluate each opportunity as they arise’.⁶⁶²
 - (iii) Kier did not respond to our questionnaire but we note that it has a significantly smaller portfolio of MRFs than Biffa and the Parties, operating a total of four MRFs.
 - (b) Two merchant-only operators – Beauparc and HW Martin – told us that they would consider bidding for some local authority O&M of MRFs contracts under certain circumstances. Specifically, HW Martin indicated that it would bid for local authority O&M of MRFs contracts but because it was a ‘niche’ business, it would not bid for contracts that were bundled with other services as that did not relate to its expertise.⁶⁶³ Beauparc told us that it was only interested in the Midlands geographic area, and it would, at best, bid for three local authority O&M of MRFs contracts.⁶⁶⁴

⁶⁶⁰ Production assets in this case likely relates to the management personnel with the experience and technical expertise to supply O&M services for MRFs.

⁶⁶¹ Response to CMA’s Phase 2 Post-PF questionnaire from Biffa, 21 June 2022, Q2.b

⁶⁶² Response to CMA’s Phase 2 Post-PF questionnaire from Renewi, 21 June 2022, Q2.b

⁶⁶³ Note of call with HW Martin, 15 June 2022, p6

⁶⁶⁴ Note of call with Beauparc, 17 June 2022, p6

- (c) Some local authorities identified merchant-only operators as potential suppliers. However, we note that each supplier received only one mention and some received a low rating.⁶⁶⁵

9.40 Four merchant-only operators, however, indicated that they would not bid for local authority O&M of MRFs contracts:

- (a) Grundon told us that, while it would be able to win O&M contracts, it would not be prepared to take on the risk profile associated with the contract, as the risk profile is heavily weighted in favour of the local authority. Grundon told us that there is a significant risk in terms of resourcing and having the staff to supply O&M of MRFs to local authorities.⁶⁶⁶
- (b) [X] told us that it would not bid for local authority O&M of MRFs contracts because it was not its 'core business'.⁶⁶⁷ [X] also told us that it would not expect merchant-only operators to be likely to bid for such contracts.⁶⁶⁸
- (c) [X] and J&B Recycling – with one MRF each – both submitted that that they would not bid for local authority O&M of MRFs contracts. [X] submitted that it only operates and manages its own MRF and that it would not take on the management of others.⁶⁶⁹ J&B Recycling, which was recently acquired by Urbaser, submitted that, under its previous guise, it would likely not have bid for local authority O&M of MRFs contracts, as it would have limited success.⁶⁷⁰ J&B Recycling submitted that local authority tenders are 'often very complex and time consuming' and noted that even though it has experience in the O&M of its own MRF, it has no experience of supplying these services to local authorities and as a result, rated its chances of success as 'remote'.⁶⁷¹ In its view, local authority tenders do not lend themselves to 'SME type businesses or new starters' and only multi-nationals and nationals will bid for such contracts.⁶⁷²

⁶⁶⁵ See section 'Credible bidders' for more detail.

⁶⁶⁶ Note of call with Grundon, 15 June 2022, page 5

⁶⁶⁷ Note of call with [X]

⁶⁶⁸ Note of call with [X]

⁶⁶⁹ Response to CMA's Phase 2 Post-PF questionnaire [X]

⁶⁷⁰ Response to CMA's Phase 2 Post-PF questionnaire from J&B Recycling, 23 June 2022, Q2

⁶⁷¹ Response to CMA's Phase 2 Post-PF questionnaire from J&B Recycling, 23 June 2022, Q2

⁶⁷² Response to CMA's Phase 2 Post-PF questionnaire from J&B Recycling, 23 June 2022, Q2 and 3

- 9.41 Although Beauparc and HW Martin submitted that they would bid for certain O&M contracts under certain circumstances, both submitted that other small merchant-only operators would be less likely to do so. Beauparc told us that it did not see operators with only one MRF as competitors for local authority O&M of MRFs contracts because these competitors would not be willing to take on the risks associated with operating MRFs that were coming towards the end of their useful life and would not be able to deploy the significant investment that would likely be required.⁶⁷³ In Beauparc's view, middle range or smaller competitors would have 'no chance' of winning local authority contracts.⁶⁷⁴
- 9.42 Similarly, HW Martin did not see operators with one or two MRFs as being interested in bidding for local authority O&M contracts and indicated that smaller organisations would rather focus on the management of their own MRFs.⁶⁷⁵ It also noted that smaller or similar size organisations may have issues financing local authority O&M of MRFs contracts, particularly if they are reliant on third party financing. HW Martin considered that it was in a relatively 'unique position', which would enable it to compete for O&M of MRFs contracts.⁶⁷⁶ HW Martin also considered that our list of 27 single MRF operators might include 'dirty MRFs' which would deal mainly with construction waste and would not be related to the sorting of recyclates, and by implication, will pose no constraint on the Parties.⁶⁷⁷
- 9.43 Further, as discussed in paragraphs 9.93-9.96, most suppliers we spoke to did not consider merchant operators as credible competitors for O&M of MRF contracts.
- 9.44 Local authorities submitted that larger suppliers would be better able to mitigate the risks associated with commodity price volatilities.⁶⁷⁸ NAWDO submitted that local authorities would likely prefer a strong and relatively large partner that would be able to spread the risk around a number of contracts to get a better financial outcome.⁶⁷⁹
- 9.45 The evidence from third parties indicates that the scale and size of an MRF operator is important to local authorities, in part to manage the risks associated with the resale of recycled materials. The requirements of local

⁶⁷³ Note of call with Beauparc, 17 June 2022, p6-7

⁶⁷⁴ Note of call with Beauparc, 17 June 2022, p7

⁶⁷⁵ Note of call with HW Martin, 15 June 2022, p6

⁶⁷⁶ Note of call with HW Martin, 15 June 2022, p6

⁶⁷⁷ Note of call with HW Martin, 15 June 2022, p8

⁶⁷⁸ See section 'Pricing risks of recycled material' for more detail.

⁶⁷⁹ See section 'Pricing risks of recycled material' for more detail.

authorities will likely reduce the ability and incentives of some O&M of MRFs operators – particularly those without scale – to bid and/or compete strongly for future standalone O&M contracts.⁶⁸⁰

- 9.46 An independent third party report on MRFs in the UK explained that larger firms benefit from greater investment capacity, which means they may have a competitive advantage when bidding to build a new materials recovery facility.⁶⁸¹ The report indicated that it would be difficult for smaller suppliers to compete with larger suppliers for contracts with local authorities since suppliers would need to be able to demonstrate the capacity to perform the task.⁶⁸²

Conclusion on merchant MRF operators

- 9.47 On the basis of the above evidence, our view is that most of the merchant MRF operators that have no experience of supplying O&M of MRFs to local authorities are unlikely to have the scale or willingness to bid for standalone O&M of MRFs contracts.
- 9.48 We will consider the constraint that Beauparc and HW Martin will place on the Parties as part of our competitive assessment, however, given that both operators have indicated that they would likely bid for some local authority O&M in contracts (though we note Beauparc will only bid in particular geographic regions of the UK).
- 9.49 The other merchant MRF operators that have experience of supplying O&M services to local authorities (Biffa, Kier and Renewi) may have a greater incentive to bid for standalone O&M contracts in future. We will consider the significance of the constraint that these suppliers pose on the Parties in our competitive assessment.

Conclusion on product market

- 9.50 Based on the above evidence, we have concluded that the relevant product market is the supply of O&M for MRFs to local authorities.
- 9.51 For the reasons set out above, we have concluded that merchant MRF operators that do not supply O&M services to local authorities will likely exert only a very weak constraint on the Parties. Similarly, for the reasons set out

⁶⁸⁰ See section 'Pricing risks of recycled material' for more detail.

⁶⁸¹ IBIS report, 'Sorted Material Recovery in the UK', page 32.

⁶⁸² IBIS report, 'Sorted Material Recovery in the UK', page 32.

above, we have concluded that self-supply will likely exert only a very weak constraint on the Parties.

Geographic market

Parties' view

9.52 Neither Party made submissions on the geographic market.

Third party views

9.53 Local authorities identified the Parties and Biffa most frequently as credible suppliers for standalone O&M of MRFs contracts. Most of the other suppliers identified by local authorities were also national suppliers that operate across the UK but we note that some suppliers that submitted they would bid for standalone O&M of MRF contracts are currently regional suppliers (namely, Beauparc and HW Martin).

9.54 No local authority named a supplier that is not currently operating in the UK.⁶⁸³

Conclusion on geographic market

9.55 For the reasons set out above, we have concluded that the relevant geographic market is the UK.

Conclusion on the relevant market

9.56 We have concluded that the relevant market is the supply of O&M of MRFs to local authorities in the UK.

Indicators of competition

9.57 In this section we consider the evidence on competition in the provision of O&M of MRFs. We note, in particular, alongside material recovery, the O&M operator is typically responsible for the subsequent resale of recycled material. The resale market can be volatile, and we have heard from both customers and competitors that suppliers' ability to take on pricing risks of recycled materials is an important aspect of competition in the O&M of

⁶⁸³ See Credible section for more detail.

MRFs. Therefore, we have assessed the available evidence on that issue. We have also assessed market shares and third party views on the credibility of suppliers.

Pricing risks of recycled material

Parties' views

- 9.58 Veolia submitted that the ability to take on pricing risks of recycled materials is becoming less relevant and that there is a trend toward sharing risks with local authorities.⁶⁸⁴ In this context, the ability and/or willingness to take on pricing risks is not an 'important competitive parameter'.⁶⁸⁵
- 9.59 Suez submitted that the primary risks associated with the resale of sorted commodity materials (eg paper, glass, aluminium, plastic) are:
- (a) The quality and quantity of marketable materials in the feedstock supply will directly influence the value of the revenue received from resale once sorted.
 - (b) The costs involved in disposing of materials that cannot be sold.
 - (c) The commodity value of the product at the point of sale. Market value can vary in response to macro-economic factors (eg oil price influencing the price of plastics) or local issues (eg demand from local recycling plants).
 - (d) For packaging materials, the value of the EPR Packaging Recovery Note or Packaging Export Recovery Note can vary depending on supply and demand.⁶⁸⁶
- 9.60 Suez submitted that commodity risk and opportunity sharing with local authorities is common, [§].⁶⁸⁷ The same risk and opportunity sharing is rare with C&I waste and in local authority streams indirectly contracted to a MRF through third parties.⁶⁸⁸
- 9.61 Suez submitted that, in some circumstances, larger MRF operators have certain advantages as they have larger quantities and more resilient supplies

⁶⁸⁴ Veolia's [response to the Provisional Findings](#), paragraph 121

⁶⁸⁵ Veolia's [response to the Provisional Findings](#), paragraph 121

⁶⁸⁶ Suez's response to RFI dated 16 June 2022, question 154

⁶⁸⁷ Suez's response to RFI dated 16 June 2022, question 154

⁶⁸⁸ Suez's response to RFI dated 16 June 2022, question 154

of materials to sell, and therefore have an advantage in negotiations with off-takers. They also have larger physical space for storage, providing flexibility in terms of when to sell to the market (ie avoiding selling when the market value is low).⁶⁸⁹

Evidence from customers

- 9.62 [X] submitted that the general risk profile of waste contracts was increasing, including through material sales prices swings. While some local authorities would take on this risk themselves, other local authorities were not in a position to do so because of their financial strategies.⁶⁹⁰ [X] submitted that the latter were likely to prefer a strong and relatively large partner who could spread the risk around a number of contracts to get a better financial outcome.⁶⁹¹
- 9.63 Local authorities submitted that it was important for their O&M of MRFs provider to be large enough to be able to mitigate against the risk associated with the volatile prices from the materials markets (sometimes referred to in the industry as the commodities market). Some suppliers have sought to mitigate this risk through risk/profit sharing agreements with local authorities.
- 9.64 Tolvik submitted that risk sharing has become increasingly common as suppliers are unwilling to bear the full risk of pricing volatility of recycled materials.⁶⁹² Tolvik told us the market for the O&M of MRFs is subject to 'considerable uncertainty' and this has led to a decline in the number of participants in the sector. This has been the case in spite of the introduction of risk-sharing mechanisms by local authorities, in which the O&M operator and the local authority share the risks arising from the commodity price volatility. In its view, waste management companies operate local-authority-owned MRFs in order to maintain a broader relationship with their local authority clients, or because it allows them access to waste streams that may be strategic for the supplier, such as plastics.⁶⁹³

⁶⁸⁹ Suez's response to RFI dated 16 June 2022, question 154

⁶⁹⁰ Note of call with [X]

⁶⁹¹ Note of call with [X]

⁶⁹² Note of call with Tolvik, 4 April 2022.

⁶⁹³ Note of call with Tolvik, 4 April 2022.

Evidence from competitors

- 9.65 Competitors submitted that the price of recyclates is driven by market forces and that MRF operators have no control over those commodity prices.⁶⁹⁴ FCC submitted that this creates a risk of ‘selling recovered/recycled’ materials but the size of supplier had little impact on the ability to mitigate these risks.⁶⁹⁵
- 9.66 However, the majority of competitors that responded to our questionnaire or that spoke to us said that the scale of an operator confers a competitive advantage in mitigating the risks of material sales and the ability to take on local authority contracts.
- 9.67 [X] told us that when considering an MRF contract it would consider ‘to what extent are we being expected to depend on the revenue from that type of material. Or to what extent will it be shared or passed back to the authority?... And it’s been pretty volatile and therefore it’s caused a lot of problems in the marketplace...authorities understand that they can’t magic that risk away. And that they tend to now put in place risk sharing or risk transfer around volumes... [X].’⁶⁹⁶
- 9.68 Grundon told us that the recycling commodities market can be ‘incredibly volatile’ and that the local authority contracts would be a ‘risky proposition’ for smaller merchant businesses.⁶⁹⁷ In Grundon’s view, larger operators such as Veolia, Suez and Biffa are in a better position to be able to bid for local authority contracts.⁶⁹⁸ [X] told us that larger waste management companies like Veolia, Suez and Biffa, with infrastructure and experience would have a greater ability to ‘de-risk’ their operations than regional or smaller operators.⁶⁹⁹ [X] submitted that larger operators would, among other things, be able to negotiate more favourable terms on the sale of the recyclates (and be able to sell lower quality material to off-takers) and have the financial power to remain in the market in the context of commodity price volatilities.⁷⁰⁰ Hills Group submitted that free-market principles would skew in favour of larger operators and contracts.⁷⁰¹

⁶⁹⁴ Response to the CMA’s questionnaire from [X], [X] and [X], See also note of call with [X].

⁶⁹⁵ Response to CMA’s Phase 2 Post-PF questionnaire by FCC, 21 June 2022 question 3a; question 3b.

⁶⁹⁶ Note of call with [X]

⁶⁹⁷ Note of call with Grundon, 15 June 2022, page 6

⁶⁹⁸ Note of call with Grundon, 15 June 2022, page 6

⁶⁹⁹ Note of call with [X]

⁷⁰⁰ Response to CMA Phase 2 Post-PF questionnaire from [X].

⁷⁰¹ Response to CMA’s Phase 2 Post-PF questionnaire by Hills Group, 21 June 2022, question 3b

- 9.69 Beauparc told us that larger companies, particularly those suppliers that have access to their own infrastructure (ie plastics recycling facilities and ERFs), would have a competitive advantage.⁷⁰² Beauparc explained that the ability to process the plastics at their own facilities would enable the supplier to extract greater value than a 'normal MRF operator' would not have.⁷⁰³ Beauparc also said that suppliers that had the ability to send the residue from the MRFs⁷⁰⁴ to their own ERFs would have a competitive advantage, as they would have lower disposal costs.⁷⁰⁵ Beauparc indicated that there are a number of advantages that come with scale; and local authorities' approach to risk would, in its view, prefer a larger operator to a smaller one.⁷⁰⁶

Conclusion on pricing risks of recycled material

- 9.70 Evidence from third parties indicates that MRF operators face risks associated with the resale of recyclates. The evidence also indicates that there is a trend towards more risk sharing between local authorities and MRF operators. While the introduction of risk sharing reduces the relative importance of the suppliers' ability to manage risks, customers and competitors indicated that it remains a relevant factor. Moreover, the third party evidence indicates that larger operators (with relevant experience in managing this risk) would be better able to manage those risks and that scale confers a competitive advantage. On this basis, we consider that the ability to take on pricing risks of recycled materials remains an important competitive factor and will likely influence the ability of smaller operators' willingness to bid for, and ability to win, local authority O&M of MRFs contracts.

Market shares

- 9.71 Veolia operates [X] MRFs in the UK, [X] of which employ automated optical sorting. Eight of those MRFs are operated for local authorities under PPP/PFI contracts and [X] are Veolia's privately owned merchant MRFs. Suez operates eight MRFs in the UK, with a mix of automated optical and manual sorting. [X] of those MRFs are operated for local authorities under

⁷⁰² Note of call with Beauparc, 17 June 2022, page 6

⁷⁰³ Note of call with Beauparc, 17 June 2022, page 6

⁷⁰⁴ Beauparc estimated that this accounted for approximately 20 per cent of the non-recyclable fraction at the MRFs.

⁷⁰⁵ Note of call with Beauparc, 17 June 2022, page 6

⁷⁰⁶ Note of call with Beauparc, 17 June 2022, page 9

PPP/PFI contracts and the remaining [redacted] are Suez's privately owned merchant MRFs.

- 9.72 Of the Parties' competitors, Biffa, Grundon and Kier are the three largest (operating six, four and four MRFs respectively). Six other competitors operate two MRFs each. However, these figures do not take into account whether these MRFs are local authority or privately owned. Our analysis of market shares, below, does take this into account.

Parties' view

- 9.73 Veolia submitted that [redacted].⁷⁰⁷
- 9.74 Veolia submitted that market shares do not 'reflect competition for O&M today', as contracts that will be let for O&M of MRFs today and in the future will not have design, finance or build elements which were included in the original PPP/PFI contracts.⁷⁰⁸ Veolia submitted that the Provisional Findings provided no evidence on the relative importance in the bidding process of the O&M element compared to other elements, like the construction of the asset and any other services included in the scope of the (often integrated) PPP/PFI contract.⁷⁰⁹
- 9.75 Veolia submitted that our shares of supply estimates took an inconsistent approach to merchant capacity, as they excluded merchant operators from the relevant competitor set, but included the suppliers' merchant capacity in the share of supply calculations, which it claims illustrates our acceptance that experience of operating merchant MRFs is relevant to suppliers' ability to bid for local authority contracts.⁷¹⁰

Evidential value of market shares

- 9.76 Local authorities told us that experience and track record were among the most important factors when deciding which supplier to select as their next O&M of MRFs provider. In markets where experience matters, market shares are a relevant indicator of strength and ability to win future contracts. The suppliers that won the initial PPP/PFI contracts have gained considerable experience from operating local authority MRFs. Market shares are indicative of wider experience in O&M of MRFs, which is relevant to

⁷⁰⁷ Veolia's response to CMA working paper on services for complex municipal contracts, 22 April 2022, page 34.

⁷⁰⁸ Veolia's response to CMA working paper on services for complex municipal contracts, 22 April 2022, page 34.

⁷⁰⁹ Veolia's [response to the Provisional Findings](#), paragraph 130.

⁷¹⁰ Veolia's [response to the Provisional Findings](#), paragraph 131.

competition in this market. Moreover, we consider that suppliers that won the initial PPP/PFI contracts were selected in part for their O&M of MRFs capabilities, as those contracts include the O&M of the MRF in addition to the design, finance and build elements that Veolia identifies.

- 9.77 Evidence from third parties indicates that the design and construction (**D&C**) components would likely have been outsourced to third party suppliers.⁷¹¹ Therefore, we acknowledge that these past tenders might reflect the bidder's ability to manage the subcontracting of D&C. Third parties have told us that the MRFs would likely require investment, either to refurbish, upgrade or replace existing machinery; and that future local authority tenders will have provision for such investment.⁷¹² Therefore, experience in D&C and/or managing relationships with D&C suppliers may be relevant in future O&M tendering, at least for some contracts.
- 9.78 The fact that the O&M of MRFs was bundled with other services (eg D&C) in the initial PPP/PFI contracts does not in itself limit the evidentiary weight that can be placed on shares of supply. Increasing recycling rates is an important public policy objective and the sorting of waste at MRFs is critical to achieving that objective. In light of this, we consider it likely that local authorities would have selected suppliers that would have had the capabilities and strengths to carry out this function and, as set out in chapter 7, there are only a few firms that are capable of providing these services together. We also note that in our competitive assessment we have considered who local authorities rated as current credible suppliers.
- 9.79 Market shares based on capacity also tell us about the suppliers' strengths in winning and delivering large contracts. As explained in paragraph 9.37, some local authorities have a preference for larger suppliers that can absorb the risks of commodity price volatility. Suppliers that have a larger market share based on capacity have a greater ability to manage those risks. In order to reflect both of these factors, we include the total capacity under management (both of the local-authority-owned and merchant capacity) of the MRF operators that we consider are likely to bid for and compete credibly for local authority contracts. We have found that merchant-only operators – except Beauparc and HW Martin – are likely to exert at most only a weak constraint on the Parties (paragraph 9.47). On that basis, we have not included the capacity of those operators in our market share calculations. Similarly, as explained below, we do not include capacities of

⁷¹¹ Note of calls with: Enva, page 24; HW Martin, page 19; Beauparc, page 18; Grondon, page 18

⁷¹² Note of calls with Beauparc, page 5; Enva, page 18; HW Martin, page 18.

Severn Waste Limited or Cory in our shares of supply calculation, as both have told us that they will not bid for local authority O&M contracts, ie they will also not exercise any constraint on the Parties. Including the capacities of MRF operators that will not compete strongly for future contracts would defeat the underlying purpose of the analysis, which is to indicate the relative strengths of firms that will likely compete for future O&M contracts.

- 9.80 In light of the above, we consider that the market shares set out in this chapter are a useful indicator of the competitive strength of firms active in the O&M of MRFs, including for future tenders. We have considered the evidence from market shares in the round with the other evidence set out in this chapter.

Market share estimates

- 9.81 We have calculated market shares using data from the Parties and third parties, including data from competitors and an external dataset prepared by Tolvik. Tolvik's dataset contained information on each of the MRFs that was operational in the UK in 2019 and the type of MRF (local-authority-owned or merchant). Wherever possible, we have updated Tolvik's database to take into account any changes in operator (and to report the current operator of the facility), data on the total operational capacity of the MRF, and/or any other changes such as whether the MRF has ceased operation. The Parties and third parties told us that some of the MRFs that had initially been categorised on Tolvik's dataset were in fact waste transfer stations with limited or no sorting capabilities. For those cases, we reassigned those as waste transfer stations and have not included those facilities in our market shares calculations.
- 9.82 We have calculated the market shares for the MRF operators that we consider will likely bid and compete credibly for local authority O&M of MRFs contracts. The MRF operators that currently have experience of supplying O&M services to local authorities, except for Severn Waste Limited and Cory, have indicated their intention to compete for these tenders.⁷¹³ Accordingly, we have included nine operators that currently have experience

⁷¹³ Severn Waste Limited, in its response to our questionnaire, submitted that it is owned 50/50 by two companies which compete for business, and Severn Waste Limited did not tender for contracts. Severn Waste Limited is owned by FCC and Urbaser, which we have considered separately. Cory, in response to our questionnaire, submitted that it did not intend to bid for further MRF contracts in the near future, and would only consider doing so if O&M of MRFs was part of an ERF contract, Cory had capacity, and believed it was in Cory's interest to provide such an offering. As such, we consider it unlikely that Cory will bid for future standalone O&M of MRFs contracts.

of supplying O&M of MRFs to local authorities and which have indicated that they would participate in these tenders.⁷¹⁴ We consider that merchant-only MRF operators are likely to exert at most only a very weak constraint and have not included them in our market shares analysis (paragraph 9.47). We, however, note that Beauparc and HW Martin – two merchant only operators that do not have experience in supplying O&M services to local authorities – indicated that they would bid for local authority O&M of MRF contracts under certain circumstances. We have therefore included their capacities in calculating the market shares.

- 9.83 Where the companies operate both local-authority-owned and merchant MRFs, we have taken into account the capacity under management of both types of MRFs, as it indicates experience of those suppliers in operating MRFs.⁷¹⁵ The market shares are set out at Table 9.1 below.

Table 9.26: O&M of MRFs share of supply estimates, by capacity

	%
<i>Operator</i>	<i>Shares</i>
<i>Veolia</i>	<i>[20-30%]</i>
<i>Suez</i>	<i>[10-20%]</i>
<i>Combined share</i>	<i>[40-50%]</i>
<i>Biffa</i>	<i>[20-30%]</i>
<i>HW Martin</i>	<i>[5-10%]</i>
<i>Hills</i>	<i>[5-10%]</i>
<i>Beauparc</i>	<i>[5-10%]</i>
<i>Kier</i>	<i>[0-5%]</i>
<i>FCC</i>	<i>[0-5%]</i>
<i>Renewi</i>	<i>[0-5%]</i>

Source: Analysis of Tolvik MRF dataset.

Note: As set out in paragraph 9.81, we have used data from the Parties, third parties and the Tolvik dataset provided to us by the Parties to calculate our shares of supply. We have not received a response from Kier on whether it would bid for local authority O&M contracts or data on the MRFs it operates. For Kier, we have used the data from Tolvik.

⁷¹⁴ Kier did not respond to questionnaire but on a cautious basis, we have included it in our assessment.

⁷¹⁵ There are only five suppliers that operate both local-authority-owned and merchant MRFs: Veolia, Suez, Biffa, Kier and Renewi.

Conclusion on shares of supply

- 9.84 The Parties are the first and third largest operators of MRFs by capacity in the UK, with a combined market share of [40-50%] incorporating a significant increment of [10-20%]. These market shares indicate that the Parties have had significant historical success in past contracts that incorporated a significant O&M element.
- 9.85 Biffa is the second largest operator by capacity but is smaller than Veolia and will be considerably smaller than the Merged Entity. Post-Merger, Biffa and the Parties would account for in excess of [70-80%] of the market. The Merger increases the degree of concentration, as measured by using the Herfindahl-Hirschman Index (**HHI**), by over 1,100 points, which is a very significant amount.⁷¹⁶
- 9.86 Overall, we consider these market shares show that the Parties and Biffa are likely to be highly significant competitors for future contracts involving O&M of local-authority MRFs.
- 9.87 No other provider has a share exceeding [5-10%]. Moreover, as explained in paragraph 9.82, Beauparc and HW Martin have indicated that they would only bid for a small number of local authority contracts and will therefore exert no constraint for most of the contracts. The market shares set out at Table 9.1 therefore overstate the importance of these two operators and, accordingly, understate the importance of the Parties.

Credible suppliers

- 9.88 In order to understand local authority views on credible suppliers of O&M of MRFs we sent questionnaires to all of the local authorities that currently outsource the supply of O&M of MRFs services to the Parties.

Parties' views

- 9.89 Veolia submitted that there was a large number of MRF operators that could bid for standalone O&M of MRFs contracts for local authorities.⁷¹⁷

⁷¹⁶ The HHI is a measure of market concentration that takes account of the differences in the sizes of market participants, as well as their number. The HHI is calculated by adding together the squared values of the percentage market shares of all firms in the market. The change in the HHI can be calculated by subtracting the market's pre-merger HHI from its expected post-merger HHI ([CMA129](#), paragraph 4.4).

⁷¹⁷ Veolia's response to CMA working paper on services for complex municipal contracts, 22 April 2022, pages 34 and 35.

9.90 Veolia submitted that local authorities identified a total of 11 suppliers other than the Parties, and all but one received an average scoring of 3 or above out of 5; and that the ratings of some of these suppliers only appear low if non-mentions are given a rating of zero.⁷¹⁸ In Veolia's view, it is inappropriate to treat non-mentions as a zero rating because it should not be expected for respondents to be 'exhaustive' – a customer may have simply have had less knowledge of suppliers or preferred not to rate them or had just forgotten to mention one.⁷¹⁹

Evidence from customers

9.91 We asked local authorities to list the suppliers that they would consider as credible suppliers for the provision of O&M of their MRFs and to indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong). Table 9.2 summarises the results.

⁷¹⁸ Veolia's [response to the Provisional Findings](#), paragraph 137

⁷¹⁹ Veolia's [response to the Provisional Findings](#), paragraph 137

Table 9.27: Summary of customer scoring of the strength of suppliers

Competitor	Average rating unadjusted for non-mentions		Average rating adjusted for non-mentions as a score of zero	
	No of respondents	Average rating (out of 5)	No of respondents	Average rating (out of 5)
Veolia	6	4.8	6	4.8
Suez	5	4.6	6	3.8
Biffa	5	3.6	6	3.0
Viridor	3	3.3	6	1.7
FCC Environment	3	3.3	6	1.7
Grundon	2	3.5	6	1.2
Countrystyle Recycling Limited	1	4.0	6	0.7
Serco	1	4.0	6	0.7
Enva	1	3.0	6	0.5
Martins	1	3.0	6	0.5
Amey	1	3.0	6	0.5
Hills	1	3.0	6	0.5
MVV	1	2.0	6	0.3

Source: CMA analysis of customer questionnaire.

Notes:

1. Viridor has exited the market and Amey is not pursuing growth in the sector and [X] and will not bid for local authority O&M of MRF contracts. Grundon, while mentioned twice, has told us that it will not bid for local authority O&M contracts.

2. It is unclear whether 'Martins' refers to HW Martin or Martins Waste Solutions.

9.92 Veolia, Suez and Biffa were identified the most frequently and received high average ratings from local authorities, regardless of the method of analysis used. In particular:

- (a) All customers that responded identified Veolia as a credible supplier and it received a very high average score of 4.8. All six local authorities explained their rating by reference to Veolia's experience, either

nationally or on their current MRF. For example, East Sussex submitted that Veolia has 'lot of experience in operating MRFs in the UK'.⁷²⁰

- (b) Suez was identified by all but one local authority and received a very high average rating of 4.6. Similar to Veolia, the five local authorities that listed Suez explained that Suez has good experience nationally and/or on their MRF. For example, GMCA submitted that Suez has 'Size, experience, innovation, access to contingency capacity'.⁷²¹
- (c) Biffa was identified by all but one local authority and received an average rating of 3.6. Local authorities also assessed Biffa with regard to Biffa's experience. While East Sussex submitted that Biffa had 'Lots of experience operating MRFs in the UK', GMCA stated that Biffa was 'Smaller scale so [doesn't] come with the advantages of the large Veolia and Suez'.⁷²²
- (d) Some other suppliers also received high ratings, including Viridor and FCC, though they were identified less frequently. There is a long tail of other suppliers which were each identified three or fewer times. The average rating adjusted for non-mentions as a score of zero for all suppliers other than the Parties and Biffa is less than 2.0. Although Veolia argues that it is inappropriate to score non-mentions as zero, we note that doing so led to results consistent with other evidence (specifically that the Parties and Biffa are the strongest suppliers). In any event, irrespective of whichever method of analysis is used, the Parties scored the highest and Biffa scored among the highest.

Evidence from competitors

9.93 In considering the importance of pricing risks of recycled materials we found that scale and experience were of considerable importance for suppliers of O&M of MRFs (paragraph 9.70). We have set out the views of competitors in this regard:

- (a) Grundon and Enva told us that Veolia, Suez and Biffa are in a better position to be able to compete credibly for local authority contracts because of their scale (paragraph 9.68); and

⁷²⁰ Response to the CMA's phase 2 questionnaire from East Sussex.

⁷²¹ Response to the CMA's phase 2 questionnaire from GMCA.

⁷²² Responses to the CMA's phase 2 questionnaire from East Sussex and GMCA.

(b) Severn Waste and Hills Group told us that larger suppliers are in a better position than smaller suppliers to negotiate better terms for the sale of recyclates (paragraph 9.68).

9.94 The views reported in that subsection therefore indicated that the most credible suppliers are the larger suppliers – in particular, Veolia, Suez and Biffa.

9.95 In this subsection we set out further views from competitors regarding which suppliers of O&M of MRFs are credible. Beauparc told us that Veolia and Suez have greater economies of scale which gives them better purchasing terms for waste material. The number of MRFs that the Parties operate would enable the Merged Entity to have greater assurance in supply of waste material and it would be more likely to be able to offer better terms for local authorities via risk sharing arrangements. Further, Beauparc said that local authorities might take the relatively large number of MRFs that the Parties operate as a sign of their being successful operators of MRFs which itself might convey some competitive advantage.⁷²³ Beauparc also told us that it does not have sufficient assets in terms of transfer stations and other MRF assets for contingency arrangements to build its resilience. Beauparc told us that it will not bid for some contracts.⁷²⁴

9.96 HW Martin submitted that it considered that Suez, Veolia, ‘perhaps’ FCC and Biffa, depending on their approach,⁷²⁵ will be credible suppliers for O&M of MRF contracts. HW Martin did not believe that smaller firms (which it described as firms which are not multinationals) would bid for such contracts, other than itself.⁷²⁶ Beauparc told us that it considered credible suppliers to be (in addition to Beauparc itself) Veolia, Suez, Biffa, Reconomy, Urbaser and, potentially, Norse (a Teckal).⁷²⁷ Similarly, Renewi submitted that it considered the credible suppliers to be Veolia, Suez, Biffa, Beauparc, Urbaser and Renewi (itself).⁷²⁸

⁷²³ Note of call with Beauparc 17 June 2022, pages 8-9.

⁷²⁴ Note of call with Beauparc 17 June 2022, page 8.

⁷²⁵ Specifically, HW Martin submitted that Biffa seems to have been ‘very much’ commercial waste driven, rather than local authority and Biffa may compete if it takes a different approach.

⁷²⁶ Note of call with HW Martin, 17 June 2022, page 13. HW Martin submitted that it was unique because its investment came from within the organisation and due to its willingness to expand to new regions.

⁷²⁷ Note of call with Beauparc.

⁷²⁸ Note of call with Renewi. For a description of Teckals see paragraph 5.13

Other evidence

9.97 As a part of the CMA's Phase 1 investigation, Veolia submitted a market research report.⁷²⁹ This report is broader in scope than the O&M of MRFs for local authorities (eg it also includes other recycling activities such as scrap metal wholesaling and waste sorted from commercial and industrial customers) and we have placed some, but not significant, weight on this report. In that light, we note that the report found that the most important factors in being successful in sorted waste material recovery were:

- (a) having supply contracts for inputs;
- (b) having the ability to win sorting contracts in competitive tenders;
- (c) being vertically integrated (ie firms that collect, treat and recycle waste can offer customers a package of waste management services);
- (d) having a steady and secure flow of recyclable material in order to operate the plant efficiently; and
- (e) having the ability to conform to environmental requirements.

9.98 Although not all of these points are relevant for our assessment – eg any operator of a municipal MRF will have a steady and secure flow of recyclable material and will be expected to conform to environmental standards – we have found other points helpful in considering what suppliers of O&M of MRFs will be credible. In particular we note that:

- (a) the market shares (Table 9.1) and our assessment of non-hazardous commercial and industrial waste (Chapter 12) indicates that Veolia, Suez and Biffa are better placed than any other supplier in regard to having supply contracts for inputs;
- (b) likewise, our market share analysis (Table 9.1) indicates that Veolia, Suez and Biffa are stronger than any other supplier at winning MRF contracts; and
- (c) Veolia and Suez are more vertically integrated than Biffa (ie they have a stronger incineration presence) as well as than Viridor and FCC (both

⁷²⁹ IBISWorld website: '[Sorted material recovery in the UK](#)', June 2021

of which are considerably less successful than either of the Parties in O&M for MRFs).

Conclusion on credible suppliers

- 9.99 Overall, we consider that the above evidence shows that local authorities and competitors consider Veolia, Suez and Biffa to be the strongest suppliers of O&M of MRFs. Some local authorities - although fewer than the number of local authorities which named Veolia, Suez and Biffa – also said Viridor and FCC would be credible suppliers. We note that Viridor has now exited the market and will not bid for local authority O&M of MRF contracts. Competitors told us that scale of Veolia, Suez and Biffa is, in particular, very important in managing the pricing risks of recyclates and is why these are the strongest competitors.

Assessment

- 9.100 We have assessed whether the Merger is likely to lead to horizontal unilateral effects in the supply of O&M of MRFs to local authorities in the UK. We have assessed how closely the Parties compete with one another and the likely competitive constraints that would be placed on the Merged Entity by other O&M of MRFs operators that may bid for future O&M contracts procured by local authorities.
- 9.101 We have found that commodity prices for recycled waste are volatile and that it is important that O&M of MRF suppliers are able to cope with that volatility. In this respect, we have found that there has been an increasing trend in risk sharing between the MRF operator and the local authority by agreeing to share profits / losses. These types of agreement incentivise local authorities to select suppliers who are best able to manage pricing risks. The evidence available to us from both customers and competitors clearly indicates that scale is important in a supplier's ability to manage risk by spreading it over a larger number of customers and sometimes over time (eg by holding some recyclates until the commodity price improves). The evidence shows that the suppliers who have the scale to cope best with pricing risk are Veolia, Suez and Biffa.
- 9.102 The Parties' competitive strengths are demonstrated by their high market shares. The Parties are the largest and third-largest suppliers by capacity, with a combined share of [40-50%], incorporating a significant increment of [10- 20%]. The market shares demonstrate the Parties' past strengths in winning O&M of MRFs contracts and experience in operating MRFs in the

UK. We consider that these market shares are likely to be a good indicator of how the Parties will compete in future O&M contracts.

- 9.103 Biffa is currently the second largest supplier with a market share of [20-30%], which is comparable to Suez. However, Biffa will be considerably smaller than the Merged Entity. After the Merger, Biffa and the Parties would account for in excess of [70-80%] of the market. The Merger results in a significant increase in concentration in an already concentrated market. No other provider has a share exceeding [5-10%].
- 9.104 We asked customers and competitors who they would consider as credible suppliers for the provision of O&M of their MRFs. Local authorities identified Veolia, Suez and Biffa most frequently and these three companies received high average ratings from local authorities. Competitors were of the same view in also considering Veolia, Suez and Biffa to be the strongest credible suppliers.
- 9.105 Further, as set out in Chapter 7, our assessment of complex contracts indicates that the Parties are strong competitors for multiservice contracts that include services related to MRFs.
- 9.106 We have found that the evidence taken together strongly suggests that the Parties are close competitors to each other. Absent the Merger, the Parties would have placed a strong constraint on each other in the supply of O&M of MRF services to local authorities.
- 9.107 We considered the current constraints from other O&M operators on both of the Parties. Overall, the evidence shows that Biffa is the only other strong competitor to each of the Parties for O&M of MRF contracts. Further, when we consider bundled waste management services contracts that include the O&M of MRFs, the evidence suggests that the Parties and Biffa are likely to be the only strong competitors. However, we do not consider Biffa would sufficiently constrain the Merged Entity to prevent an SLC from arising.
- 9.108 Of the other competitors, Viridor and FCC were also rated highly by some local authorities although by fewer local authorities than identified Veolia, Suez and Biffa. However, Viridor has now exited the market and will not bid for future O&M contracts. We have also heard from third parties that existing scale is important in managing pricing risks. The low market shares of other competitors, the overall views of third parties and the greater scale of Veolia, Suez and Biffa together indicate that these O&M operators will likely exert only a weak competitive constraint, and significantly weaker than the constraint that the Parties place on each other. In our view, the presence of these competitors will not materially constrain the Merged Entity such as to

prevent as SLC from arising. The Merger therefore represents a reduction in large, strong competitors from three to two, with a significant increase in concentration in an already concentrated market.

- 9.109 The O&M of some MRFs are complex services and therefore Veolia and Suez are likely to compete particularly closely (and face more limited competition from suppliers without the same willingness and ability to service complex contracts), in particular where the O&M of MRFs are included with other services for local authorities.
- 9.110 Based on our assessment, we have found that the Merger will result in the removal of a direct and significant constraint on each of the Parties and may be expected to result in an SLC. We consider that overall, the remaining constraints post-Merger will not be sufficient to prevent an SLC.
- 9.111 We consider that the Merger could lead to adverse effects in the provision of O&M of MRFs to local authorities through, for example higher prices for O&M contracts and/or worse terms (eg in risk/profit sharing agreements), and/or worse service levels relative to the situation absent the Merger (REF para in ch6).

Entry and expansion

- 9.112 We have considered whether entry or expansion, as a direct response to the Merger, would prevent the SLC.⁷³⁰ The entry or expansion must be: (a) timely; (b) likely; and (c) sufficient to prevent an SLC.⁷³¹ These conditions are cumulative and must all be satisfied.⁷³²
- 9.113 As discussed in paragraph 9.36 above, Veolia submitted that, at the very least, we should consider the constraint from merchant operators within the framework for assessing new entrants. In this regard, Veolia stated that there were 27 potential entrants in the market for the supply of sorting services to local authorities.
- 9.114 We consider that Tolvik's submissions indicate that new entry is unlikely. In particular, Tolvik submitted that there is 'considerable uncertainty' in the market due to upcoming legislative changes (paragraph 9.64). Tolvik also submitted that uncertainty has meant a lack of investment and indeed a

⁷³⁰ CMA129, paragraph 8.28

⁷³¹ CMA129, paragraph 8.31

⁷³² CMA129, paragraph 8.32

reduction in the number of participants.⁷³³ Veolia also submitted that ‘there is a large degree of uncertainty about whether and in what form MRFs will be needed in the future, given upcoming legislative changes’.⁷³⁴ These representations indicate that entry or expansion would be unattractive which in turn indicates that it would reduce the likelihood of entry or expansion occurring.

- 9.115 Even if all remaining merchant operators intended to bid for local authority O&M of MRF contracts, we consider that merchant operators would pose only a very weak constraint on the Parties. In particular, if we treated all remaining merchant operators as ‘new entrants’, the Parties would have a combined share of [30-40%].⁷³⁵ Biffa and n+p would be the only other suppliers with a share above 10% (specifically, Biffa would have an [10-20%] market share and n+p would have [10-20%]), and all other suppliers would have a share below [5-10%].
- 9.116 While merchant-only operators likely possess the skills necessary to provide O&M of MRFs to local authorities, we do not consider that merchant-only operators are likely to enter the market and bid for O&M of local authority MRFs (see discussion in the ‘market definition’ subsection of this chapter). In particular, four merchant operators submitted they will not bid for such services, with one of these citing the risks associated with the contracts and the other three submitting that it was not consistent with their business model.
- 9.117 In addition, local authorities have told us that they prefer suppliers with some minimum scale in order to better manage the pricing risks of recycled materials – an entrant would need to be of sufficient scale to win O&M contracts across local authorities and replace the competitive constraint lost by the Merger (Suez accounts for [10-20%] of the market). Entry or expansion needs to be successful over a sustained period of time.⁷³⁶ The available evidence indicates that entry will not be likely to occur in a timely manner and at a sufficient scale.
- 9.118 Beauparc told us that ‘barriers to entry into these contracts are more onerous than they have ever been and they are costly processes to

⁷³³ Note of call with Tolvik, dated 04 April 2022.

⁷³⁴ Veolia’s [response to the Provisional Findings](#), 9 June 2022, paragraph 113

⁷³⁵ Note: in calculating these shares, we have excluded firms that submitted they will not bid for the O&M of MRFs. Namely, [REDACTED].

⁷³⁶ [CMA129](#), paragraph 8.37

tender'.⁷³⁷ In particular, Beuparc referred to the track record and scale of incumbents (paragraph 9.95).

9.119 We consider that the evidence indicates that entry or expansion may be unattractive because of the uncertainty surrounding the future role of MRFs, merchant operators do not have plans to enter, incumbents have some advantage in terms of a track record, and local authorities look for existing scale in providers.

9.120 As such, we do not consider that entry by merchant MRF operators will likely constrain the Parties and prevent an SLC.

Conclusion

9.121 We have found that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the O&M of MRFs to local authorities in the UK.

⁷³⁷ Note of call with Beuparc 17 June 2022, pages 8-9.

10. INCINERATION SERVICES

- 10.1 The Parties overlap in the provision of services to operate and maintain incineration facilities (specifically, ERFs) and in the provision of services to incinerate waste supplied by third parties.
- 10.2 Incineration of residual waste is a widely used method of waste disposal. Residual waste that is burned at ERFs produces electricity, which is made available to the national grid.⁷³⁸
- 10.3 There were 56 ERFs operational in the UK in 2022:
- (a) 43 ERFs were built under the Public Private Partnership/Private Finance Initiative scheme;⁷³⁹
 - (b) 3 are local authority funded ERFs; and
 - (c) 10 are merchant ERFs.⁷⁴⁰
- 10.4 We provide a brief explanation of each of the three ownership models and their relevance to our competition assessment.

PPP/PFI ERFs

- 10.5 The majority of ERFs in the UK were developed, constructed, financed and operated under the PPP/PFI scheme on behalf of local authorities.⁷⁴¹ The average PPP/PFI contract duration is around 20–25 years. At the end of the PPP/PFI contract, 27 out of the 43 facilities will revert ownership to the local authority that commissioned the infrastructure; the remaining ERF facilities will transfer to the incumbent operator of the plant, effectively becoming a merchant ERF.
- 10.6 The majority of the operational capacity at the PPP/PFI ERFs is typically reserved ('locked') for use by the local authority that commissioned the infrastructure under the PPP/PFI contracts.⁷⁴² The remaining capacity –

⁷³⁸ Residual waste is the portion of non-hazardous, solid, combustible waste that cannot be recycled and can include household waste and commercial and industrial waste.

⁷³⁹ Aberdeen Ness ERF is due to become operational in 2022 with Indaver as the O&M provider. For the purposes of this Chapter, we have included Aberdeen Ness ERF as an operational ERF.

⁷⁴⁰ The Parties provided a dataset with information on ERFs that had been prepared by an independent third party Tolvik in 2021. The analysis undertaken in this chapter relies on Tolvik's dataset and is therefore based on data from 2020. Where possible, we have sought to update the information.

⁷⁴¹ FMN, NHW Chapter, paragraph 15.114.

⁷⁴² FMN, NHW Chapter, paragraph 15.117.

CMC – is made available to the operator of the ERF and is typically used by the operator for its own commercial purposes. The ERF operator will use this capacity for its own residual waste that it has collected from other customers and/or to sell incineration services to other waste management companies.⁷⁴³ The proportion of capacity used as CMC varies by ERF, but typically accounts for approximately 20% of total capacity.⁷⁴⁴

Local authority ERFs

- 10.7 Three ERFs were developed, financed and operated for local authorities outside of the PPP/PFI scheme. These local authority ERFs are not affected by the Merger and are not considered further in this chapter.

Merchant ERFs

- 10.8 Merchant ERFs are privately-owned facilities in which the merchant owner will sell capacity at its ERFs to customers that have to dispose of waste. Typically, the majority of the capacity is sold via fixed term contracts known as fuel supply agreements (**FSAs**), which have a duration of one year or more or short-term contracts via the spot market.⁷⁴⁵ There were 10 merchant facilities that were operational in 2022 and another 14 are in development.
- 10.9 The customers' cost of merchant capacity includes two components:
- (a) Price per tonne of waste disposed (known as a 'gate fee'): where a supplier sells its capacity on the spot market, the price may vary depending on demand for waste disposal, the availability of ERF capacity in the region, the volume of waste involved, and the contract term.⁷⁴⁶ The price under fuel supply agreements may depend on the estimated future ERF capacity in the area, inflation, and costs required to supply and deliver the waste to the facility.⁷⁴⁷
 - (b) Cost of transport: the supplier of the ERF facility either collects the waste from the customer or requires the customer to deliver the waste to the facility.⁷⁴⁸ Where the supplier collects the waste, this cost of

⁷⁴³ FMN, NHW Chapter, paragraph 15.118.

⁷⁴⁴ CMA analysis of Tolvik databook

⁷⁴⁵ FMN, NHW Chapter, paragraph 12.33

⁷⁴⁶ FMN, NHW Chapter, paragraph 15.135 and FN 579

⁷⁴⁷ FMN, NHW Chapter, paragraph 15.134

⁷⁴⁸ Based on analysis of data provided in email from Veolia to CMA, 18 March 2022.

transport is passed on to the customer.⁷⁴⁹ The customer itself might deliver the waste to the ERF in which case the customer directly bears the cost of transport.

Areas of assessment of incineration services

10.10 We have assessed the impact of the Merger on competition in incineration in two ways:

- (a) First, we have considered the O&M of the PPP/PFI ERFs (referred to as local-authority-owned ERFs), and specifically the future O&M contracts for the assets that will revert to local authority ownership when the PPP/PFI contract expires.⁷⁵⁰ At that time, the local authority will likely re-tender and procure O&M services from third party operators.
- (b) Second, we consider the supply of waste disposal services by incineration. This relates to the competition between merchant ERFs and operators that have access to merchant capacity (either CMC from local-authority-owned ERFs or capacity at merchant ERFs, either because the operator owns the merchant ERF or has an FSA at a third-party ERF).

Operation and maintenance services for energy recovery facilities to local authorities

10.11 In this section, we set out our assessment of the effect of the Merger on the supply of O&M services for ERFs to local authorities (**O&M of ERFs**). In our assessment, we have considered how closely the Parties compete with one another and whether the removal of the constraint the Parties place on each other is likely to lead to an SLC in the O&M of ERFs. As part of this assessment, we have also considered the likely competitive constraints that will be placed on the Merged Entity by other O&M operators that may bid for future O&M of ERFs contracts. In our assessment, we draw on the evidence from Chapter 7 where we considered contracts for specific waste management services that involve complex requirements. We consider that the factors that we have identified that indicate complexity (paragraph 7.46)

⁷⁴⁹ FMN, NHW Chapter, paragraph 15.132

⁷⁵⁰ As discussed in more detail in this section, it is likely that subsequent tenders will be primarily for the O&M of ERFs, though there may be some elements of refurbishment, repair and/or retrofit included in the contract.

apply generally to O&M of ERFs. In particular, the contracts are typically large in size and they involve the operation of infrastructure. The issue of complexity therefore exists in relation to O&M of ERFs whether or not they are bundled with other waste management services for local authorities.

10.12 The remainder of this section is structured as follows:

- (a) Market definition;
- (b) Indicators of competition, in which we examine the likely selection criteria that local authorities will use in choosing their future O&M supplier, the characteristics of likely bidders against those criteria, incumbency advantage, who customers and competitors consider to be credible suppliers, market shares and internal documents;
- (c) Our assessment;
- (d) Barriers to entry and expansion; and
- (e) Conclusion

Market definition

Product market

10.13 The Parties overlap in the O&M of ERFs, which we take as our starting point for determining the relevant product market.⁷⁵¹ Veolia submitted that merchant ERF operators could compete for O&M of ERFs contracts.⁷⁵² Further, Veolia submitted that technology suppliers could potentially compete, and that self-supply will provide a competitive constraint on the Parties.⁷⁵³

10.14 In general, the boundaries of the relevant product market are determined primarily by reference to demand-side substitution.⁷⁵⁴ In this case, other than potential self-supply, there are no demand-side factors to take into account,

⁷⁵¹ CMA129, paragraph 9.6

⁷⁵² FMN, NHW Chapter, paragraph 12.157.

⁷⁵³ See sub-sections 'Competition from technology suppliers' and 'Self-supply' for more detail.

⁷⁵⁴ CMA129, paragraph 9.7.

as local authorities cannot feasibly switch away from their demand for O&M services.⁷⁵⁵ In certain circumstances, we may aggregate markets based on

⁷⁵⁵ We recognise that the local authority closing their ERF and acquiring incineration services from the merchant market is a potential option. However, we do not consider that this is a feasible option because no local authority submitted that they would close their ERF and Tolvik submitted that as long as a local authority has an ERF that is running, it will continue to use that ERF for incineration services.

considerations about the response of suppliers to changes in price. For this, we would require evidence that (i) firms routinely use their existing production assets to supply a range of different products that are not demand-side substitutes and that firms shift their existing capacity between these products depending on demand for each; and (ii) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.⁷⁵⁶

- 10.15 Below, we consider the arguments whether self-supply is a sufficiently viable alternative to the provision of O&M of ERFs by specialised third party operators. We also consider whether merchant operators and technology suppliers are viable supply-side alternatives, in the context of the framework set out in paragraph 10.14.

Self-supply

Parties' view

- 10.16 Veolia submitted that self-supply was a competitive constraint: operators of local-authority-owned ERFs will face competition from local authorities choosing to operate their own ERFs.⁷⁵⁷ Veolia stated that no local authority submitted that it would not consider self-supply and Veolia considers the strongest evidence was that two local authorities that already own and operate their own ERFs: Coventry and Solihull Waste Disposal Company; and London Energy (the local-authority funded ERFs).⁷⁵⁸

Third party views

- 10.17 All seven local authorities that responded to our questionnaire indicated that management experience and technical expertise in operating ERFs is an important selection criterion.⁷⁵⁹ Viridor told us the key criterion for winning an O&M of ERFs contract is the 'expertise in...operating the plant'.⁷⁶⁰ enfinium told us that the supply of O&M services is a 'specialised skill'.⁷⁶¹ The

⁷⁵⁶ CMA129, paragraph 9.8.

⁷⁵⁷ Veolia's supplemental response on O&M ERFs, 1 April 2022, paragraph 35.

⁷⁵⁸ Veolia's supplemental response on O&M ERFs, 1 April 2022, paragraph 36; Veolia's [response to the Provisional Findings](#), paragraph 172.

⁷⁵⁹ See 'Selection criteria' for more detail.

⁷⁶⁰ Note of call with Viridor, 21 February 2022.

⁷⁶¹ Note of call with enfinium, 2 March 2022.

evidence from third parties indicates that supplying O&M of ERFs is not straightforward and requires a specialised workforce.

- 10.18 We note that no local authority identified self-supply as an alternative to outsourcing O&M of ERFs provision when the PPP contracts expire.⁷⁶² Given that all local authorities outsourced the supply of O&M services for all of the ERFs constructed under the PPP/PFI scheme, it is unlikely local authorities would have the management capability and other staff with technical expertise or experience to provide these services.⁷⁶³ A local authority would require significant investment to acquire a skilled management team and may, depending on available skills of any workforce transferring by TUPE, have to recruit additional workforce with the necessary technical expertise for self-supply.
- 10.19 Further, all responding local authorities suggested that self-supply was not a credible constraint due to the highly technical nature of operating an ERF. We asked local authorities whether they would consider self-supply when their current contract comes to an end: all six local authorities that responded to this question submitted that they would not switch to self-supply or it was unlikely, with most of these local authorities identifying their lack of expertise and experience as the principle reason for this.⁷⁶⁴ However, one local authority submitted that it may consider self-supply if staff could be retained through TUPE.⁷⁶⁵ We subsequently asked local authorities that had their PPP/PFI contract coming to an end within the next five years whether they would self-supply following a 5-10% increase in price from their current operator. Two local authorities responded to this question. Surrey County Council submitted that it did not have the expertise to operate an ERF as it is a 'complex facility' and it therefore would not consider self-supply.⁷⁶⁶ Similarly, Dudley Council submitted that it had 'no provision or available expertise' to self-supply the O&M of its ERF.⁷⁶⁷
- 10.20 A waste consultant's submissions indicated that this view is consistent across local authorities. In particular, the consultant submitted that local authorities did not have the resources to manage O&M of ERFs and the associated supply chain and in the 'vast majority' of cases, local authorities

⁷⁶² We asked local authorities to explain what plans were in place for the O&M of their ERF when the current PPP/PFI contract expires.

⁷⁶³ See 'Management and technical expertise' section for further discussion.

⁷⁶⁴ Responses to the CMA's phase 2 questionnaire from Shropshire, Hampshire, Kirklees, Surrey, Sheffield and Brighton and Hove / East Sussex.

⁷⁶⁵ Response to the CMA's phase 2 questionnaire from Shropshire, 25 January 2022, Q16.c.

⁷⁶⁶ Responses to the CMA's phase 2 questionnaire from Surrey County Council, 24 June 2022, Q1.d.

⁷⁶⁷ Responses to the CMA's phase 2 questionnaire from Dudley Council, 21 June 2022, Q1.d.

did not even fully understand the nature of the supply chain. The consultant also submitted that local authorities may be able to self-supply, but it would take considerable resource expenditure and a detailed strategic resourcing plan over several years, which he has not seen in the market thus far.⁷⁶⁸ This is consistent with the responses to our question regarding the plans that customers have in place: no customers indicated that they have plans in place to self-supply, which we would expect to see if self-supply was a serious alternative under consideration.

Conclusion on self-supply

- 10.21 On the basis of the above evidence, we do not consider that self-supply is a viable alternative to the provision of O&M of ERFs by specialised third party operators for enough local authorities to prevent a price increase in the O&M of ERFs.

Merchant ERF Operators and Municipal O&M Contracts

Parties' views

- 10.22 Veolia submitted that merchant ERF operators have the technical know-how and experience to compete for municipal contracts.⁷⁶⁹ Veolia noted that:
- (a) There is no differentiation in the technology used by local-authority-owned and merchant ERFs. On this basis, Veolia submitted that the operational requirements of merchant and local authority customers are therefore the same, as is the technical expertise needed to operate such facilities.⁷⁷⁰
 - (b) The skills and knowledge required to be an operator of a merchant ERF operator and a local-authority-owned ERF are the same. For all ERFs, the O&M operator requires the ability to recruit and train a specialised workforce that has the engineering knowledge to able to operate and maintain large, high pressure steam boilers, boiler generators and auxiliary systems of an ERF.⁷⁷¹ Veolia submitted that that an O&M

⁷⁶⁸ Responses to the CMA's phase 2 questionnaire from Surrey County Council, 24 June 2022, Q1.d, Response from Frank Smith.

⁷⁶⁹ Veolia's supplemental submission on O&M ERFs, 1 April 2022, page 2.

⁷⁷⁰ Veolia's supplemental submission on O&M ERFs, 1 April 2022, paragraph 11.

⁷⁷¹ Veolia's supplemental submission on O&M ERFs, 1 April 2022, paragraph 13.

provider will require a 'specialised workforce' with knowledge in engineering.⁷⁷²

- (c) Some local authorities may have additional requirements that are not relevant for the operation of a merchant plant. For example, the local authority may request the O&M provider to arrange the sale of electricity generated at the facility, whereas, according to Veolia, in the case of merchant ERFs, this would typically be arranged by the project company owning the facility, which is not necessarily the O&M provider.⁷⁷³ Another difference in requirement is that the local authority may require the operator to source and manage the supply of third-party waste for incineration, which would typically not sit with the O&M provider in the case of merchant plants. However, in Veolia's view, these additional requirements should not be an obstacle for operators with merchant ERF experience, in particular if the staff employed to deliver the O&M services at the local authority ERF will transfer via TUPE; this will give the merchant ERF operator a 'ready-made set of staff with experience of operating that particular ERF'.⁷⁷⁴
- (d) Veolia submitted that [REDACTED]. Veolia stated that in France a wide range of suppliers, including operators of merchant ERFs, began to compete for contracts for the O&M of ERFs.⁷⁷⁵

10.23 Veolia submitted that there are suppliers that operate both merchant ERFs and local-authority-owned ERFs. In addition to Viridor, which currently operates both local-authority-owned ERFs and merchant ERFs, Veolia identified a further six merchant operators that it considered either already operate local-authority-owned ERFs, or would be 'just as credible bidders' for future standalone local authority O&M of ERFs contracts.⁷⁷⁶ These were:

- (a) Bouygues;
- (b) Pinnacle;
- (c) Covanta;
- (d) Vogen/Aviva;

⁷⁷² Veolia's supplemental submission on O&M ERFs, 1 April 2022, paragraph 13

⁷⁷³ Veolia's supplemental submission on O&M ERFs, 1 April 2022, paragraph 19

⁷⁷⁴ Veolia's supplemental submission on O&M ERFs, 1 April 2022, paragraphs 19–20.

⁷⁷⁵ Veolia's [response to the Provisional Findings](#), paragraph 154-155.

⁷⁷⁶ Veolia's supplemental submission on O&M ERFs, 1 April 2022, paragraph 5.

(e) enfinium (formerly WTI); and

(f) Indaver.⁷⁷⁷

10.24 Of the list of suppliers identified by Veolia in paragraph 10.23, only Viridor, enfinium, Bouyges and Indaver were operating ERFs in 2022.⁷⁷⁸ With respect to the other suppliers identified by Veolia:

(a) Covanta and Vogen/Aviva were identified as prospective operators by Tolvik, as the ERFs were still under construction or had only been commissioned; and

(b) Pinnacle is not listed as an ERF operator, either current or future, in Tolvik's dataset.

10.25 We also identified Levenseat from Tolvik's dataset. Levenseat currently operates one merchant ERF in Scotland.

10.26 Veolia stated that it [REDACTED], as a result, most competitors will bear in mind the threat of competition from merchant operators and compete more aggressively as a result.⁷⁷⁹ Suez submitted that for bigger, more complex contracts such as [REDACTED] it knows which suppliers it is competing against.⁷⁸⁰

Third party views

10.27 Evidence from third parties supports the view that there are limited technological differences between merchant and local authority owned ERFs. Third parties told us that merchant ERF operators would have the technical capabilities required to operate and manage a local-authority-owned ERF.⁷⁸¹ In this respect, technological barriers for merchant ERF operators to supply O&M services to local authority owned ERFs are likely to be low.

10.28 Technological barriers, however, are only one form of barrier that may prevent supply-side substitution or entry by merchant operators into the supply of O&M services to local authorities.

⁷⁷⁷ Veolia's supplemental submission on O&M ERFs, 1 April 2022, paragraph 5.

⁷⁷⁸ Indaver is the O&M provider for the Ness ERF in Aberdeen which is due to become operational in late 2022.

⁷⁷⁹ Veolia's [response to the Provisional Findings](#), paragraphs 179.

⁷⁸⁰ Suez, Main Party Hearing Transcript, page 39-40.

⁷⁸¹ Customer responses to third party questionnaires.

- 10.29 We therefore considered the likelihood that merchant operators could use their existing ‘production assets’⁷⁸² to supply O&M services to their existing merchant ERFs and to local-authority-owned ERFs, in response to changes in demand for each. In this respect, we consider the following evidence supports the view that merchant operators may be potential supply-side substitutes:
- (a) Two of the four merchant operators currently present in the UK – Viridor and enfinium – also supply O&M of ERFs to local authorities. Viridor is the second biggest operator of local authority ERFs and it submitted that it would bid for future ‘O&M only’ contracts (ie contracts that do not include the design and construction of an ERF).⁷⁸³
 - (b) Local authorities indicated that they would ‘consider’ or ‘potentially consider’ using a merchant operator when they tender for O&M of ERFs when their existing PPP/PFI contracts expire.⁷⁸⁴
 - (c) Most competitors confirmed that merchant operators would be viable competitors for O&M of ERFs supplied to local authorities in response to our question. Further, when considering future tenders, some competitors identified current merchant ERF operators as potential rivals.⁷⁸⁵
- 10.30 We sought information from three merchant ERF operators that currently operate ERFs in the UK (enfinium, Bouygues, Levenseat) and two merchant ERF operators with ERFs in construction (Covanta, Indaver) about their plans to bid for standalone local authority O&M contracts (ie O&M only contracts).
- 10.31 Two merchant operators (one current and one future operator in the UK), indicated that they would be less likely to bid for standalone local authority O&M of ERFs contracts, as it would represent a departure from their core business models:
- (a) enfinium told us that it would not be interested in looking at local authority O&M only contracts. In enfinium’s view, the ‘risk-reward arrangement conflicts with its business model’. enfinium noted that it

⁷⁸² Production assets in this case likely relates to the management personnel with the experience and technical expertise to O&M of an ERF.

⁷⁸³ Note of call with Viridor, 21 February 2022.

⁷⁸⁴ Responses to the CMA’s phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

⁷⁸⁵ Responses to the CMA’s phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

might have ‘an interest’ in continuing O&M of Parc Adfer – the PPP/PFI ERF it currently operates in North Wales – given its knowledge and experience of operating that plant. However, for the other facilities that are coming up to the end of their life, unless there was going to be a ‘significant redesign, rebuild and investment’, it ‘probably would not want to participate in’ bidding for the standalone local authority O&M contracts.⁷⁸⁶ On this basis, we do not consider that enfinium will bid for local authority O&M only contracts when the existing PPP contracts expire.

- (b) Covanta submitted that its preferred business model is to own and operate ERFs; and given that PPP/PFI assets will revert back to local authority ownership, a ‘standalone O&M contract may not be of interest to bid’.⁷⁸⁷ It also noted that the incumbent contractor is best placed to win the future tender, which would discourage Covanta (and, in its view, other competitors) from bidding.⁷⁸⁸ On this basis, we do not believe Covanta will bid for standalone local authority O&M contracts when the existing PPP contracts expire.

10.32 Indaver, one of the merchant ERF operators identified by Veolia, confirmed that it would carry out the O&M for the new PPP Ness ERF in Aberdeen.⁷⁸⁹ The Ness ERF is expected to become operational in August 2022. Indaver also submitted that it would not be ‘out of scope’ to bid for O&M contracts and it was selectively looking at contracts in Scotland or the South East of England due to the locations of existing contracts it has. Indaver submitted that its recent success in winning the O&M contract for Ness ERF in Aberdeen in addition to its experience as a specialised, large-scale operator of ERFs in over 30 locations in Europe, is evidence that it would be a ‘credible competitor for future local authority O&M contracts’.^{790 791}

10.33 The evidence from enfinium and Covanta indicates that merchant ERF operators may have limited incentives to bid for standalone local authority O&M contracts, as their core business is to own and operate merchant

⁷⁸⁶ Note of call with enfinium, 02 March 2022.

⁷⁸⁷ We note that earlier this year Covanta acquired a 50% stake in four waste-to-energy facilities in the UK, which emphasises its focus on owning and operating ERFs (Covanta press release ‘[Covanta increases its ownership stake across four waste-to-energy facilities in the UK](#)’, 1 March 2022).

⁷⁸⁸ Email from Covanta to CMA, 1 March 2022.

⁷⁸⁹ Acciona – the lead partner – won the PPP contract for the design, build, operation and maintenance for the NESS ERF, and awarded the O&M element of the contract to Indaver. See [Acciona webpages](#) for more detail.

⁷⁹⁰ Indaver’s response to the CMA’s phase 2 questionnaire, 29 June 2022, Q1.

⁷⁹¹ Indaver’s response to the CMA’s phase 2 questionnaire, 29 June 2022, Q2c

ERFs. However, Indaver's submissions indicate that it may bid for a subset of O&M of ERFs only contracts.

- 10.34 While the other current merchant operators – Bouygues and Levenseat – did not respond to our questionnaire, we note that neither of those have significant experience of operating ERFs relative to the Parties or the other major ERF operators in the UK. Bouygues and Levenseat have only one ERF each, although Bouygues is in the process of building a second. Similarly, we note that the other merchant ERF operators identified by Veolia in paragraph 0 (ie Vogen/Aviva and Pinnacle) have no or very limited experience of operating any ERFs in the UK, either of merchant or local-authority-owned ERFs.⁷⁹² We also note that no customer or competitor identified any of these firms as credible bidders (see 'Credible suppliers' below).

Conclusion on merchant ERF operators

- 10.35 On the basis of the above evidence, our view is that enfinium and Covanta are not likely to bid for standalone local authority O&M of ERFs contracts in the foreseeable future and will therefore not pose a constraint on the Parties for those contracts.
- 10.36 The evidence from enfinium and Covanta suggests that merchant ERF operators, as a group, may also have limited incentives to bid for standalone O&M contracts. However, we note that Indaver has indicated that it would bid selectively for O&M of ERFs contracts. The other merchant operators currently operating in the UK have not indicated their preferences. We examine the significance of the constraint that these merchant operators, together with Indaver will pose on the Parties in the competitive assessment.⁷⁹³
- 10.37 We have placed limited weight on Veolia's submissions on the French O&M of ERFs market. It is not clear from Veolia's submissions why the French market is a reliable or useful proxy for how the UK market will evolve in future. In particular, Veolia has not provided evidence on how the relevant factors of competition compare between the UK and France (on both the demand- and supply-sides and incorporating, for example, customer preferences and supplier business models), the regulatory environments and the time period involved for merchant operators to become a competitive

⁷⁹² See section 'Management and technical expertise' for more detail.

⁷⁹³ See section 'Credible suppliers' for more detail.

constraint.⁷⁹⁴ Instead, as set out above, we have placed weight on evidence collected from current merchant operators in the UK and examined evidence from local authorities that will likely procure O&M of ERFs in the UK, and from ERF operators that will likely supply such services to those local authorities.

Competition from technology suppliers

- 10.38 As set out in paragraph 10.14, to consider technology suppliers as supply-side substitutes we would require evidence that technology suppliers routinely use their existing production assets to supply engineering and construction services and O&M of ERFs and have shifted their existing capacity between these two services; and that the conditions of competition are the same for both services.⁷⁹⁵

Parties' views

- 10.39 Veolia submitted that technology suppliers, such as Hitachi Zosen Inova (HZI), CNIM and STC Power, could 'develop operational expertise from their experience as a technology supplier' and compete for O&M of municipal ERFs.⁷⁹⁶ It noted that CNIM's subsidiary MES Environmental (MESE) has won contracts for the O&M of ERFs in the UK previously. These ERFs are now operated by Paprec, which 'integrated CNIM's O&M teams in 2021'.⁷⁹⁷

Third party views

- 10.40 enfinium told us that Engineering, Procurement and Construction (EPC) contractors have sought, to some extent, to carry out the 'engineering operation and maintenance of the plant' in addition to the building of the plant. However, in enfinium's view, they 'do not have the skillset to do...the day-to-day fuel management and fuel sourcing' and would 'focus more on the maintenance side'.⁷⁹⁸ This indicates that technology suppliers may need to partner with a waste management firm to undertake the operational element of the ERF and that they do not have the operational expertise to provide O&M services.

⁷⁹⁴ Even if we had been minded to use international comparisons in our decision we would likely to have wanted a broader range of comparisons than one country.

⁷⁹⁵ [CMA129, paragraph 9.8](#)

⁷⁹⁶ Veolia's supplemental submission on O&M ERFs, 1 April 2022, paragraph 32.

⁷⁹⁷ Veolia's supplemental submission on O&M ERFs, 1 April 2022, paragraph 33.

⁷⁹⁸ Note of call with enfinium, 02 March 2022.

- 10.41 Evidence from third parties indicates that technology suppliers have in the past been subcontracted by the O&M operator to provide the EPC (or ‘design and build’) elements of the overall PPP/PFI contract.⁷⁹⁹ Technology suppliers appear to have competed for the EPC element, rather than for the O&M component of those contracts. We note that no technology supplier currently supplies O&M services to local authorities.⁸⁰⁰ No customer or competitor identified any of the technology providers as credible bidders for future local authority standalone O&M contracts.⁸⁰¹ Based on this evidence, it does not appear as if the same firms compete for EPC and O&M services; it is therefore not clear that the conditions of competition between the two services will be same.
- 10.42 While Veolia cited MESE as an example of a technology supplier that has supplied O&M services, we note that MESE was a subsidiary of CNIM and that it would have had its own personnel and technical expertise to supply O&M of ERFs to local authorities. We consider that the constraint that MESE exerts on the Parties in our competitive assessment, on the basis that it is an O&M supplier to local authorities. We also note that CNIM is in administration and will not pose a constraint for future contracts.⁸⁰²

Conclusion on technology suppliers

- 10.43 Based on the above evidence, our view is that technology suppliers are not viable supply-side substitutes to specialised third party O&M operators and therefore would not be likely to prevent a price increase in the O&M of ERFs.

Conclusion on product market

- 10.44 Based on the evidence, we have concluded that the relevant product market is the O&M of ERFs.

Geographic market

Parties’ views

- 10.45 Neither Party made submissions on the geographic market.

⁷⁹⁹ Note of calls with [X], [X] and [X].

⁸⁰⁰ See ‘Market shares’ section – no technology supplier was identified as a current or future O&M operator.

⁸⁰¹ See ‘Credible suppliers’ section for the full assessment.

⁸⁰² Companies House website: [CNIM UK LIMITED](#), accessed by the CMA on 22 August 2022

Our assessment

- 10.46 We asked waste disposal competitors which firms they believe would be able to bid for the supply of the O&M ERFs contracts in the UK. Overall, respondents submitted that several national suppliers, including the Parties, Viridor, and FCC, would likely submit tenders for these contracts. Similarly, local authorities told us that the same suppliers would be capable of bidding. No local authority or competitor named a supplier that is not currently operating in the UK.

Conclusion on geographic market

- 10.47 For the reasons set out above, we have concluded that the relevant geographic market is the UK.

Conclusion on market definition

- 10.48 Based on the above evidence, we have concluded the relevant market is the O&M of ERFs in the UK.

Indicators of competition

- 10.49 As explained in the introduction to this chapter, the timing of the Merger broadly coincides with the period in which the first PPP/PFI contracts are set to expire and revert to local authority ownership. No PPP/PFI contracts have yet expired so there is no recent direct evidence on how suppliers will compete for O&M only contracts. These local authorities will require O&M of ERFs and will likely re-tender for those services. Within the next five years, six out of the 43 PPP/PFI contracts are due to expire.⁸⁰³
- 10.50 In this section, we set out the evidence on the key indicators of competition that has helped inform our understanding of the likely future shape of this market and the effect of the Merger on the O&M of ERFs in the UK. Since there have been no standalone O&M service contracts tendered in recent years, there is no evidence of current competition in practice for this kind of contract that we can rely on.⁸⁰⁴ Instead, we have based our assessment on customer selection criteria, as suggested by local authority customers, which we have applied in our assessment of the Parties and their competitors. We

⁸⁰³ Veolia response to CMA Phase 2 s109 16 February 2022, question 113

⁸⁰⁴ We note that GMCA terminated its integrated disposal contract with Viridor and retendered for an integrated contract that included the O&M of its ERF. See footnote 901 for more detail.

have also considered the plans of the Parties and their competitors in bidding for upcoming O&M for ERFs contracts.

10.51 The remainder of this section is structured as follows:

- (a) How competition works;
- (b) Suppliers' characteristics;
- (c) Incumbency advantage;
- (d) Credible suppliers;
- (e) Market shares; and
- (f) Internal documents.

10.52 Within each of these subsections, we have first set out any relevant submissions made by the Parties and third parties, before setting out our own assessment of the evidence and those submissions. The evidence in this section informs our overall assessment which is set out in the subsequent section.

How competition works

Selection criteria

10.53 We asked local authorities to list the factors that they consider important when deciding which supplier(s) should provide O&M services for their ERF when their PPP contract expires, in order of importance (where one is not very important and five is very important).⁸⁰⁵ Six local authorities responded to this question which informed our Provisional Findings and the scoring from these responses is summarised in Table 10.1. After our Provisional Findings we received responses from two further local authorities with upcoming O&M of ERF contracts (their PPP/PFI contracts will expire within the next five years). The additional input did not map precisely to some of

⁸⁰⁵ In particular, we asked:

Using the table below, please list the factors you believe are most important when deciding which supplier should provide your O&M services for your ERF when the PPP/PFI contract ends. To the extent that the factors already listed in the table are relevant, please:

- a. Indicate on a scale from one to five (where one is not very important; and*
- b. Provide an explanation for your rating. In doing so, please refer to any specific criteria and weighting you use when assessing bids.*

We sent questionnaires out to all 17 of the Parties' PPP/PFI ERF customers and received 11 responses in total. Not all local authorities answered all questions because their contracts were not due to expire for many years.

the selection criteria considered in our Provisional Findings and has therefore not been incorporated in the data shown in Table 10.1. However, the responses from the two local authorities were generally consistent with the rankings reported below.⁸⁰⁶ Table 10.1 sets out the average rating for each selection criterion.

Table 10.1: Average rating of selection criteria by local authorities

<i>Selection criteria</i>	<i>Average score</i>
<i>Management and technical expertise in operating and managing local authority ERFs</i>	4.8
<i>Price</i>	4.8
<i>Reliability of service, including access to contingency capacity</i>	4.8
<i>Quality of service</i>	4.5
<i>Financial resources of supplier</i>	3.7
<i>Costs associated with transferring between suppliers</i>	3.1
<i>Access to other waste management service infrastructure</i>	3.2
<i>Ability to innovate and introduce efficiencies</i>	2.9
<i>Experience of contracting with supplier for other waste management services</i>	2.5

Source: CMA analysis of local authority responses to questionnaires.

10.54 Local authorities considered the following factors the most important when deciding on their next O&M provider: management and technical expertise; price; reliability of service, including access to contingency capacity;⁸⁰⁷ quality of service; and the financial resources of the supplier (Table 10.1). In the following section, we assess the available evidence on the Parties and their competitors against these criteria. We have placed most weight on the higher-ranking criteria.

⁸⁰⁶ These responses were not incorporated in the table because the local authorities ranked slightly different criteria. Namely:

- a. 'Management and technical expertise in operating and managing ERFs' instead of 'Management and technical expertise in operating and managing local authority ERFs';
- b. 'Reliability of service' instead of 'Reliability of service, including access to contingency capacity'; and
- c. An additional criterion of 'Access to contingency capacity (if your ERF is unavailable either for emergency shut-downs or planned maintenance/refurbishment)'

All other criteria were the same.

⁸⁰⁷ Contingency capacity refers to alternative treatment or processing options when capacity at the ERF is unavailable, such as in the case of planned maintenance or breakdowns.

Suppliers' characteristics

- 10.55 In this subsection, we consider in more detail the evidence on the suppliers' characteristics and, in particular, the extent to which the Parties and their rivals have assets or underlying capabilities that may make it more or less likely that they will be able to compete on attractive terms. In particular, we consider suppliers' underlying strengths in relation to management and technical expertise, as well as evidence on their strengths in service reliability and their ability to access contingency capacity.

Management and technical expertise in operating and managing local authority ERFs

- 10.56 As identified in paragraph 10.54, local authorities ranked management and technical expertise, alongside price and reliability of service, as the most important factor when selecting an O&M provider for local authority owned ERFs.

Veolia's submissions

- 10.57 Veolia submitted that we asked only about expertise in operating local authority ERFs, not ERFs in general, which would include both merchant ERFs and overseas ERFs.⁸⁰⁸
- 10.58 Veolia submitted that plenty of suppliers have significant experience operating ERFs and the CMA gives undue significance to the total years a supplier has operated its ERFs.⁸⁰⁹ In particular, Veolia commented on the framework we put forward in the Provisional Findings including our analysis of suppliers' experience in terms of plant years (years spent operating ERFs). Veolia submitted that the CMA itself identified that (i) there are likely to be diminishing returns to experience, and relative differences between the Parties and other operators may not represent a significant competitive advantage; and (ii) total plant years is not a metric used by local authorities.⁸¹⁰
- 10.59 Veolia further submitted that the aggregation of total years a supplier has operated is 'incoherent', as the experience of operating one ERF cannot be

⁸⁰⁸ Veolia's response to Working Paper, page 6.

⁸⁰⁹ Veolia's [response to the Provisional Findings](#), paragraph 163-164.

⁸¹⁰ Veolia's [response to the Provisional Findings](#), paragraph 164.

aggregated across ERFs, particularly given that the timeframes are overlapping or parallel.⁸¹¹

10.60 In addition, Veolia submitted that the CMA lacked the evidence to show that the ‘total plant years’ metric related to success in bidding.⁸¹² Veolia submitted that many contracts have been awarded to operators with little or no experience of operating local authority ERFs.⁸¹³ In this regard, Veolia compiled a dataset that showed the ‘total plant years’ of each ERF operator at each point in time a local authority awarded an O&M of ERFs contract. Veolia stated that this analysis showed that:

- (a) [REDACTED] different companies were awarded contracts that included O&M of ERFs by local authorities in the UK. By definition, each of these had no previous UK experience of operating ERFs for local authorities when they first won a contract;
- (b) An additional [REDACTED] contracts were awarded to competitors with more than zero but less than seven years of experience;
- (c) [REDACTED] of these [REDACTED] contracts have been awarded since 2010;
- (d) In the remaining [REDACTED] instances, contracts were awarded to a provider with more than seven years of experience; and
- (e) Only once was the contract awarded to the operator that had the most experience at the time.⁸¹⁴

Third party views

10.61 Local authorities submitted that the Parties have strong track records and experience of providing O&M of ERFs services. In particular, all seven local authorities that identified Veolia as a strong supplier referenced Veolia’s track record or experience, with Surrey stating that Veolia has ‘lots of technical expertise operating ERF plant[s]’.⁸¹⁵ Similarly, all five local authorities that identified Suez as a strong supplier referenced Suez’s track record or experience.⁸¹⁶ For example, East Sussex County Council/Brighton

⁸¹¹ Veolia’s [response to the Provisional Findings](#), paragraph 165.

⁸¹² Veolia’s [response to the Provisional Findings](#), paragraph 166.

⁸¹³ Veolia’s [response to the Provisional Findings](#), paragraph 167.

⁸¹⁴ Veolia’s [response to the Provisional Findings](#), paragraph 168-169.

⁸¹⁵ Responses to the CMA’s phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

⁸¹⁶ Responses to the CMA’s phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

and Hove City Council stated that Suez had 'lots of experience in operating ERFs in the UK'.⁸¹⁷

- 10.62 Further, we asked local authorities whether, all other things equal, they would prefer a firm with more experience, or if they would be indifferent as long as each firm had some level of experience.
- 10.63 Dudley Council submitted that as long as operators could demonstrate all the necessary requirements (which we note includes extensive reference checks), the length of trading in the UK would not be a criterion.⁸¹⁸ Surrey Council submitted that it would prefer an operator able to demonstrate a good understanding and technical knowledge.⁸¹⁹ One local authority, GMCA, submitted that it would require its O&M provider to have a track record of operating older facilities,⁸²⁰ indicating that suppliers that have operated their facilities for a significant period of time will have a competitive advantage in future O&M tenders.
- 10.64 Kirklees also submitted that it would expect experience with local authorities specifically.⁸²¹ Kirklees submitted that it would prefer operators with a range of contracts because contracts vary considerably in their technical configuration. One local authority, however, submitted that, while previous experience was 'absolutely crucial', it was not essential that the expertise was gained from providing O&M services to local authority owned ERFs.⁸²²
- 10.65 Evidence from local authorities indicates that management and technical expertise in operating ERFs is an important selection criterion and that the Parties were strong in this regard. Although there were some mixed views on whether this experience would have to be gained from operating local authority ERFs, the evidence supports the view that operators with experience would have a competitive advantage over others. In the following sub-section, we consider the Parties' relative strengths in this regard and the extent to which operators' total experience (gained at either merchant or local-authority-owned ERFs) provides any additional competitive advantage.

⁸¹⁷ Response to the CMA's phase 2 questionnaire from East Sussex County Council/Brighton and Hove City Council's.

⁸¹⁸ Response to the CMA's phase 2 questionnaire from Dudley Council, 21 June 2022, Q4.

⁸¹⁹ Response to the CMA's phase 2 questionnaire from Surrey Council, 24 June 2022, Q4.b.

⁸²⁰ Note of call with GMCA, 21 February 2022.

⁸²¹ Response to the CMA's phase 2 questionnaire from Kirklees, 29 June 2022, Q4.

⁸²² Response to the CMA's phase 2 questionnaire from [REDACTED]

Parties' relative strengths in management and technical expertise

- 10.66 Veolia has the largest network of ERFs in the UK, with nine local-authority-owned ERFs currently under management, and [X] merchant [X]. It established its network of ERFs gradually over a period of time, winning its first PPP/PFI contract in 1993 (Birmingham City) and the last in 2012 (Leeds City Council).⁸²³ Veolia has supplied the O&M services for each of its ERFs for the entire duration of the PPP/PFI contract, ie from day one of the contract to date. Veolia has gained extensive management and technical expertise through the provision of O&M services to its network of ERFs.
- 10.67 Suez has the third largest network of ERFs in the UK, with seven local-authority-owned ERFs currently under management. Suez won its first PPP/PFI contract in 1992 (Stockton); and won its most recent contract for the O&M of Bolton ERF in 2019, where Suez took over operation from Viridor following the early termination of Viridor's contract.⁸²⁴ With the exception of Bolton ERF, Suez has supplied the O&M services for each of its ERFs for the entire duration of these PPP/PFI contracts and has also established extensive management and technical expertise from the provision of these services to local authorities.
- 10.68 Other O&M operators also have a number of ERFs under management. In particular, Viridor and FCC currently operate 10 and 6 ERFs respectively. However, the market shares analysis does not capture the relative experience of the O&M of ERFs operators. It is the case that some firms (potentially with high shares) may have operated plants for only a short period, and others for a longer period.
- 10.69 Given the importance of experience to local authorities, we examine the relative differences in total experience by combining the total years each supplier has operated its ERFs ('plant years'). Figure 10.1 sets out the results. While we acknowledge that this is not a metric used by local authorities,⁸²⁵ we consider that it is indicative of relative experience across suppliers.

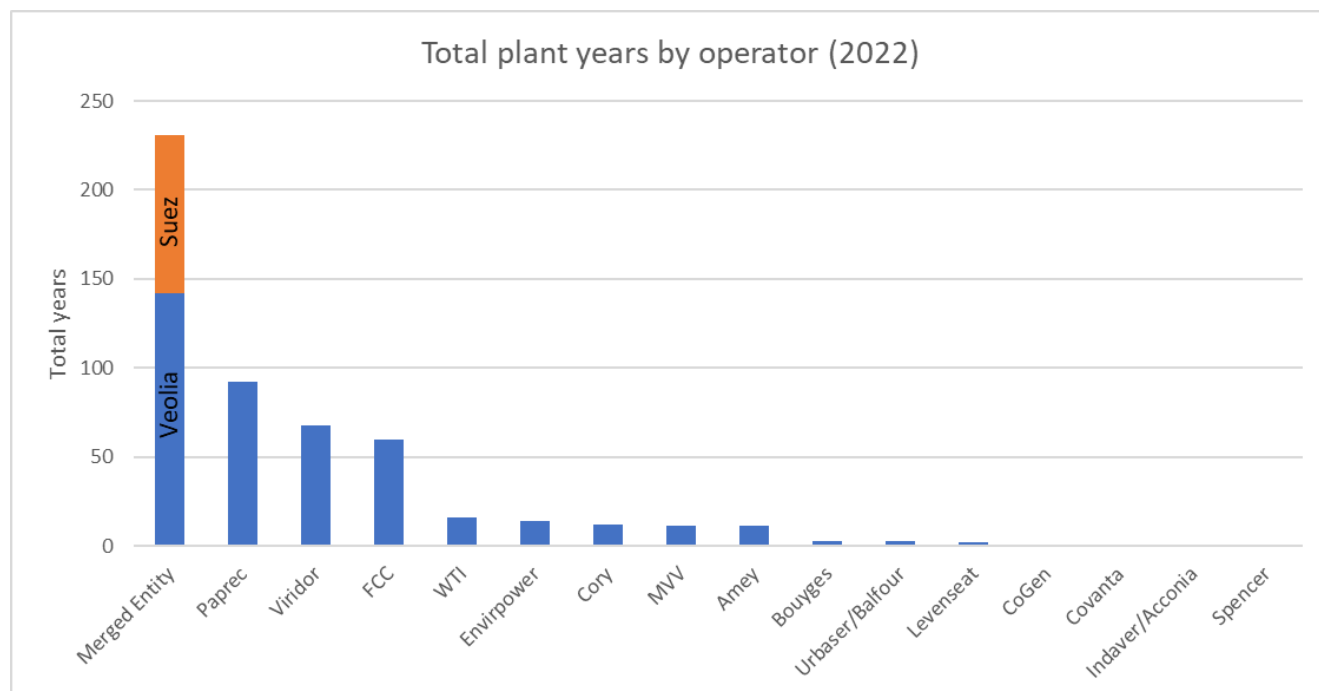
⁸²³ Veolia's [response to the Provisional Findings](#), Annex 1

⁸²⁴ We note that the contract for the O&M of Bolton ERF was bundled with other waste management services.

⁸²⁵ Surrey Council submitted that it would assess experience and track record though (i) the number of plants operated and type of plants; (ii) the strength of the operator's technical team in terms of national or international experience; (iii) track record in environmental permits; (iv) performance data for power generation and downtime for unplanned maintenance; and (v) references from public sector customers. Dudley Council submitted it would assess experience and track record through evidence of regulatory compliance, health and safety records and proof of technically capable staff.

Response to the CMA's post-PFs questionnaire from Surrey Council and Dudley Council.

Figure 10.1: Total plant years on all ERFs by operator, 2020



Source: CMA analysis

Notes:

1. We calculated plant years using the data from Veolia's analysis of operators' experience (Annex 1 of Veolia's response to the Provisional Findings) and updated each operators' experience to 2022. We have included the experience gained by operators from both merchant ERFs and local-authority-owned ERFs.

2. Paprec has acquired MESE and Tiru and have combined their respective experiences to produce a single total for Paprec.

10.70 Figure 10.1 shows that the Merged Entity would have significantly more experience than all other operators. We acknowledge that there are likely to be diminishing returns to experience and the relative differences in plant years between the Merged Entity and other O&M operators (Paprec, FCC and Viridor) that have also gained considerable experience from operating their own ERFs may not represent a decisive competitive advantage. We, however, note that there is a very significant difference in relative experience between the Merged Entity and the long tail of competitors. This analysis shows that only a few O&M operators – Viridor, FCC and Paprec – have a similar profile of experience and expertise to the Parties.

10.71 With regards to Veolia's analysis of experience by supplier, we note that:

- (a) Veolia's claim that 24 companies have been awarded contracts with no previous experience is misstated. Our assessment shows that there

have been at most 16 ‘new entrants’ for local authority contracts,⁸²⁶ between the first PPP contract awarded in 1991 and the last in 2019.⁸²⁷ It might be that Veolia has counted the number of ‘occasions’ rather than ‘companies’. For example, it is likely to have counted MESE three times, as it won all three of its PPP contracts when it had zero operational experience, ie all of MESE’s contracts were won before 1997.

- (b) Even if we were to correct Veolia’s analysis (24 occasions rather than companies), we note that at least the first nine of those PPP contracts for the O&M of ERFs were awarded when no suppliers had any experience, because all of these contracts were awarded before the first ERF became operational in 1997. In our view, including these contracts as part of the 24 ‘occasions’ significantly overstates the strength of new entrants, as by definition, all suppliers were new entrants. Moreover, as explained in paragraph 10.61, local authorities told us they value experience in the context of deciding their next O&M operator. It is not clear or obvious that local authorities awarding their initial contract would have valued, or would have had the option to value, experience to the same extent as local authorities would for an operator that supplies O&M services for future contracts on existing ERFs.
- (c) Four of the 16 ‘new entrants’ (MESE, Veolia, Suez and WRG) were awarded their first contract when no other supplier had any experience. Further, our assessment shows that even by 2012, when 14 of the 16 operators had entered, only five suppliers had more than five years of experience (Veolia, Suez, FCC, MESE and Tiru), indicating there were only a few firms with any significant experience and that management experience would have been unlikely have been an important criterion for local authorities when those contracts were let (ie between 1992 and 2012). Further, as explained below, it is not known whether the

⁸²⁶ A new entrant is a firm that has had zero experience in supplying O&M services to an ERF (either local-authority-owned or merchant).

⁸²⁷ We say ‘at most 16 new entrants’ because there were some acquisitions and mergers between firms that had already entered, and it is not clear whether local authorities that awarded the contracts took into account the experience of the acquiring firm. For example, Hanson Waste Management won the PPP contract for the Allington ERF in Kent in 2000 and was acquired by WRG (an experienced operator at that time) in the same year. Similarly, FCC, is labelled as the winner of the North Hykeham ERF in 2010 but we understand that it was WRG that won the contract under the FCC ownership (ie an experienced operator). Taking into account these transactions, there have likely only been 14 ‘new entrants’.

more 'experienced' firms would have bid for the contracts that were won by 'new entrants' during this period.

- 10.72 Veolia's analysis compares the winner of each contract with all suppliers that are currently in the market. However, it is not the case that all suppliers currently in the market bid for all historic contracts. With the information available, it is not possible to assess whether the bidder with the most (or relatively high) experience won the tender.
- 10.73 It may be the case that, in general, experience is a more relevant criterion now than in the past, given that a small number of firms have now established strong track records, potentially distinguishing them from the smaller operators in the market. Notwithstanding this, we note that some firms with little experience have won contracts (eg Amey and most recently Indaver). However, for those contracts, it is not clear which other firms bid and what other factors were considered by the local authorities in deciding to which operator to award the contract. In any event, while local authorities have identified experience as an important selection criterion, we do not consider management experience to be an insurmountable barrier to entry or expansion but it is one of a range of factors local authorities take into consideration when selecting their O&M provider (see paragraphs 10.53 to 10.54).
- 10.74 Overall, we consider that Veolia's analysis is too simplistic and misconstrues the underlying purpose of our analysis, which was to demonstrate that the Parties and other firms such as FCC, Viridor and Paprec have accumulated significant experience and, given that experience is valued by local authorities, it is likely to be confer some degree of competitive advantage to those suppliers in future O&M of ERFs tenders.

Conclusion on management and technical expertise

- 10.75 Based on the evidence above, it is clear some operators have extensive management and technical expertise (the Merged Entity, Viridor, FCC and Paprec) and there is a tail of O&M of ERFs operators with significantly less experience. While it may be possible to overcome this barrier to win contracts, we consider that the experience of the Parties, Viridor, FCC and Paprec give them a competitive advantage for future tenders. The Merged Entity will be particularly well placed to compete for the tenders let by local authorities that prefer suppliers with experience operating older facilities or a range of ERF contracts due to the Parties' depth and breadth of experience.

Reliability of service including access to contingency capacity

- 10.76 In paragraph 10.54, we explained that reliability of service, including access to contingency capacity is likely to be important factor to local authorities when they select their next O&M provider. As set out below, Veolia submitted that it is impossible to infer anything about the importance of contingency capacity specifically from this criterion. Nevertheless, we have focused this section on access to contingency capacity as local authorities highlighted the importance of contingency in their submissions. We first set out the evidence in relation to its importance. We then assess whether landfill and RDF export are adequate contingencies, as submitted by Veolia; and, finally, the ability of O&M operators to access incineration capacity as a contingency.

Importance of contingency capacity

Parties' views

- 10.77 Veolia submitted O&M of ERF operators would need to consider the availability of contingency capacity to manage the risks of planned and unplanned maintenance and outages at the facilities. This is considered to be the normal course of operating ERFs. Veolia submitted that when competing for O&M of local-authority-owned ERFs, bidders will likely be expected to describe how they will handle such contingency situations and local authorities may give some weight to their answers in scoring bids.⁸²⁸
- 10.78 Suez told us that contingency arrangements may be required for an extended period of time – maybe as long as six months – particularly in the context of ERFs that may require substantial refit or refurbishment.⁸²⁹
- 10.79 Veolia, however, submitted that it is difficult to place weight on the criterion related to contingency capacity in the CMA's questionnaire responses, noting in particular that this factor was included in 'reliability of service' more generally. As such, Veolia submitted that it is impossible to infer anything about how local authorities perceive access to contingency capacity. Veolia further stated that the phrasing of the criterion 'clearly' leads respondents to consider contingency capacity in their free text explanations.⁸³⁰ Veolia noted that most local authorities that responded said they would be content either

⁸²⁸ Veolia's supplemental response on O&M ERFs: contingency options, 7 April 2022, paragraph 2.

⁸²⁹ Transcript of hearing with Suez, 13 April 2022

⁸³⁰ Veolia's [response to the Provisional Findings](#), paragraph 18.

to procure contingency capacity separately or to accept a bid from a supplier that relies on third party facilities for contingencies.⁸³¹

Third party views

10.80 While we note Veolia's submission that contingency capacity was part of a more general 'reliability of service' criterion, our analysis of the free-text explanations provided in the local authority responses to our questionnaire indicates that contingency capacity was an important feature of this criterion. In particular, two of the six responding local authorities referred to the need for a continuity of service during periods of unavailability.^{832,833} In any case, we also asked local authorities specifically about the importance of contingency capacity preferences when considering who to choose for their O&M of ERFs supplier.⁸³⁴ Six local authorities responded to this question:

- (a) Three out of six local authorities submitted that contingency capacity is important when considering which company to use for the O&M of their ERF.⁸³⁵ These authorities noted that contingency capacity is particularly important towards the end of the plant's life and that the service is critical and cannot be offline for long.
- (b) One local authority submitted that a supplier with access to its own contingency capacity at its own facilities would be a bonus, but it would accept a bid from a supplier without its own facilities as long as the company was able to build relationships with third party ERFs nearby.⁸³⁶
- (c) Two local authorities submitted they may consider procuring contingency capacity separately from their O&M services contract.⁸³⁷

10.81 We consider that the evidence from local authorities shows that contingency capacity is an important consideration for local authorities when selecting an O&M supplier.

⁸³¹ Veolia's response to Working Paper, page 7.

⁸³² Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

⁸³³ Further, one local authority referred to the fact that it looks for bidders to 'demonstrate where they own and/or operate facilities elsewhere', though it was unclear whether this was in relation to using this capacity as contingency or demonstrating track record ([REDACTED]).

⁸³⁴ CMA's phase 2 questionnaire, dated 17 January 2022.

⁸³⁵ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED] and [REDACTED].

⁸³⁶ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁸³⁷ Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

Parties' views

- 10.82 Veolia submitted bidders can use alternatives such as landfill and/or RDF export; [REDACTED].
- 10.83 Suez told us it currently disposes of some waste to landfill but with the likely 'landfill ban' that is being brought in, it noted that the way that it deals with contingency will change. Suez indicated that RDF export has increased in cost with the introduction of taxes in Europe and that, from Suez's perspective, RDF export has always been seen as a short-term solution. As set out in paragraph 10.78, Suez indicated that contingency arrangements may be required for extended periods of time, particularly if the ERFs will require substantial maintenance work at the end of the PPP/PFI contract.

Third party views

- 10.84 Evidence from third parties indicates that landfill and RDF export are weak constraints on incineration services and their use in the UK is on a downward trend.⁸³⁸
- 10.85 In order to further consider Veolia's representations with respect to contingency capacity, we asked local authorities with upcoming O&M of ERFs tenders about their preference for the type of contingency capacity used in the event that their ERF was offline. Four local authorities responded to this question:
- (a) All four local authorities submitted that disposal by incineration using the O&M operator's own ERF network was strongly favoured.⁸³⁹ One of these local authorities noted that it would likely provide 'better value' for money,⁸⁴⁰ and another stated that it considers that the operator would have 'complete control of the outlet' and would be able to 'displace other material in preference to [its own]'.⁸⁴¹

⁸³⁹ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

⁸⁴⁰ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁸⁴¹ Response to the CMA's phase 2 questionnaire from [REDACTED].

- (b) Disposal by incineration at a third-party ERF was the next highly ranked option. One local authority that strongly favoured this option submitted that this supported its aim to move up the waste hierarchy,⁸⁴² while another expressed concerns about the lack of capacity in the market leading to 'premium prices' in the event of an unplanned outage.⁸⁴³
- (c) All four local authorities submitted that RDF export was a less favourable option than disposal by incineration.⁸⁴⁴ Three of the local authorities cited concerns about the associated carbon footprint of export;⁸⁴⁵ the other local authority submitted that RDF export would be 'acceptable' but had concerns about future viability arising from legislative change.⁸⁴⁶
- (d) All four local authorities identified landfill as the least favourable option.⁸⁴⁷

10.86 The evidence from these four local authorities is consistent with previous responses we have received from other local authorities regarding the use of RDF export and landfill as a contingency capacity. In particular, in response to a question about whether they 'would consider' using RDF export as contingent capacity, three of the four responding local authorities (all different from those in paragraph 10.85) submitted they would 'consider' using RDF export⁸⁴⁸ but two of these submitted it would be less desirable than an ERF solution.⁸⁴⁹ The other local authority submitted it would not consider RDF to be a sufficient contingency.⁸⁵⁰ In relation to landfill, two local authorities submitted that it was not an adequate contingency,⁸⁵¹ while the remaining two local authorities noted that landfill would be undesirable or a last resort.⁸⁵²

10.87 Overall, the evidence from local authorities indicates incineration services is strongly preferred to landfill and RDF export and their use in the UK will likely continue on a downward trend.⁸⁵³

⁸⁴² Response to the CMA's phase 2 questionnaire from [REDACTED].

⁸⁴³ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁸⁴⁴ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

⁸⁴⁵ Responses to the CMA's Phase 2 questionnaire from [REDACTED], [REDACTED] and [REDACTED].

⁸⁴⁶ Response to the CMA's Phase 2 questionnaire from [REDACTED].

⁸⁴⁷ Responses to the CMA's Phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

⁸⁴⁸ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED] and [REDACTED].

⁸⁴⁹ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED] and [REDACTED].

⁸⁵⁰ Response to the CMA's phase 2 questionnaire from [REDACTED].

⁸⁵¹ Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

⁸⁵² Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

⁸⁵³ Paragraphs 10.82 to 10.89.

- 10.88 Similarly, most competitors submitted that landfill and RDF export are adequate substitutes but are not desirable contingencies.⁸⁵⁴
- 10.89 The evidence from third parties indicates that, although landfill and RDF export are accepted as adequate contingencies, these disposal routes are not favoured by local authorities. Accordingly, to the extent contingency follows the general waste hierarchy, we consider that local authorities would value incineration using an ERF as a contingency higher than they would value landfill and RDF export.

O&M suppliers' ability to access incineration capacity, as a contingency

Parties' view

- 10.90 Veolia submitted that in order to win a contract, an O&M of ERFs contractor may need to identify the availability of capacity in general, rather than capacity available at short notice.⁸⁵⁵ [REDACTED].⁸⁵⁶ Veolia also submitted that [REDACTED] of the capacity controlled by Parties is dedicated to the local authority that owns the ERF.⁸⁵⁷ According to Veolia, there is [REDACTED] spare (merchant) capacity at these facilities over the course of a year, let alone in a particular week when another ERF in the area may require contingency at short notice.⁸⁵⁸ Veolia submitted that [REDACTED].⁸⁵⁹
- 10.91 Veolia submitted that there are a [REDACTED] of alternative disposal outlets available around every local-authority-owned ERF so no operator should have difficulties in finding contingency options while bidding to operate any such ERF, or while operating one.⁸⁶⁰
- 10.92 Veolia submitted that the Provisional Findings provided no basis for the view that operators with a large network of ERFs will have a competitive advantage in dealing with outages; and this conclusion is not based on any evidence or third party views.⁸⁶¹

⁸⁵⁴ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

⁸⁵⁵ Veolia's response to Working Paper, page 8.

⁸⁵⁶ Veolia's supplemental response on O&M ERFs: contingency options, 7 April 2022, paragraph 6.

⁸⁵⁷ Veolia's [response to the Provisional Findings](#), paragraph 186

⁸⁵⁸ Veolia's response to Working Paper, page 8.

⁸⁵⁹ Veolia's [response to the Provisional Findings](#), paragraph 185

⁸⁶⁰ Veolia supplemental response - O&M of ERFs Contingency Disposal Options 7 April 2022, paragraph 14.

⁸⁶¹ Veolia's [response to the Provisional Findings](#), paragraph 186

- 10.93 Suez told us that one of its strengths when bidding for contracts is that it has capacity at its other ERFs. In Suez's view, [REDACTED].⁸⁶²

Third party views

- 10.94 Of the six ERF competitors that responded to our questionnaire, all except one said that they use their own ERFs and third-party incineration capacity for contingency, although the ratio of mix varies by supplier. Viridor submitted that it usually uses its own ERFs but at times may use third party sites for timing, capacity or geographic reasons.⁸⁶³ Amey, Beuparc and Urbaser indicated that they can often acquire contingency capacity from third party competitors but did not disclose the proportion of capacity acquired from third party sites.⁸⁶⁴ FCC submitted that it has not acquired contingency capacity from third party competitors.⁸⁶⁵
- 10.95 In response to our question about the ability to access contingency capacity from third parties, some competitors indicated that it is not always possible to acquire capacity at third party sites because of capacity constraints at those sites: Amey submitted that it has seen strong competition for available capacity in the market;⁸⁶⁶ FCC indicated that existing ERFs usually operate at 'full' capacity;⁸⁶⁷ and Viridor said there have been times when ERF capacity has not been available.⁸⁶⁸ Only Urbaser indicated that that it had not been 'particularly difficult to secure contingency support from other operators'.⁸⁶⁹
- 10.96 Evidence from competitors indicate that it is not always possible to access incineration capacity at third party sites. We note that the two competitors with the largest network of ERFs (other than the Parties) tend to use their own ERFs for contingency capacity.

O&M operators' ERF network

- 10.97 The Merged Entity will have the largest network of ERFs in the UK followed by Viridor and FCC.

⁸⁶² Transcript of hearing with Suez, 13 April 2022

⁸⁶³ Response to the CMA's phase 2 questionnaire from Viridor.

⁸⁶⁴ Responses to the CMA's phase 2 questionnaire from Amey, Beuparc and Urbaser.

⁸⁶⁵ Response to the CMA's phase 2 questionnaire from FCC.

⁸⁶⁶ Response to the CMA's phase 2 questionnaire from Amey 4 February 2022, Q34

⁸⁶⁷ Response to the CMA's phase 2 questionnaire from FCC

⁸⁶⁸ Response to the CMA's phase 2 questionnaire from Viridor.

⁸⁶⁹ Response to the CMA's phase 2 questionnaire from Urbaser

10.98 Taking together all of the evidence we have received from the Parties and third parties, we consider that operators that have a large network of ERFs, such as the Parties, Viridor and FCC, will in relative terms face a lower risk to their business if one of their ERFs is closed for a period of time, as that operator will be more likely than a smaller operator to use its network of ERFs to access contingent capacity.⁸⁷⁰ Further, it is likely that the impact of an ERF shutdown will be low relative to the absolute size of its business, than it would be for a smaller operator.⁸⁷¹ Indeed, [X] submitted that the more available plants an operator has, the more opportunities it would have to ‘mitigate the risk of having to pay compensations’ in the event of a shutdown.⁸⁷² Beuparc submitted that local authorities prefer larger suppliers because they have options if one plant fails.⁸⁷³ Larger network operators will therefore benefit from scale advantages, which confers a competitive advantage in dealing with planned or unplanned outages.

Conclusion on suppliers’ access to contingency capacity

- 10.99 Access to contingency capacity is an important factor for some local authorities; and overall, landfill and RDF export are considered to be less favoured contingencies. In our view, those bidders that offer alternative and more sustainable contingencies than landfill and RDF export, all other things being equal, will have a higher likelihood of winning local authority O&M of ERFs contracts.
- 10.100 Operators that have access to their own network of ERFs may benefit from some advantages when bidding for these contracts. The Parties, Viridor and FCC may benefit in this respect, as these suppliers have the largest ERF networks in the UK.

⁸⁷⁰ Third parties told us that operators with a larger network of ERFs will have greater control and be able to move residual waste more easily, and this confers an advantage. See paragraphs 10.85(a), 10.93 for more detail.

⁸⁷¹ If a single ERF operator faced an outage, that operator would have no recourse to supply incineration services to its local authority within its own network and would have to either find a third party ERF site or other less desirable disposal alternatives. In the worst case scenario, the operator would not be able to take on the local authorities’ residual waste. If an operator with a network of 10 ERFs similarly had an outage at one of its ERFs, it may be able to use the spare capacity at any of its 9 other ERFs, or use a third party site or dispose of the local authority waste in a landfill or RDF export. In absolute terms, both would face an outage at one ERF but in relative terms, the operator with the larger network would be less impacted by the shutdown than the single asset operator.

⁸⁷² Note of call with [X]

⁸⁷³ Transcript of call with Beuparc, 17 June 2022, p9. Beuparc also submitted that local authorities prefer larger operators because they have larger balance sheets.

Other criteria

- 10.101 We have assessed management and technical expertise and access to contingency capacity above. Table 10.1 reports that local authorities consider that these two criteria, together with price, are the most important selection criteria for them. Given the lack of recent tenders we have not been able to consider suppliers' relative pricing strategies nor is there any realistic way for us to assess future pricing.
- 10.102 We consider that the Parties' record on quality, which was also ranked relatively highly by local authority customers (see Table 10.1) will be reflected in customer views on the set of credible suppliers, discussed below.
- 10.103 Table 10.1 also reported other criteria:
- (a) Financial resources of supplier;
 - (b) Costs associated with transferring between suppliers;
 - (c) Access to other waste management service infrastructure;
 - (d) Ability to innovate and introduce efficiencies; and
 - (e) Experience of contracting with supplier for other waste management services.
- 10.104 We have briefly assessed suppliers against each of the remaining criteria although we reiterate that we have placed most weight on those criteria that the local authorities have identified as being most important to them.
- 10.105 The financial resources of a supplier was considered in Chapter 5. We found that both Veolia and Suez have very strong financial standing (paragraph 5.49). We have also found that other suppliers – Biffa, Viridor, FCC, Serco and Urbaser – also have strong financial standing.
- 10.106 The costs associated with transferring between suppliers is not specific to any supplier and therefore Veolia and Suez are no more advantaged or disadvantaged relative to any other supplier.
- 10.107 With respect to access to other waste management infrastructure, we note that both Veolia and Suez:
- (a) have access to significant infrastructure in waste collection (see chapter 8);

- (b) are significant operators of MRFs in the UK – Veolia is the second and Suez the third largest MRF operators in the UK (see chapter 9);
- (c) have significant numbers of waste transfer stations and waste depots (see chapter 5); and
- (d) have a significant number of landfill sites (only Biffa has more sites than either Veolia or Suez, each with 12).

10.108 No other supplier in the UK is as integrated across the whole waste management chain as the Parties.

10.109 However, as set out in this report, other suppliers also have access to other waste management infrastructure. Most notably:

- (a) Biffa is a significant provider of waste collection services; it operates a large number of MRFs; it holds the largest portfolio of landfill sites in the UK; and it is building merchant ERF capacity.
- (b) In addition to its position as an operator of ERFs, Viridor operates a significant number of MRFs and it has as many landfill sites as both Veolia and Suez.
- (c) FCC is active in waste collection; it operates a small number of MRFs; and it has as many landfill sites as both Veolia and Suez.

10.110 The evidence indicates that the Parties are extremely strong in regard to access to other waste management infrastructure. However, other suppliers – Biffa, Viridor and FCC – also have ready access to some other waste management infrastructure.

10.111 Local authorities also told us that they look for the ability to innovate (Table 10.1). The Parties have made public statements referring to innovation as key to their business strategies (paragraphs 5.55 and 5.65).⁸⁷⁴ For example, Veolia submitted that it has UK projects that develop innovations including in carbon capture for ERFs.⁸⁷⁵ Similarly, Suez told us that it plans to have carbon capture and sequestration technology operational at two plants by 2025/26.⁸⁷⁶

⁸⁷⁴ However, Veolia also told us that the Veolia group globally spends a relatively small proportion of total revenues on R&D (paragraph 5.55).

⁸⁷⁵ Supplemental response to CMA questions on innovation, 29 March 2022

⁸⁷⁶ Suez site visit slides, slide 28, 15 February 2022

- 10.112 Viridor submitted some examples of its innovations regarding ERFs including use of carbon capture and storage technology, increasing the capacity of ERF plants and increasing the efficiency of ERFs.⁸⁷⁷
- 10.113 We have not seen any evidence to suggest that the Parties are disadvantaged in their ability to innovate compared to their major rivals. Evidence gathered indicated that, when considering total R&D spend in the UK as a percentage of revenue, the Parties spent a similar level to Beauparc, Biffa and FCC (paragraph 5.73). We note that neither Beauparc nor Biffa currently operates ERFs in the UK.
- 10.114 Finally, local authorities identified experience in contracting with the supplier for other waste management services. In this respect the Parties have an extremely strong track record. Both Veolia and Suez have long-standing experience in the provision of municipal waste collection, the operation of municipal recycling centres, the operation of waste transfer stations, the O&M of MRFs and the supply of composting services. Indeed, all of the Parties' O&M of ERFs customers that responded to this question also used the Parties to provide other waste management services to their local authority. Other suppliers too have extensive experience in contracting with the supplier for other waste management services, most notably, Viridor, FCC, Serco, Biffa and Urbaser.

Conclusion on suppliers' characteristics

- 10.115 In our assessment we have placed most weight on the factors that customers themselves identified as being most important – management and technical expertise and access to contingency capacity. These have been discussed above and we have found with respect to:
- (a) management and technical expertise: the experience of the Parties, Viridor, FCC and Paprec give them a competitive advantage for future tenders (paragraph 10.75); and
 - (b) access to contingency capacity: operators that have access to their own network of ERFs may benefit from some advantages when bidding for these contracts. The Parties, Viridor and FCC may benefit in this respect, as these suppliers have the largest ERF networks in the UK (paragraph 10.100).

⁸⁷⁷ Response to CMA Phase 2 Questionnaire from Viridor, 22 Feb 2022, Q14

10.116 With respect to the other criteria identified by customers, we have found that the Parties are strongly positioned on each of these criteria and no other single supplier is better placed than Veolia and Suez nor as strong across the board as the Parties. We have also found that a small number of other suppliers are well positioned against these other criteria, particularly Viridor and FCC. Although Biffa meets many of these criteria, it has told us that it does not intend to bid for O&M of ERFs contracts for local authorities. When measured against these other criteria we have found that Serco and Urbaser are likely to be weaker constraints on the Parties given their weaker position in other waste management infrastructure.

Incumbency advantage

10.117 Local authorities have told us that they will put their O&M of ERFs contracts out to tender and have indicated a willingness to change provider if a more competitive supplier presents itself so it is likely that O&M of ERFs will be contestable to some degree at least.⁸⁷⁸ In this section, we consider whether the incumbent provider has a higher likelihood of winning the re-tender of the standalone O&M of ERFs contract over other bidders because it has a degree of plant-level incumbency advantage. We examine the potential sources of any incumbency advantage and assess the impact that this may have on competition for future standalone O&M of ERFs contracts.

Parties' views

10.118 Veolia argued that there is no incumbency advantage. When O&M of ERFs contracts come to market, an independent consultant will typically prepare a report that sets out the works required, and any potential bidder will have sufficient information to assess the viability of the plant. The age of the facility is not an impediment for any new operator that takes on the O&M of the ERF.⁸⁷⁹ Veolia also argued that to the extent there is an incumbency advantage in the form of having a greater likelihood of winning the O&M contract for specific facilities that a supplier currently operates, there is no merger effect. That is, the advantage to either of the Parties is the same with or absent the Merger.⁸⁸⁰

⁸⁷⁸ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

⁸⁷⁹ Transcript of hearing with Veolia.

⁸⁸⁰ Veolia's response to Working Paper, page 3.

- 10.119 Suez, when assessing the strengths of its rivals for the upcoming Tees Valley ERF contract, noted that it would be able to [REDACTED].
- 10.120 Suez told us that that there is a [REDACTED] associated with taking on the O&M of an ERF that another supplier has operated.⁸⁸¹ It submitted that the incumbent has advantages in terms of information about pricing, risks and other issues.⁸⁸² However, Suez told us that it would bid for an O&M contract if it received sufficient information from the local authority.⁸⁸³ In this regard, Suez stated that when it took over the O&M for GMCA, the local authority provided all available information, [REDACTED].⁸⁸⁴
- 10.121 Suez told us that the challenge for the new operator would be to understand the size of the investment required for the replant of the facility and whether the local authorities were providing the necessary information to bidders for them to understand the potential costs.⁸⁸⁵ According to Suez, cost of the refurbishment can be difficult to estimate as it depends on the replanting involved.⁸⁸⁶

Third party views

- 10.122 Viridor submitted that the tendering process for the standalone O&M contracts would be subject to public procurement rules and the incumbent would have the same likelihood as other bidders.⁸⁸⁷
- 10.123 Dudley Council submitted that its incumbent contractor would likely not retender for the O&M of its ERF when its current PPP contract expires and cited a number of commercial factors/concerns.⁸⁸⁸ However, we consider that Dudley Council's concerns relate to specific and unique circumstances related to its current O&M operator so this example provides limited evidentiary value in assessing whether incumbent operators generally benefit from a competitive advantage in future tenders. We also note that Dudley's incumbent O&M of ERF provider, MESE, was bought by Paprec

⁸⁸¹ Transcript of hearing with Suez, (13 April 2022), p 53.

⁸⁸² Transcript of hearing with Suez, (13 April 2022), p 53.

⁸⁸³ Transcript of hearing with Suez, (13 April 2022), p 52.

⁸⁸⁴ Transcript of hearing with Suez, (13 April 2022), p 53.

⁸⁸⁵ Transcript of hearing with Suez, (13 April 2022), p 61.

⁸⁸⁶ Transcript of hearing with Suez, (13 April 2022), p 60.

⁸⁸⁷ Response to the CMA's phase 2 questionnaire from Viridor, question 34a.

⁸⁸⁸ Dudley Waste Services subcontracts the O&M of its facility to MESE, which was part of the CNIM group. Dudley Council submitted that the incumbent contractor would not retender for the O&M of its ERF following a breakdown in commercial negotiations on contract renewal. Dudley Council submitted that its concerns included, among other things, disagreements about the terms of its revenue sharing agreements and concerns around the insolvency of CNIM, the then parent of MESE. Dudley Council response to questionnaire 21 June 2022, question

and Paprec could still potentially compete for the O&M of Dudley Council's ERF contract.

- 10.124 A number of other third parties indicated that incumbents would have a higher likelihood of winning the next tender.⁸⁸⁹ One reason posited by third parties was that the incumbent would have a better understanding of the technical specificities of the plant (consistent with Suez's submissions). Urbaser submitted the incumbent operator would 'better understand the true running rates for an asset' and the 'efficiency profile of the ERF'.⁸⁹⁰ In its view, the incumbent's knowledge of the particular asset would 'result in a benefit for the incumbent provider during the bidding process'. Beuparc submitted that in addition to the incumbent's familiarity with the asset, the incumbent would understand 'all of the potential refit costs'.⁸⁹¹ Similarly, Surrey County Council submitted that the incumbent to its plant may be the only bidder willing to take on its operation due to its 'unique experience' with the plant.⁸⁹²
- 10.125 Another reason provided by third parties for the potential incumbency advantages is around the uncertainty that non-incumbents would have about how the asset had been maintained and operated by the previous supplier. FCC told us that while it would bid for ERFs that it currently operates, it would have to assess whether it would bid for the O&M of ERFs that have been operated by another supplier. FCC said that these are 'hugely...complex assets' akin to 'power plants' and that it would be quite difficult to be certain that the ERF has been maintained to the right level. Taking on the asset would be 'high risk' in FCC's view and this risk may take the form of considerable repair costs at an unknown point during the contract.⁸⁹³ This risk is exacerbated by the age of the technology that a new provider would have to manage. Similarly, Tolvik told us that the risk and reward trade-offs of taking on an asset from another provider might reduce the number of suppliers that bid for O&M only contracts.⁸⁹⁴ Another waste consultant submitted that the incumbent would have a 'material advantage' as it would understand the performance of the plant and condition of key

⁸⁸⁹ See responses to the CMA's phase 2 questionnaire from [X], [X] and [X]; email from [X].

⁸⁹⁰ Response to the CMA's phase 2 questionnaire from Urbaser question 34a.

⁸⁹¹ Response to the CMA's phase 2 questionnaire from Beuparc question 34a

⁸⁹² Response to the CMA's post-PFs phase 2 questionnaire from Surrey County Council, 24 June 2022, question 1c.

⁸⁹³ Note of call with FCC, 25 February 2022.

⁸⁹⁴ Note of call with Tolvik, 4 April 2022.

components, meaning that the incumbent can adjust the price based on the risks.⁸⁹⁵

- 10.126 Most of the evidence from third parties indicates that incumbents may have a material advantage in the tendering process arising from an incumbent's knowledge and experience of operating the plant. This will allow them to bid strategically for facilities they wish to keep (ie there are plant level incumbency advantages). By contrast, potential O&M bidders will face a degree of uncertainty about the condition of the ERF for which they are bidding, in particular about the quality of the maintenance undertaken by the incumbent supplier. Given the informational asymmetry, it is likely that any new supplier will face risks relating to the condition of the ERF asset that an incumbent is less likely to face. However, we note that the Parties, Viridor, Indaver and possibly FCC plan to [✂] (paragraphs 10.29, 10.36, 10.125 and 10.172). On this basis, although it may be that an incumbent operator will be more likely to win the future O&M contract of the plant where it is the incumbent, any plant-level incumbency advantage may not be significant enough to prevent suitably experienced O&M bidders competing for and winning future O&M contracts. That is it is expected that O&M contracts will still be contestable.

The Parties' incumbency advantage and the merger effect

- 10.127 We note that there are only six O&M contracts that will come up for re-tender in the next two to five years. Given the limited opportunities, it may take time for the market participants to understand the extent to which they can rely on the consultants' reports and due diligence to determine the condition of the facilities in question.
- 10.128 In this context, we consider that the Parties' breadth of experience means that they may be more likely than other bidders to be able to overcome incumbency advantage where another operator is the incumbent, at least in the short to medium term. In particular, as discussed in paragraph 10.75, the Parties' combined experience is significantly greater, and together they operate more ERFs, than any other supplier. As such, they will be able to draw on more knowledge to assess facilities held by others, so the information asymmetry may affect the Parties less strongly than other bidders when they bid for contracts that they do not currently hold. Another

⁸⁹⁵ Response to the CMA's post-PFs phase 2 questionnaire from Surrey County Council, question 1c (answer from Frank Smith).

advantage of the Parties' scale and large portfolio of contracts is that it allows them to spread the risk of any unexpected cost more easily than a smaller operator that takes on a problematic or costly O&M contract. In both respects, the Parties' experience and scale advantages may reduce the impact of incumbency when they bid for contracts in which they are not the incumbent, relative to smaller O&M operators.

- 10.129 In this regard, all other things equal, if a local authority tendered for an O&M of ERFs contract where Veolia is the incumbent, Suez would be one of the most credible alternative bidders for that contract (or vice versa). The Merger effect arises because the Merger removes one of the limited number of competitors that would otherwise be well positioned to compete for O&M of ERFs contracts, given the potential advantages enjoyed by incumbent operators.

Shares of reverting assets

- 10.130 We consider the implication that plant-level incumbency advantage may have for the O&M of ERFs contracts that are likely to be contestable, ie the assets that will revert to local authority ownership on expiry of the existing PPP contract. Tolvik's dataset identifies that 27 of the 43 PPP ERFs will revert to the local authority upon expiration of the PPP/PFI contract. Table 10.2 sets out shares on this basis.

Table 10.2: Share of ERFs that will revert to local authorities

<i>Supplier</i>	<i>Number of PPP ERFs currently operated</i>	<i>Share</i>
<i>Veolia</i>	[X]	[30-40%]
<i>Suez</i>	[X]	[20-30%]
<i>Paprec</i>	[X]	[10-20%]
<i>Viridor</i>	[X]	[10-20%]
<i>FCC</i>	[X]	[5-10%]
<i>enfinium</i>	[X]	[0-5%]
<i>MVV</i>	[X]	[0-5%]
<i>Urbaser/Balfour</i>	[X]	[0-5%]
<i>Indaver/Acconia</i>	[X]	[0-5%]

Source: CMA analysis [X].

Notes: Amey has been excluded because it is not pursuing growth in the sector and [X]. By excluding Amey, the shares reflect forward-looking incumbency advantage. Amey had a share of supply of [X]%. Its share is distributed in proportion to other firms' shares of supply.

10.131 Before the Merger, Veolia and Suez would benefit from any incumbency advantage on the highest number of facilities that will revert to LA ownership on expiry of the existing PPP contract ([X] and [X] ERFs, respectively). The Merged Entity would benefit from incumbency advantage on five times the number of facilities operated by the next largest suppliers (Paprec and Viridor). The Merged Entity's combined share is [50-60%] (or [40-50%] when considering all ERFs, ie including both those reverting to local authorities and merchant ERFs).⁸⁹⁶

10.132 This suggests that for a significant proportion of contracts, Veolia or Suez will have a competitive advantage, and will therefore be a more important competitive constraint for all other suppliers bidding for the contract. For the contracts where the Parties are not the incumbent, the third party that is currently operating the plant will likely be a stronger constraint on all rivals. Overall, the Parties' competitive strengths for the reverting assets may be higher than the 'average' strength reflected by the shares of ERFs.

⁸⁹⁶ See 'market definition'.

Conclusion on incumbency advantage

- 10.133 Based on the above evidence, we have concluded that an incumbent will likely benefit from some competitive advantage when it bids for O&M of ERFs contracts.
- 10.134 We consider that the evidence shows that, for a large proportion of contracts that will revert to local authorities at the expiry of PPP contracts, Veolia and Suez will have a competitive advantage and will therefore be a stronger competitive constraint for *all* other suppliers bidding for the contract (including each other).⁸⁹⁷ We note that other suppliers will benefit from this same advantage on the ERFs they currently supply, but this will be on fewer ERFs than Veolia and Suez. Further, the Parties' experience and scale advantages may reduce the impact of incumbency when they bid for contracts in which they are not the incumbent, relative to smaller O&M operators.
- 10.135 Overall, the Parties are likely to benefit from any incumbency advantage more than most of the other operators.

Credible suppliers

Parties' views

- 10.136 Veolia submitted that there will be numerous strong competitors for O&M of ERFs contracts and that a significant number of additional rivals with experience operating ERFs have entered the market since PPP/PFI contracts were tendered.⁸⁹⁸
- 10.137 Veolia further submitted that 'just' six local authorities and four competitors responded, and it was not clear when the six authorities' contracts will next be tendered, and therefore whether they would be affected in practice by the Merger in the foreseeable future.⁸⁹⁹
- 10.138 Suez submitted that its main competitors would be [X]. Suez also submitted, while technology suppliers are likely to be more interested in newer assets, they may bid for O&M of ERFs contracts if there will be a significant replant. Suez stated that technology suppliers may also have

⁸⁹⁷ Paragraphs 10.128 and 10.129

⁸⁹⁸ Veolia's [response to the Provisional Findings](#), paragraph 159.

⁸⁹⁹ Veolia's [response to the Provisional Findings](#), paragraph 160.

concerns if other elements of waste management were included in the contract because it is not within a technology supplier's skill set.⁹⁰⁰

Evidence from customers and competitors

- 10.139 No PPP/PFI contracts have yet expired so there is no recent direct evidence on how suppliers will compete for O&M of ERFs only contracts.⁹⁰¹ In this context, views from local authorities and competitors are particularly important to understand how closely the Parties might be expected to compete with each other and other rivals for the upcoming O&M tenders. First, we consider customers' assessments of the relative credibility of potential suppliers; and second, we consider rivals' assessments of the relative strength of potential bidders for O&M only contracts.
- 10.140 With respect to Veolia's submission on the number of respondents and reliability of third-party evidence, we note that 12 local authorities responded in total, nine of which used the Parties for the O&M of their ERF. We acknowledge that some local authorities that responded to our questionnaire will not tender the O&M of their ERF for a number of years and note that some local authorities felt they lacked the knowledge to answer our question and detailed this in their response. Where such a submission was made by a respondent, we did not include those responses in our analysis. Overall, eight local authorities responded to the question which suppliers they consider to be credible (see below), which in itself is a high proportion of the Parties' total O&M of ERFs customers (combined the Parties provide O&M to 17 local authorities). Five of these either have PPP contracts that expire in the next five years or have recently tendered their O&M of ERF contract (due to early termination) and as such will likely have an informed view of the market.
- 10.141 In any case, we do not consider it to have been necessary, or proportionate, to conduct a comprehensive survey in order to make inferences about the market. Instead, we have focused on what we consider to be the most relevant evidence. In particular, we looked at responses and input from local authorities, which allowed us to understand their experience of the market and any challenges local authorities face. We note that the submissions from local authorities with PPP contracts that expire in the next five years (and

⁹⁰⁰ Suez Main Party hearing transcript, page 51.

⁹⁰¹ We note that GMCA terminated its contract with Viridor and retendered its integrated contract that included the O&M of its ERF. Suez won the contract in 2019. It is the only recent example of where a local authority has tendered for the O&M of its ERF.

thus are more likely to be actively considering the market) were consistent with evidence from other local authorities. The consistency of local authority answers suggests the evidence is informative and reliable.

Evidence from customers

10.142 We asked local authorities to list the suppliers that they would consider credible if they were to retender their existing O&M of ERFs contracts and to indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong). Table 10.3 summarises the results.

Table 10.3: Summary of local authority scoring of the strength of suppliers

<i>Competitor</i>	<i>Average rating unadjusted for non-mentions</i>		<i>Average rating adjusted for non-mentions as a score of zero</i>	
	<i>No of respondents</i>	<i>Average rating (out of 5)</i>	<i>No of respondents</i>	<i>Average rating (out of 5)</i>
<i>Veolia</i>	8	4.8	8	4.8
<i>Suez</i>	7	4.7	8	4.1
<i>FCC</i>	6	3.7	8	2.8
<i>Viridor</i>	5	3.6	8	2.3
<i>MVV</i>	2	3.5	8	0.9
<i>Urbaser</i>	1	5.0	8	0.6
<i>Paprec</i>	1	5.0	8	0.6
<i>Coventry & Solihull Waste Disposal Company</i>	1	4.0	8	0.5
<i>Cory</i>	1	3.0	8	0.4
<i>enfinium</i>	1	2.0	8	0.3
<i>Biffa</i>	1	4.0	8	0.5

Source: CMA analysis of response to questionnaire by local authorities.

10.143 Veolia and Suez were identified most frequently and given the highest average ratings, regardless of the method of analysis used. In particular, all customers that responded identified Veolia as a credible supplier and Veolia received a very high average score of 4.8. Customers explained their rating by noting Veolia's strengths in terms of experience and track record. Suez was identified by all but one customer and received a very high average rating of 4.7. When treating non-mentions as scores of zero (the supplier is not considered a credible supplier), Suez received an average score of 4.1.

Similar to customers' explanations of Veolia's capabilities, customers explained that Suez has strengths in terms of experience and track record. We note that Veolia's current customers identified Suez as a strong credible competitor and vice versa.

10.144 FCC and Viridor were identified next most frequently (six and five times, respectively), and both received an average rating of 2.8 and 2.3, respectively, when treating non-mentions as a zero score.

10.145 Overall, we consider that the above evidence shows that the local authorities we engaged with considered the Parties to be the strongest suppliers and FCC and Viridor were also considered to be moderately strong.

Evidence from competitors

10.146 We asked competitors to list the suppliers they would consider as their strongest competitors in O&M in the UK and indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong). Table 10.4 summarises the results.⁹⁰²

Table 10.4: Summary of competitor scoring of the strength of suppliers

<i>Competitor</i>	<i>Ignoring non-mentions</i>		<i>Treating non-mentions as zero</i>	
	<i>No of respondents</i>	<i>Average rating (out of 5)</i>	<i>No of respondents</i>	<i>Average rating (out of 5)</i>
<i>Veolia</i>	4	5.0	4	5.0
<i>Suez</i>	4	4.8	4	4.8
<i>Viridor</i>	4	4.8	4	4.8
<i>FCC</i>	4	3.5	4	3.5
<i>enfinium</i>	3	3.3	4	2.5
<i>Covanta</i>	1	3.0	4	0.8
<i>Biffa</i>	1	2.0	4	0.5
<i>Self-supply</i>	1	1.0	4	0.3

Source: CMA analysis of competitor questionnaire

Note: Beuparc listed Veolia, Suez, FCC and Viridor but only provided a rating of 5 for Veolia and Suez. Given the incompleteness of the submission, we have excluded Beuparc's scoring from this analysis

⁹⁰² Four suppliers gave ratings to other competitors. However, we note that there are a limited number of suppliers in the market in any case. altern

10.147 Veolia, Suez, Viridor and FCC were identified the most frequently (four times each) and Veolia, Suez and Viridor received high average ratings (5, 4.8 and 4.8, respectively). Most competitors explained their ratings with reference to each supplier's existing network of ERFs, experience and track record. We note that we asked competitors their views on the suppliers they considered to be their own strongest competitors, rather than the closest competitors to the Parties, and we have interpreted the results accordingly. Nevertheless, we consider it likely that a strong competitor to one supplier will be a strong competitor to all suppliers (unless they are competing for different niches).

Conclusion on credible suppliers

10.148 Third party ratings identified Veolia and Suez as among the strongest suppliers in the market; the Parties were identified most frequently and received very high average scores.

10.149 We note that almost all local authorities and competitors used experience and track record to assess the strength of suppliers. The Merged Entity will have significantly more experience than any of its competitors. Further, we note that the evidence from local authorities is consistent with other evidence we have received, including from competitors, the market shares analysis and Parties' internal documents.

Market shares

Parties' views

10.150 The Parties submitted that no or limited weight should be placed on market shares as they are based on contracts that were tendered 5-25 years ago and included design and construction (D&C), whereas future contracts will be for O&M of ERFs only.⁹⁰³ Therefore, market shares measure their strength in D&C, and not (strictly) O&M. Veolia also submitted that market shares can be an indicator of strength in 'static markets' but not in markets that were set to 'change significantly in the next few years'.⁹⁰⁴

⁹⁰³ Veolia's [response to the Provisional Findings](#), paragraph 189.

⁹⁰⁴ Veolia's [response to the Provisional Findings](#), paragraph 189.

- 10.151 Veolia submitted that share estimates should include merchant-only operators, otherwise these estimates would exclude at least four suppliers Veolia considered credible to operate local-authority-owned ERFs: Covanta, enfinium, Bouygues and Indaver.⁹⁰⁵
- 10.152 Veolia also submitted that the market shares take into account only facilities that were operational in 2020 and the CMA should take into account facilities that will come online in the next few years. Veolia submitted that on this basis, the Parties' combined share is [X].⁹⁰⁶

Evidential value of market shares

- 10.153 Local authorities told us that experience and track record were among the most important factors when deciding which supplier to select as their next O&M of ERFs provider.⁹⁰⁷ In markets where experience matters, market shares are a relevant indicator of strength and ability to win future contracts. The suppliers that won the initial PPP/PFI contracts have gained considerable experience from operating local authority ERFs. Market shares are indicative of wider experience in O&M of ERFs, which is relevant to competition in this market. Moreover, we consider that suppliers that won the initial PPP/PFI contracts were selected, in part, for their O&M capabilities and reliability over the long term, as those contracts included the O&M of the ERF and local authorities would have assessed bidders' ability to meet the O&M requirements of the contract in addition to the design and build elements that Veolia identifies.
- 10.154 We acknowledge that past tenders were also in part driven by the bidder's ability to manage the subcontracting of a D&C supplier.⁹⁰⁸ We consider that this is relevant experience for future tenders. In particular, Urbaser stated that local authorities may prefer bidders that are able to demonstrate experience in delivering retrofit works or who are aligned with a strong EPC partner.⁹⁰⁹ Further, Suez told us that its proven track record in refurbishment stemmed from its experience designing and constructing ERF facilities.⁹¹⁰ As such, experience in D&C and/or managing relationships with D&C suppliers may be relevant in future O&M tendering, as the age of facilities and

⁹⁰⁵ Veolia's [response to the Provisional Findings](#), paragraph 191.

⁹⁰⁶ Veolia's response to Working Paper, page 14-15.

⁹⁰⁷ See 'Selection criteria' and 'Management and technical expertise' sections for more detail.

⁹⁰⁸ Bidders for PPP/PFI contracts were usually consortia of different specialisms (eg construction companies and finance companies)

⁹⁰⁹ Response to the CMA's phase 2 questionnaire from Urbaser.

⁹¹⁰ Transcript of hearing with Suez, 13 April 2022, p 45.

development of technology and regulatory requirements might require local authorities to invest in re-planting, and refurbishment and/or repairs that will likely be necessary.

- 10.155 Veolia did not explain or provide evidence to support its assertion that the market for O&M of ERFs market is likely to be subject to significant change and why limited or no weight should be given to market shares. Veolia did submit that it expected to see new entry from merchant ERF operators, which appears to be based broadly on its experience in a different geographic market. If that were to be the case, it would follow that there would be a wider pool of available suppliers and therefore a change from pre-Merger conditions of competition. However, as explained in this chapter, we do not consider that merchant ERF operators will likely exert a significant constraint on the Parties nor does the evidence suggest that there will be a large influx of new entry from merchant ERF operators. Given this, we do not agree with Veolia that no or limited weight should be placed on market shares, but we have considered the evidence from market shares in the round with all the other evidence in our overall assessment.
- 10.156 While we consider that merchant-only operators will have limited incentives to bid for standalone local-authority O&M contracts (paragraph 10.36), we have included merchant-only operators in market shares on the basis that one merchant operator (Indaver) has recently been awarded a contract for the O&M of an ERF and has indicated that it may bid for future O&M only contracts, under certain circumstances.⁹¹¹ However, as explained below, we consider that the resulting market shares are likely to overstate the competitive strengths of merchant ERF operators, and understate the strength of the Parties and other non-merchant operators. We have not included Covanta or enfinium in our market share analysis because both firms submitted that they would not bid for standalone local authority O&M of ERFs contracts.⁹¹²
- 10.157 With regards to Veolia's submission that we should take into account facilities that will come online in the next few years (paragraph 10.152), we do not consider that it would be appropriate in this case, as it will not accurately reflect the future strengths of suppliers in the market. In particular, we note:

⁹¹¹ Paragraph 10.36.

⁹¹² Paragraph 10.33.

- (a) Of the 15 ERFs under construction, two are PPP ERFs and the other 13 are merchant ERFs. With the exception of FCC and MVV, all of the other future suppliers will only operate merchant ERFs. As discussed in market definition, we consider that merchant-only suppliers will have limited incentives to bid for standalone O&M of ERFs contracts and will likely pose only a weak constraint on the Parties.
- (b) It is not clear that all the ERFs in Tolvik's dataset will come online in the next few years. Tolvik explains that its list includes ERFs that are 'seeking planning consent, have planning consent or for which planning consent has been refused but some form of appeal/new submission is expected'.⁹¹³ Additionally, Tolvik states that its previous (upwards) trend of number of ERFs has been reversed because projects have 'reached financial close, seemingly ceased being progressed, been cancelled and/or have been refused consent'.⁹¹⁴

10.158 Nonetheless, we acknowledge that by the time that some local authorities tender for the O&M of their ERF, at least some of the new operators will have gained some experience and expertise. Therefore, we estimate market shares based on current and future ERF capacity but note that including ERFs that are not operational will likely overstate the strength of these new operators, as they have yet to gain the relevant experience in the O&M of ERFs; and understate the strength of the Parties and the other current O&M operators.⁹¹⁵

Market share estimates

10.159 We calculated market shares using an external dataset prepared by Tolvik.⁹¹⁶ This dataset contains information on each of the ERFs that were operational in the UK in 2020 (local-authority-owned and merchant owned), including on the owner of the ERF, the operator of the facility and the

⁹¹³ See Tolvik's '[UK Energy from Waste Statistics – 2020](#)' report.

⁹¹⁴ See Tolvik's '[UK Energy from Waste Statistics – 2021](#)' report.

⁹¹⁵ Table 5.6 for shares of ERF capacity.

⁹¹⁶ We consider Tolvik data is reliable as it provides an independent view based on multiple sources of information. We discuss Tolvik in more detail below.

capacity of the facility.⁹¹⁷ We calculated market shares based on the assumed operational capacity of ERFs.⁹¹⁸

10.160 The results of these market shares calculations are presented below in Table 10.5.

⁹¹⁷ We used Tolvik's 2020 dataset as it was the most recent dataset available to us. We consider this is reasonable as the number of operational ERFs is reasonably stable across years. In particular, Tolvik's 'UK Energy from Waste Statistics – 2021' records one fewer operational ERF in 2021 than 2020.

⁹¹⁸ Our analysis includes both merchant ERFs and local-authority-owned ERFs.

We calculate shares of supply using capacity to reflect that competition for larger contracts would be expected to be more vigorous, and therefore winning larger contracts is more probative of competitive strength. We also calculated shares of supply based on a count of sites, but this did not substantially affect our conclusions.

Note: while Energy Works ACT and Ness ERF were recorded as in construction by Tolvik's dataset, we understand these facilities to be currently operational and, as such, have included in the shares of supply.

Table 10.5: Share of capacity of ERFs

Operator	Shares
Veolia	[20-30%]
Suez	[10-20%]
Combined share	[40-50%]
Viridor	[20-30%]
FCC	[10-20%]
Cory	[5-10%]
Paprec	[0-5%]
MVV	[0-5%]
Urbaser/Balfour	[0-5%]
Spencer	[0-5%]
Indaver/Acconia	[0-5%]
Levenseat	[0-5%]
Bouygues	[0-5%]
Enviropower	[0-5%]

Source: CMA calculations using Tolvik dataset

Notes:

1. Amey has been excluded because it not pursuing growth in the sector [X]; and enfinium because it submitted that it does not, and likely will not tender for 'O&M only' contracts. By excluding Amey & enfinium, the shares of supply reflect forward-looking concentration. Amey and enfinium had market shares of [X]% and [X]% respectively. By excluding, its share is distributed in proportion to other firms' shares.

2. Spencer, Levenseat, Bouygues and Enviropower operate their own merchant ERFs.

10.161 The Parties are the second and third largest providers of O&M services in the UK. Only Viridor has a larger share than the Parties individually, and FCC is the only other provider with a share exceeding 10%. The Merged Entity would become the largest supplier in the market, with a combined share of [40-50%]. The Merger increases the degree of concentration, as measured by HHI, by just under 800 points which is a very significant amount.

10.162 We consider that the strength of Cory and Paprec may be overstated in the market shares. In particular:

- (a) Cory won its only PPP contract for an ERF in 2002 and has not subsequently won any other contracts including the O&M of ERF contracts that have been put out to tender since then (30 contracts

have been let since 2002). While we note that Cory is building a second ERF adjacent to the local-authority ERF it currently operates,⁹¹⁹ we note that this is a merchant ERF, and therefore does not indicate Cory's strengths in winning local authority contracts. Further, we also note that Cory's activities are focused in London with a reliance on its network of London transfer stations and the River Thames to transport some waste by barge.⁹²⁰ It is not clear that Cory would have an incentive to expand its scope beyond London and we note that there is only one reverting ERF in London.⁹²¹ Given Cory's relative lack of success in winning O&M of ERFs contracts in the past 20 years and its low market share ([5-10%]), we consider Cory will likely only exert a weak competitive constraint on the Parties.

- (b) Paprec currently operates four local authority ERFs due to its recent acquisitions of MESE (which operated three ERFs) and Tiru (which operated one ERF).⁹²² Both MESE and Tiru won their contracts between 1997-1999 and have not won any contract since (34 contracts have been let since 1999). Further, we note that Paprec does not have an established track record of winning any contracts in the UK. Its 'experience' has been gained through its acquisitions of MESE and Tiru. Taken all together, similar to Cory, we consider that Paprec will pose only a limited constraint on the Parties.

10.163 While we have included merchant-only operators in market shares, we consider that they will pose a limited constraint on the Parties. We first consider the extent of the constraint Indaver will provide and then merchant operators more generally.

10.164 Indaver has recently won a contract to supply O&M services for the new PPP ERF facility in Aberdeen and has submitted it would consider bidding for future local authority O&M contracts under certain circumstances: it would bid for contracts preferably in the regions where it has ERF operations (ie Scotland and South East England).⁹²³ Further, Indaver stated that it would prioritise contracts that did not include other waste management

⁹¹⁹ Cory Website: [Riverside energy park](#), accessed by the CMA on 22 August 2022

⁹²⁰ Cory Website: [About Us – At a glance](#), accessed by the CMA on 22 August 2022

⁹²¹ This is SELCHP, which is currently operated by Veolia. We note that Tolvik's dataset also records Edmonton ERF as a reverting facility, but as this is a local authority owned and operated ERF, it is outside the scope of this market.

⁹²² Paprec acquired MESE and Tiru in 2021. Paprec Website:

[Paprec integrates the O&M division of CNIM and enters exclusive negotiations with Dalkia Wastenergy](#) and [Paprec signs a binding agreement with Dalkia to acquire its Tiru subsidiary](#), accessed by the CMA on 22 August 2022

⁹²³ There are nine reverting PPP ERFs in Scotland and South East England.

services.⁹²⁴ As such, we consider that Indaver will only compete for a small subset of local authority O&M of ERFs contracts and will pose only a constraint on the Parties for those contracts (and likely only a weak constraint given its current low market shares). Indaver will likely pose little or no constraint on the majority of future local authority O&M, ie the future O&M tenders that take place in other regions of UK outside of Scotland and the South East.

10.165 Similarly, we consider that other merchant operators that we have included in our market shares estimates will provide only a weak constraint on the Parties:

- (a) As set out in 'Market definition', merchant operators may lack the incentive to bid for O&M of ERFs only contracts. Enfinium and Covanta submitted that bidding for O&M only contracts would be a divergence from their business model and they would be unlikely to compete for future local authority O&M contracts. Covanta submitted that it considers other operators are also likely to be deterred from bidding due to perceived incumbency advantages. It is therefore not clear that merchant-only operators that we have included in our market share estimates would compete for local authority tenders.
- (b) Local authorities consider experience and track record to be very important in selecting a new supplier.⁹²⁵ This is likely to disadvantage merchant operators if they bid for O&M only contracts as they have significantly less experience than operators that currently supply O&M services to local-authority-owned ERFs (some of these also operate their own merchant ERFs).⁹²⁶ In particular, we note that these merchant-only operators have significantly smaller networks of ERFs and all except Enviropower also have significantly less experience in operating ERFs than enfinium.⁹²⁷
- (c) Although Enviropower has more operational experience than some of the other merchant-only operators, we note it has not won any of the 26 local authority O&M of ERFs that have been tendered since it started the operation of its own merchant ERF in 2008. This may mean that

⁹²⁴ Indaver submitted that this strategy may change if it acquires other companies. Indaver's response to the CMA's Phase 2 Post-PF questionnaire, 29 June 2022.

⁹²⁵ See sub-section 'Management and technical expertise in operating and managing local authority ERFs' for more detail.

⁹²⁶ See Figure 00.1: Total plant years on all ERFs by operator, 2020

⁹²⁷ Levenseat, Bouyges, Enviropower and Spencer each operate only one merchant ERF whereas enfinium operates four in total (three merchant and one local-authority-owned).

Enviropower does not bid for local-authority tenders or participates but is not successful. In either case, it shows that Enviropower is a weak or very weak competitor for local authority tenders, and will likely only exert a weak or very weak constraint on the Parties for future O&M contracts.

- 10.166 We have also calculated market shares including ERFs based on current and future capacity (ie ERFs that are still not operational). However, we note that it is not certain that all of the future ERF facilities identified in the Tolvik dataset will proceed to completion and actually come into service. Further, the majority of new capacity is provided by merchant-only operators and it is not certain that merchant-only operators will have the incentive or willingness to bid for local-authority O&M contracts. For these reasons, we consider that the market shares based on current and future capacity presented below will likely understate the Parties' and the other current O&M operators' competitive strengths.⁹²⁸
- 10.167 The results show that the Merged Entity would have the largest share in the market, with a combined share of [30-40%], incorporating an increment of [10-20%]. Viridor and FCC are the next largest suppliers, with a share of [20-30%] and [10-20%], respectively. All other suppliers have a share of [5-10%] or less.

Conclusion on market shares

- 10.168 The Parties are the second and third largest suppliers by capacity and the Merged Entity would be the largest supplier by a significant degree, with a combined market share of [40-50%]. These market shares indicate the Parties' significant historical success in past contracts that incorporated a significant O&M of ERFs element. Moreover, to the extent that future O&M contracts will also involve D&C – which we understand to be the case – these historical shares are even more likely to be reflective of the Parties' historical success in similar contracts. We consider that these shares to be a relevant indicator that show that the Parties are likely to be two very important competitors for future contracts involving O&M of ERFs.
- 10.169 Viridor and FCC will be the next largest competitors (with shares of [20-30%] and [10-20%], respectively), indicating that they are strong competitors and will likely pose a constraint on the Parties post-Merger. This is consistent

⁹²⁸ We excluded suppliers that submitted that they would not bid for standalone O&M contracts, ie [X], [X] and [X].

with evidence from third parties. While Cory's share of supply of [5-10%] is not trivial, we note that the Merged Entity would be still be five times its size and Cory has been a weak competitor for local authority contracts since it first entered in 2002. The other O&M operators each have market shares below 5% and are considerably smaller than the Parties. As set out above, we consider that Cory, Paprec, Indaver and other merchant operators will all pose a limited constraint on the Parties.

10.170 Even if we consider a lower bound estimate of the Parties' market shares, the evidence shows that the Merged Entity would be a very significant supplier in the market, with only Viridor and FCC also having shares above 10%.

10.171 The market share analysis set out above may further understate the competitive strength of the Parties in two ways. First, it does not take into account plant specific incumbency advantages – specifically for the assets that will revert to local authority ownership – from which the Parties may benefit when competing for those contracts they currently operate, which may make them stronger and closer competitors to each other in a subset of contracts. The Merger therefore removes one of the limited number of competitors that would otherwise be well positioned to compete for O&M contracts, given the potential advantages enjoyed by incumbent operators. Second, it does not take into account the extent to which the Parties have operated their plants on average for longer than their rivals, yielding more total institutional experience and depth of technical/operational knowledge, which may also make them closer competitors than their market shares suggest. We take these factors into account in the section setting out our assessment of the theory of harm.⁹²⁹

Internal documents

10.172 The Parties' documents indicate that both Parties intend to bid for O&M of ERFs contracts and consider themselves to be market leaders in the O&M of ERFs. In particular:

- (a) A Veolia Internal Document sets out that it [REDACTED].⁹³⁰ Similarly, another Veolia Internal Document [REDACTED].⁹³¹

⁹²⁹ See 'Assessment' section for our overall assessment.

⁹³⁰ Veolia's internal document, VES-000000938.

⁹³¹ Veolia's internal document, SON_CMA-0001593-0001.

(b) A Suez Internal Document identifies Suez as the number three player in ERFs [REDACTED].⁹³²

(c) In a strategy document looking ahead to 2030, Suez [REDACTED].⁹³³ [REDACTED].

10.173 The ongoing tender for the Tees Valley Energy Recovery Facility includes both its design and construction and subsequent O&M (for 25 years).⁹³⁴ We acknowledge that it therefore is not fully representative of a bid for a standalone local authority O&M contract, but we believe it provides relevant insight into the market. In particular, [REDACTED] and Suez's assessment of its and rivals' strengths in its Internal Documents seems to [REDACTED]. In one such document, [REDACTED]. This document also notes Suez's win strategy is supported by its proven track record.⁹³⁵ While Veolia [REDACTED].⁹³⁶

Assessment

10.174 Based on the evidence set out above, we have assessed how closely the Parties compete with one another and whether the removal of the constraint that they place on each other would lead to an SLC in the O&M of ERFs. We have also assessed the current competitive constraints placed on the Parties by other operators that may bid for future O&M of ERFs contracts. We have also taken into account the evidence on the Parties' plans, and the plans of other suppliers, to bid for future O&M of ERFs contracts and the impact of complexity on competitive conditions, allowing for the fact that O&M of ERFs can be complex in and of itself but that competitive conditions can also be affected where it is bundled with other waste management services.

10.175 The Parties are the second and third largest suppliers by capacity, with a combined market share of [40-50%], incorporating a significant increment of [10-20%], and the Merger would create the largest supplier in the market. The Parties' market shares are significant in a highly concentrated market, in which the top four suppliers account for 80% of supply. Viridor ([20-30%]) and FCC ([10-20%]) are the only two other suppliers with a market share of over 10%.

10.176 While the Parties' combined share is in itself concerning, the Parties' strengths are likely to be greater than indicated by the market share

⁹³² Suez's internal document, VES-000011853.

⁹³³ Suez's internal document, Document 006, page 29.

⁹³⁴ Note of call with Tees Valley Energy Recovery Facility, 9 August 2021.

⁹³⁵ Suez's internal document, CMA-SUEZ-00005611

⁹³⁶ Note of call with [REDACTED].

analysis. In particular, we found that there is a material degree of plant-level incumbency advantage such that the incumbent operator will be more likely to win future O&M contracts, and for a significant proportion of contracts (ie the approximately 60% of ERFs that will revert to local authority ownership), Veolia or Suez will be the incumbent. Therefore, they will be a stronger constraint on all other suppliers bidding for those contracts, including the other Party.

- 10.177 Local authorities have told us which factors they consider to be the most important in selecting an O&M supplier for their ERFs. Having the right level of management and technical expertise, price, and reliability including contingency arrangements were the three most important selection criteria. Although we were unable to assess price, given the lack of recent tenders, we have found that the Parties are strongly positioned in regard to management and technical expertise and access to contingency.
- 10.178 The Parties' competitive strengths with respect to management and technical expertise are demonstrated by each of the Parties' track records of operating and managing a large network of ERFs. Taken overall, Veolia has the most experience (in plant years) and Suez has the third most. The Parties' combined management experience is significantly greater than that of the next closest supplier. By the number of ERFs under management, the Parties are first and third.
- 10.179 With respect to contingency capacity, Veolia and Suez each have an extensive network of ERFs and the Parties' combined network will be the largest in the UK. On this basis, we consider that the Parties' access to infrastructure may confer further competitive advantages over most other O&M operators in the bidding process, as they will have superior access to contingency capacity through its extensive network.
- 10.180 We have also considered the other selection factors listed by local authorities although we have placed more weight on the factors they indicated were more important. The others were financial resources, access to other waste management service infrastructure, the ability to innovate and experience of contracting for other services.
- 10.181 We have found that the Parties have significant competitive strength in respect of each of these criteria and that few other competitors would match the Parties' strengths across all the selection criteria identified as important by local authorities.
- 10.182 We have found that across the selection criteria Viridor and FCC have characteristics that also make them strong competitors. Viridor and FCC are

also close competitors of the Parties. These two companies have significant experience of supplying O&M of ERFs in the UK albeit to a lesser extent than Veolia and Suez and are likely to be significant competitors in future O&M contracts. Viridor is the largest supplier by capacity and FCC is the fourth largest. Each operates an extensive network of ERFs which they may need to cite to demonstrate the availability of contingency arrangements when they bid for O&M contracts. However, Viridor and FCC are incumbents in fewer of the ERFs that will revert to local authorities and will likely face a stronger constraint from the Parties than vice versa.

- 10.183 The evidence shows that Viridor and FCC are likely to be strong competitors for future O&M of ERFs contracts and therefore will pose a strong constraint on the Parties. However, on their own or together, we do not consider they would sufficiently constrain the Parties to prevent an SLC from arising.
- 10.184 Other operators such as Paprec, Cory and MVV have experience in the O&M of ERFs and may potentially bid for standalone O&M of ERF contracts. However, with respect to the key indicators of competition, the evidence suggests that each of these operators is weaker and for some indicators significantly weaker than the Parties, Viridor and FCC. The combined tail of the other O&M operators' shares by capacity, by number of ERFs under management and by management experience is significantly less than the Parties' combined totals.
- 10.185 Biffa, Serco and Urbaser have characteristics that meet some of the criteria local authorities consider important, but not other key criteria. However, Biffa told us that it does not intend to bid for O&M of ERFs contracts for local authorities, therefore we do not consider that Biffa will be a constraint on the Merged Entity. Serco is currently not active in the UK and has no track record or experience in the O&M of ERFs. We therefore consider that Serco will not be a constraint on the Parties. Urbaser has only a very limited ERF footprint in the UK operating one small merchant ERF and is therefore unlikely to pose a significant constraint on the Merged Entity.
- 10.186 When we asked local authorities and competitors who they viewed as being credible suppliers, there was consensus between both groups of third parties that the strongest suppliers would be Veolia, Suez, Viridor and FCC. Other operators were less credible bidders for future O&M contracts.
- 10.187 In its internal documents Veolia identifies itself as the strongest player in the market, and in its internal documents Suez recognises itself as the third. Third party ratings identified Veolia and Suez as the first and second strongest suppliers in the market, receiving the most mentions and the highest average scores by a material margin.

10.188 We have found that the evidence taken together strongly demonstrates that the Parties are close competitors to each other. Absent the Merger, the Parties would have placed a strong constraint on each other in the supply of O&M of ERFs.

10.189 For the reasons set out in the market definition, we consider that merchant ERF operators that do not provide O&M services to local authorities will likely exert no or a weak constraint on the Parties. Amey, enfinium, Covanta and Biffa (which is building its own merchant capacity) all told us that they do not intend to bid for local authority O&M of ERFs contracts.⁹³⁷

10.190 We have found that the competitive conditions in this area can be affected by complexity in two ways:

(a) O&M requirements are intrinsically complex (either because the contracts are large in size and/or because they involve the operation of infrastructure); and/or

(b) O&M services may be bundled with other service requirements.

10.191 Paragraph 7.80) reported a local authority's ([REDACTED]) view that 'There are currently specialists for delivery of an O&M contract for operation of an EfW/ERF, but the market narrows significantly for operation of further waste treatment facilities whereby operations and management of waste flows can be quite complex as the national strategy pushes local authorities towards waste minimisation and maximising recycling at higher cost.'⁹³⁸ Of the 13 complex contracts analysed in Table 7.4, one was for the disposal of waste by incineration as a standalone service and two other contracts included the management of ERFs as a part of a broader integrated contract.

10.192 As set out in Chapter 7, where contracts for specific waste management services involve complex requirements (whether for some customers or all customers), we take into account a greater likelihood of closer competition between the Parties and weaker constraints from third parties.

10.193 Having considered all of the evidence available to us, we have found that:

(a) Veolia and Suez manage the largest network of ERFs in the UK;

⁹³⁷ Biffa's ERF, being built in partnership with Covanta, is expected to be operational in 2024.

⁹³⁸ Response to the CMA's phase 2 questionnaire from [REDACTED].

- (b) Veolia and Suez are in a strong position to bid for and win future O&M services for ERFs contracts based on the criteria that local authorities set out and based on the views of local authorities and competitors;
- (c) The Parties would face only limited competition after the Merger, with only Viridor and FCC likely to be strong competitors to the Parties; and
- (d) O&M of ERFs are complex services and therefore Veolia and Suez are likely to compete particularly closely (and face more limited competition from suppliers without the same willingness and ability to service complex contracts), in particular where the O&M of ERFs are included with other services for local authorities.

10.194 Based on our assessment, we have found that the Merger will result in the removal of a direct and significant constraint on each of the Parties and may be expected to result in an SLC. We consider that overall, the remaining constraints post-Merger will not be sufficient to prevent an SLC.

10.195 We consider that the Merger could lead to adverse effects in the supply of O&M of ERFs through higher prices, worse terms and/or worse service levels relative to the situation absent the Merger.

Entry and expansion

10.196 We have considered whether entry or expansion, as a direct response to the Merger, would prevent the SLC.⁹³⁹ The entry or expansion must be: (a) timely; (b) likely; and (c) sufficient to prevent an SLC.⁹⁴⁰ These conditions are cumulative and must be satisfied simultaneously.⁹⁴¹

10.197 We have not identified any planned entry. Amey, enfinium, Covanta and Biffa all told us that they do not intend to bid for local authority O&M of ERFs contracts which has been taken into account in our competitive assessment (paragraph 10.189).

10.198 We have found that technology suppliers are not credible suppliers for the O&M of ERFs (paragraph 10.43) nor is self-supply a viable alternative to the provision of O&M services by specialised third party operators (paragraph 10.21).

⁹³⁹ CMA129, paragraph 8.28

⁹⁴⁰ CMA129, paragraph 8.31

⁹⁴¹ CMA129, paragraph 8.32

10.199 Even if all remaining merchant operators with current or planned ERFs intended to bid for local authority O&M of ERF contracts, we consider that, individually or in aggregate, they would pose a limited constraint on the Parties (paragraph 10.156). In particular, if we treated all remaining merchant operators, including those with facilities that have not yet come online, as ‘new entrants’, the Parties would have a combined share of [30-40%]. The 11 merchant-only operators will each have shares under [0-5%] and have a combined share of [10-15%]. Given the high value local authorities place on management and technical expertise in operating and managing local authority ERFs, we consider that it is unlikely that any merchant operator, or operators in aggregate, will be able to enter or expand in a timely manner and at a sufficient scale to offset what is being lost by the Merger.

10.200 The available evidence indicates that entry and/or expansion would not be timely, likely and sufficient to prevent an SLC.

Conclusion on the supply of O&M of ERFs

10.201 We have found that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the O&M of ERFs in the UK.

Supply of waste disposal services by incineration

10.202 In this section, we consider the effect of the Merger on the supply of waste disposal services by incineration (or ‘disposal by incineration’). As set out in the introduction to this chapter, this relates to the competition between ERF operators that have access to merchant capacity (either CMC from the local-authority-owned ERFs or merchant ERFs). The main customers for this service are waste management companies (paragraph 10.6). There are currently 56 ERFs in the UK of which 10 are merchant ERFs (paragraph 10.3)

10.203 This section is structured as follows:

- (a) Market definition;
- (b) Local area assessment;
- (c) Provisional conclusion.

Market definition

Product market

10.204 The Parties overlap in the supply of waste disposal by incineration, which we take as our starting point for determining the relevant product market. Neither the Parties nor any third party has suggested that the relevant market is narrower than this.

10.205 However, Veolia has submitted that other disposal methods, such as landfill and RDF export,⁹⁴² belong in the same relevant market.⁹⁴³ On this basis, we have assessed whether landfill and RDF export are demand-side substitutes to disposal by incineration in the ordinary course of business rather than as a contingency (which we have considered separately in this chapter) using the market definition framework of the response of customers to a small but significant price increase of the products of the merger firms.⁹⁴⁴

Landfill

10.206 Landfill involves the disposal of non-hazardous waste in structures specifically designed for its containment, built in or on the ground, and in which the waste is isolated from the surrounding environment (eg groundwater, air, and rain). Landfill is at the bottom of the waste hierarchy, and its use is declining, but it is still commonly used for contingency waste disposal and for disposal of waste that is not suitable for other methods of treatment.⁹⁴⁵

10.207 By way of background on the broader regulatory environment, we note that in January 2021, the Department for Environment, Food and Rural Affairs published its 'Waste Management Plan for England', which sets out the measures to be taken so that, by 2035, the amount of municipal waste sent to landfill is reduced to 10% or less of the total amount of municipal waste generated (by weight).⁹⁴⁶ Veolia also said that the UK Government's strategy is ultimately to reduce the use of landfill to zero.⁹⁴⁷ Suez submitted that, as a

⁹⁴² RDF is shredded residual waste that may be exported to be incinerated abroad (see FMN, NHW Chapter, paragraphs 12.30 and 12.102).

⁹⁴³ Veolia response to CMA Working Paper on supply of non-hazardous waste incineration services, 22 April 2022

⁹⁴⁴ [CMA 129](#), paragraph 9.7

⁹⁴⁵ [Overview Submission by Veolia](#), paragraph 26.

⁹⁴⁶ [DEFRA, Waste Management Plan for England](#), January 2021, page 6.

⁹⁴⁷ [DEFRA, Waste Management Plan for England](#), January 2021, page 12 and FMN, NHW Chapter, paragraph 12.19.

result of the Environment Act 2021, it expects to see a reduction in the landfill (and RDF export) volumes.⁹⁴⁸

10.208 In line with government policy to reduce the use of landfill as a waste disposal method, landfill's proportion of total waste generated has fallen from around 80% in 2010 to around 40% in 2019.⁹⁴⁹ We have heard from the Parties and third parties that the industry expects this declining trend will continue. The effect of the Environment Act and overarching public policy to reduce the use of landfill will likely impact the waste disposal strategies of local authorities today, even if the target date is several years away.

10.209 Veolia submitted that landfill exercises a strong constraint on disposal by incineration. It cited an example where [REDACTED].⁹⁵⁰ Veolia, however, noted that the wider UK Government's policy is to reduce the use of landfill.⁹⁵¹

10.210 Suez said that [REDACTED].⁹⁵²

10.211 We received views from customers (local authorities) and competitors.

10.212 We received questionnaire responses from six local authorities on whether landfill was an adequate substitute for incineration services, and the amount of waste it had disposed via landfill.⁹⁵³ Three of these local authorities responded that they had sent almost no waste to landfill, one said the waste sent to landfill accounted for around 22% of waste disposed of and another said that waste sent to landfill accounted for around 17% of total waste disposed of. The other response provided the volume of waste sent to landfill but not provide the total volume of residual waste so we could not calculate the proportion accounted for by landfill for it.⁹⁵⁴ One respondent told us that landfill is not 'an adequate sustainable substitute for our current EfW contract'.⁹⁵⁵

10.213 In addition, we spoke to four further local authorities, none of whom are included in the six questionnaire respondents discussed above in this paragraph. Three of the four local authorities that we spoke to told us that

⁹⁴⁸ Suez's response to the CMA's 22 February 2022 question on the Environment Act 2021, 7 March 2022, paragraph 1.2.

⁹⁴⁹ FMN, NHW Chapter, Figure 5.

⁹⁵⁰ FMN, NHW Chapter, paragraph 15.191.

⁹⁵¹ FMN, NHW Chapter, paragraph 12.19.

⁹⁵² Transcript of hearing with Suez, 13 April 2022, p 21.

⁹⁵³ We sent 13 questionnaires and received six responses from [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

⁹⁵⁴ Responses to our questionnaire from [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. See [REDACTED]. [REDACTED]. It also noted that landfill is not an 'adequate sustainable substitute for our current EfW Contract'.

⁹⁵⁵ Questionnaire response from [REDACTED].

they either do not send waste to landfill or have only used landfill for contingency reasons.⁹⁵⁶ One, [X], told us that landfill was its main disposal route.

10.214 Veolia submitted that the number of local authorities who provided views is too small to draw any conclusions on the competitive constraints that landfill exerts on disposal by incineration, noting that ‘very few third parties’ responded to our questionnaire. Veolia also noted that we had only spoken to local authorities and not to its commercial customers.⁹⁵⁷ Veolia also submitted that the customer evidence for landfill did not appear to be based on responses from customers in the relevant geographic area.⁹⁵⁸

10.215 We have considered Veolia’s submissions on the number of questionnaire responses and that the evidence is from local authorities rather than its commercial customers. Accordingly, we have placed the appropriate weight on the evidence from local authorities. In any event, we also consider that the more important evidence on whether landfill is an adequate demand-side substitute within the market definition framework is the evidence on the significant reduction in the use of landfill, driven by the regulatory environment and overarching ‘landfill to zero’ policy objective.⁹⁵⁹

10.216 With regard to Veolia’s submission that the evidence was not from the geographic markets of concern, we consider that at least some of the benefits and limitations of landfill are driven by factors that are common across all geographic areas of the UK, and therefore this evidence warrants some weight in our assessment. To this extent, evidence from third parties from outside the geographic markets of concern can be helpful in defining the relevant market.

Our assessment on the inclusion of landfill

10.217 We do not consider that Veolia’s submission in relation to [X] is representative of overall substitution patterns from incineration to landfill. In addition to Veolia’s submissions, we have considered other evidence (set out above) in deciding whether disposal by landfill is in the relevant markets.

⁹⁵⁶ Note of calls with [X], [X], [X] and [X].

⁹⁵⁷ Veolia’s response to CMA Working Paper on supply of non-hazardous waste incineration services (22 April 2022), p3; Veolia’s [response to the Provisional Findings](#), paragraph 209

⁹⁵⁸ Veolia’s [response to the Provisional Findings](#), paragraph 210

⁹⁵⁹ Paragraphs 5.15 and 5.16.

10.218 Evidence from third parties indicates that some local authorities would not consider using landfill or would use it only for contingency. While some local authorities still use landfill for a non-trivial proportion of their waste disposal, we consider that the overarching regulatory objective to reduce the use of landfill will result in those customers switching to sustainable alternatives, such as disposal by incineration. We consider that the regulatory changes will likely impact on waste disposal strategies immediately, as local authorities plan to meet the target. Given this, we do not consider that landfill is an adequate demand-side substitute within the market definition boundaries of a small but significant price increase.

10.219 On the basis of the above evidence, we have concluded that landfill is likely to be a weak constraint on disposal by incineration and have therefore not included in the same relevant market.

RDF Export

10.220 RDF is shredded residual waste that is exported to be incinerated abroad (paragraph 5.2).⁹⁶⁰ We have considered whether RDF export is a demand-side substitute to disposal by incineration in the ordinary course of business rather than as a contingency.

10.221 Veolia submitted that [REDACTED] for waste disposal. [REDACTED].⁹⁶¹ Veolia cited two examples – West Sussex County Council and Dorset Council – where RDF export firms won waste disposal contracts.⁹⁶²

10.222 Veolia said RDF export was still used to a significant extent (especially for C&I volumes). Veolia also said that RDF export volumes had fallen partly because of reduced residual waste volumes due to Covid-19, green initiatives, and expansion of merchant incineration capacity within the UK (which allows for greater incineration domestically and reduces the need for export).⁹⁶³ Suez submitted that RDF export volumes was on the decrease, which was in part explained by the introduction of taxes in other European countries.⁹⁶⁴

⁹⁶⁰ FMN, NHW Chapter, paragraphs 12.30 and 12.102.

⁹⁶¹ Veolia's response to CMA Phase 2 RF11 Q52, paragraph 52.2.

⁹⁶² Veolia's response to CMA Working Paper on supply of non-hazardous waste incineration services (22 April 2022), p 4-5.

⁹⁶³ Veolia's supplemental response on local analysis of ERFs and OWCs (22 April 2022), p 4-5.

⁹⁶⁴ Suez's main party hearing, page 57.

- 10.223 Tolvik submitted that, in its view, it would be difficult for RDF export to be competitive in future.⁹⁶⁵ Like Suez, it explained that the decrease in RDF export was partly driven by increases in taxes in Europe.
- 10.224 We asked 13 of the Parties' customers whether they considered RDF export to be an adequate substitute to disposal by incineration and to indicate the volumes of residual waste that was sent for RDF export.⁹⁶⁶ Five responded. All five indicated that RDF export was not used or used a very limited extent.⁹⁶⁷
- 10.225 We asked the Parties' competitors their views on the degree to which their business faced a competitive constraint from RDF export. Biffa said that RDF exports may offer a benefit to an operator through the surety of disposal but that would be subject to comparative price for disposal at third party waste transfer stations or UK ERF facilities. However, Biffa also said that RDF export had been falling in recent years, which it understood to be partly due to Brexit, taxes imposed and the increasing ERF capacity in the UK.⁹⁶⁸
- 10.226 Evidence from third parties, Veolia and Suez indicate that RDF export is declining. Third parties and Suez told us that the decline was, in part, driven by higher environmental taxes abroad and because of the increase in incineration capacity in the UK. On the basis of this evidence, we do not believe that RDF export is likely to be an adequate alternative disposal method for customers, in the ordinary course of business.

Veolia's response to third party views

- 10.227 Veolia submitted that the sample was too small to draw any conclusions on the competitive constraints that RDF export exerts on disposal by incineration, and that we had only spoken to local authorities and not to its merchant customers.⁹⁶⁹ Veolia submitted that there are at least [X] active RDF export ports within the Kemsley ERF area which, in 2019, handled

⁹⁶⁵ Note of call with Tolvik, 16 March 2022, pp 16-17.

⁹⁶⁶ Question wording: Please indicate if you consider landfill and RDF export to be an adequate substitute for incineration services. In doing so, please indicate (i) the volume of residual waste your local authority sent to landfill in 2020; (ii) the volume of residual waste your local authority sent for RDF export in 2020; and (iii) the volume of residual waste your local authority sent to an energy from waste facility in 2020. Explain what factors you consider when choosing between whether to dispose of residual waste at a landfill, via RDF export, and at an energy from waste facility.

⁹⁶⁷ [X]

⁹⁶⁸ Response to the CMA's phase 2 questionnaire from Biffa.

⁹⁶⁹ Veolia's response to CMA Working Paper on supply of non-hazardous waste incineration services (22 April 2022), p 4.

export volumes of more than [REDACTED] times the Parties' combined CMC at Kemsley.⁹⁷⁰ There are three active RDF export ports within the Teesside and Wilton ERFs areas that exported more than double Suez's CMC at Teesside and Wilton combined for each of the past four years.⁹⁷¹

10.228 Veolia also said that the customer evidence did not appear to be based on responses from customers in the relevant geographic area.⁹⁷² Veolia criticised the reliance on evidence from local authorities, as much of the [REDACTED].⁹⁷³ Veolia also submitted that because we had only spoken to the Parties' customers, and [REDACTED], those customers are unlikely to be letting contracts now or in the future and therefore we should have spoken to customers that were currently assessing the market or customers of waste companies that [REDACTED].

10.229 We have considered Veolia's submissions on the number of questionnaire responses and that the evidence is from local authorities rather than its commercial customers. We note that the primary customers for disposal services by incineration are the waste management companies with residual waste in need of disposal (paragraph 10.6). We have spoken to these extensively. We have also considered Veolia's submission which states that [REDACTED].

10.230 As regards whether we should have spoken to customers other than those of the Parties, we consider it appropriate to focus on the Parties' customers as they are the immediate customers whose alternatives are most likely to determine whether the Merger gives rise to an SLC. This is likely to be particularly the case in markets, such as this one, where the key determinants for customer choice are price and distance. We consider customer views on substitutability of RDF export is relevant to defining the relevant market. As set out above in the landfill section, we consider that at least some of the benefits and limitations of RDF export are driven by factors that are common across all geographic areas of the UK, and therefore this evidence warrants some weight in our assessment. We also note that we spoke to the Parties' customers from the North East of England – the region in which we have identified competition concerns – with regard to the constraint from RDF export.

⁹⁷⁰ Veolia response to Working Paper on supply of non-hazardous waste incineration services, 22 April 2022

⁹⁷¹ Veolia response to Working Paper on supply of non-hazardous waste incineration services, 22 April 2022

⁹⁷² Veolia's [response to the Provisional Findings](#), paragraph 210

⁹⁷³ Veolia's [response to the Provisional Findings](#), paragraph 209

Our assessment on the inclusion of RDF export

- 10.231 We have considered all the evidence available to us. We have considered Veolia's individual examples of local authorities switching to RDF export substitution. However, other evidence from local authorities indicates that RDF export is not widely used or used only for small proportions. While RDF export is still used as a means of disposal by some customers (Veolia provided export volumes at specific ports), it is relevant that [X]. Volumes of RDF export are declining as export becomes more commercially unattractive (the evidence indicates that increased taxes in some European countries have been driving this) and greater levels of capacity are made available domestically.
- 10.232 Overall, the evidence indicates that it is unlikely that RDF export is an adequate substitute to disposal by incineration within the market definition framework of a small but significant price increase.

Conclusion on the relevant market

- 10.233 On the basis of the above evidence, we have found that the relevant product market is the supply of waste disposal services by incineration.

Geographic market

- 10.234 In this section, we consider the evidence related to the appropriate geographic market for disposal by incineration.

Parties' view

- 10.235 Veolia submitted that the supply of disposal services by incineration could be analysed on a national, regional and local catchment area basis.⁹⁷⁴ Suez submitted that waste was transported over substantial distances for processing at incineration facilities.⁹⁷⁵ Suez proposed analysing the market for incineration on both a national and regional basis.

Third party views

- 10.236 We sent questionnaires to seven of the Parties' competitors and asked what proportion of the cost of providing incineration services was accounted for by

⁹⁷⁴ FMN, NHW Chapter, paragraph 13.58.

⁹⁷⁵ Suez's response to CMA phase 2 s.109 notice, 21 December 2021, paragraph 1.34.

transport costs; and whether or how transport costs affected the area over which they competed. Five of the six competitors that responded said that transport costs contribute to the cost of incineration and the viability of treatment method in a significant way, and only one said it was not affected by transport costs. Competitors' estimates of transport costs ranged from 5% to 20% of the costs of providing incineration services

- 10.237 We consider the competitor evidence indicates that transport costs are significant, and that distance affects competitiveness because facilities located less far away were preferable to customers because of lower transport costs for those customers, or better gate fees. As such, we consider that the competitor evidence suggests that transport costs are likely to limit the area over which suppliers are able to compete effectively.

Catchment area analysis

- 10.238 When assessing mergers that involve a number of local geographic markets, we may examine the geographic catchment area within which the great majority of the relevant site's custom is located.⁹⁷⁶ Catchment areas are a pragmatic approach to identifying the most significant competitive alternatives available to customers of the merger firms.⁹⁷⁷
- 10.239 To calculate the catchment area in this case, we analysed evidence on the distance over which waste is transported to the Parties' ERFs, by using Parties' data on the customers that use merchant capacity, and their distances from each of the Parties' sites.⁹⁷⁸ We then ordered customers by distance and identified the shortest travel time that would capture 80% of merchant volumes (called a national 80th percentile catchment area).⁹⁷⁹ This analysis showed that 80% of the Parties' customers' waste travelled 106 minutes' drive time.
- 10.240 Veolia submitted that 80% catchment areas were inappropriate because it is a rule of thumb used as a standard for consumer markets, where customers may travel from locations other than their home; and waste travels long distances in this market.

⁹⁷⁶ CMA129, paragraph 9.15.

⁹⁷⁷ CMA129, paragraph 9.15.

⁹⁷⁸ The analysis excludes capacity that is tied up in long-run contracts with local authorities, because we consider the competition for this capacity in the previous section of this chapter.

⁹⁷⁹ In this case, we calculated a national catchment area using drive-time and volume of waste travelled. This was preferred to alternative measures, such as individual catchment areas for each ERF; or driving distance or straight line distance as the measure of distance; or number of customers.

10.241 We disagree with the Parties' arguments and consider 80% catchment areas to be a relevant way to capture the most significant competitive constraints that are likely to constrain the merger firms. Our approach to using 80% catchments in a commercial context is not unusual.⁹⁸⁰ As set out above, the focus of market definition is to identify the 'main significant competitive alternatives'. With respect to Suez's argument that customers transport waste long distances, we note that this is already captured by the catchment area analysis itself.

10.242 Our analysis of the distances over which waste is transported showed that the large majority of waste does not travel all over the UK, and only a minority of waste is transported beyond 106 minutes' drive time. Evidence from the Parties' competitors also indicates that transport costs are significant, and distance affects the competitiveness of ERFs. Those facilities that are less far away were preferable to customers, as using closer facilities reduces transport costs for those customers.

Conclusion on geographic market

10.243 On the basis of the above evidence, we have found that ERFs located in different parts of the UK are unlikely to exert the same constraint. Consequently, we consider that a national geographic market would not be appropriate and, moreover, ERFs located outside a customer's local area would be unlikely to exert a significant competitive constraint on ERFs within the customers' local area. We have therefore concluded that the relevant geographic market is local. To incorporate local areas in our analysis, we have estimated that the catchment size for disposal by incineration is a 106-minute drive time and consider local areas with a radius of this distance to be an appropriate area over which to conduct a competitive assessment.

Conclusion on the relevant market

10.244 We consider that the relevant market is the supply of waste disposal services by incineration at a local level.

Competitive assessment

10.245 In order to identify overlaps between the Parties' ERFs, we identified the 106-minute drive time area around each of the Parties' nine ERFs using

⁹⁸⁰ See [Ausurus Group Ltd and Metal & Waste Recycling](#), Final Report (14 August 2018), paragraph 6.64 and [Breedon Group/Cemex Investments Limited](#), Final Report (26 August 2020), paragraph 160.

isochrones.⁹⁸¹ We identified 11 overlaps between the Parties' facilities inside the relevant drive time areas.

10.246 Evidence from third parties indicates that price and distance are the key parameters of competition in this market (as discussed in paragraph 10.53) and did not point to any other significant aspects differentiating the offering of different ERFs or suppliers. In a relatively undifferentiated market such as this, the Merged Entity may have a greater incentive to restrict volumes to the extent it has a large share of supply, as the benefits of a higher price would apply to a greater volume than would be the case for a smaller firm.⁹⁸² Where the market is concentrated among fewer rivals, price increases may be more likely.⁹⁸³ Price increases might occur once contracts are tendered / negotiated or immediately in the case of spot market prices. We have found that customers with residual waste in need of disposal almost always have a disposal contract with the ERF operator and the Parties submitted that around only 5% of incineration services is procured on the spot market.⁹⁸⁴

10.247 In this case, we assess the effect of the Merger on competition by calculating the Parties' combined market shares in each of the overlap areas. The higher the Parties' combined share, the greater the Parties' incentive to restrict volumes and increase price levels is likely to be.

10.248 In the remainder of this section, we explain our choice of concentration measure before setting out the results and conclusions.

Concentration measure

10.249 In our assessment, we considered multiple potential concentration measures: fascia count,⁹⁸⁵ site count⁹⁸⁶ and shares by capacity, unweighted and weighted by distance. We considered shares by capacity to be a superior measure to fascia and site count as it assumes that suppliers in the

⁹⁸¹ An isochrone is a line that connects points that are an equal travel time away from a focal point (in our case, the Parties' ERFs).

⁹⁸² [CMA129](#) paragraph 4.38(b).

⁹⁸³ [CMA129](#), paragraph 4.38(a).

⁹⁸⁴ FMN, paragraph 12.33

⁹⁸⁵ This counts the number of suppliers in each area. Fascia counts may under or overstate the extent of competition in an area, as they treat each brand as being equally important and therefore do not reflect the differences between them. See [Sainsbury's/Asda](#), footnote 119.

⁹⁸⁶ This counts the number of ERFs in each location. As an indicator for diversion, this concentration measure assumes all facilities in an area exert equal competitive constraint and would attract the same volume diversion if prices of the centroid facility were to increase.

area exert a competitive constraint proportional to their merchant capacity (rather than an equal competitive constraint).

10.250 We then considered whether to use unweighted or linear distance-weighted shares by capacity. Unweighted shares would give the same weight to all capacity within the catchment area (ie capacity inside the catchment area would receive the same weight as capacity right next to the centroid facility), whereas linear distance-weighted shares would adjust the weights based on the distance between the ERF facility and the centroid facility.⁹⁸⁷ Given that distance affects the competitiveness of an ERF, we considered that it would be more appropriate to use the linear distance-weighted shares by capacity as the measure of concentration for our assessment.

10.251 [X] submitted that linear distance-weighted shares produces unreliable and inappropriate results because in markets like this where there are relatively few customers, and where many are located long distances from the centroid, the weighted shares based on the centroid do not represent choices available to those customers.⁹⁸⁸ Further, [X] submitted that the only reasoning for the importance of distance comes from third parties.

10.252 We have set out the evidence on why distance affects the competitiveness of an ERF.⁹⁸⁹ In our view, it is therefore appropriate to use linear distance-weighted shares as the concentration measure, as it reflects our considerations on the relative importance of distance in this market and is the best methodology available to us. Using unweighted shares by capacity would ignore distance – which is a key parameter of competition – and would therefore be less suitable.

Results of our local area assessment

10.253 In this section, we set out the results of our local area assessment for the 11 overlaps. We used supplier merchant capacity data for Parties and third parties to estimate linear distance-weighted shares of supply within each catchment area.

⁹⁸⁷ The linear weighting is achieved by adjusting the capacity of a facility by its proportional distance in the 80% travel time catchment area from the centroid facility: ie a competitor facility located half way (in terms of travel time) between the centroid facility and the 80% travel time catchment boundary would have its capacity reduced by 50%.

⁹⁸⁸ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 5.12–5.14.

⁹⁸⁹ Paragraphs 10.235 to 10.237

Weighted shares of supply results

10.254 Table 10.6 below shows the linear distance-weighted shares of supply for all 11 overlap areas.⁹⁹⁰

Table 10.6: Parties' local area shares of supply of capacity for incineration services, overlaps areas, 2020

<i>Entity</i>	<i>Veolia or Suez facility</i>	<i>Combined weighted share of supply</i>	<i>Increment</i>
SELCHP	Veolia	[10-20%]	[0-5%]
Ferrybridge FM1	Veolia fuel supply agreement	[20-30%]	[0-5%]
Ferrybridge FM2	Suez fuel supply agreement	[20-30%]	[0-5%]
Ferrybridge FM2	Veolia fuel supply agreement	[20-30%]	[0-5%]
Leeds	Veolia	[20-30%]	[0-5%]
Kemsley	Suez fuel supply agreement	[20-30%]	[5-10%]
Kemsley	Veolia fuel supply agreement	[20-30%]	[5-10%]
Sheffield	Veolia	[30-40%]	[0-5%]
Avonmouth EfW	Suez fuel supply agreement	[40-50%]	[0-5%]
Teesside	Suez	[40-50%]	[10-20%]
Wilton 11	Suez	[50-60%]	[10-20%]

Source: CMA analysis of Parties customer and supplier data.

10.255 Table 10.6 shows that there are nine local areas that either have a low combined weighted share of supply (below 30%) or a low increment (below 5%) or both. On this basis, we do not believe that the Merger will likely give rise to an SLC in these local markets.⁹⁹¹

⁹⁹⁰ Amey is not pursuing growth in the sector and [§] so we have reallocated Amey's shares to the existing suppliers (the Parties and third parties) in proportion to their pre-Merger linear distance-weighted shares of supply. The Merged Entity at Wilton 11 and Teesside has combined shares of supply of more than 40%. See Note of call with Amey, 14 February 2022, p5.

⁹⁹¹ While the CMA can be concerned with mergers involving small increments, this is typically where the combined market share is very high (ie the acquirer already is a very large or leading player), and/or the overall concentration is very high. In Avonmouth, where the increment is very small, and the combined weighted share is considerable (at [40-50%]), there are a number of other competitors in the area and so we would not consider this to be an area that would typically give us concern.

10.256 In the other two local areas – Teesside and Wilton 11 – the combined weighted share of supply exceeds 40%, and the increment is more than 10%. Table 10.7 shows weighted shares for Wilton 11 and Teesside for the Parties and competitors.

Table 10.7: Weighted shares of supply, by capacity for Wilton 11 and Teesside ERFs, 2020

<i>Entity</i>	<i>Suez's Wilton 11</i>	<i>Suez's Teesside</i>
Veolia	[10-20%]	[10-20%]
Suez	[30-40%]	[20-30%]
Veolia and Suez combined	[50-60%]	[40-50%]
Increment	[10-20%]	[10-20%]
enfinium	[40-50%]	[50-60%]

Source: Analysis of Parties customer and supplier data.

10.257 The linear distance-weighted shares of supply show that the Merged Entity would be largest supplier at Wilton 11 and the second largest supplier at Teesside. Post-merger, enfinium would be the only major competitor in each of these local areas.

Veolia's views on Wilton 11 and Teesside local areas

10.258 Veolia submitted that the weighted shares do not reflect any meaningful overlap between the Parties in the Wilton 11 and Teesside local areas due to several local area specific reasons:⁹⁹²

- (a) Amey's Allerton Park ERF is the closest facility to the Teesside and Wilton 11 ERFs. The estimated CMC at this Amey facility [REDACTED]. Veolia submitted that the [REDACTED].⁹⁹³ Veolia, however, did not explain how it would treat Amey's contract nor did it suggest that our methodological approach was wrong.
- (b) Spencer energy works is located just outside the 106 minute catchment area (118 minutes from Teesside ERF, and 122 minutes from Wilton

⁹⁹² Veolia's supplemental response on local analysis of ERFs and OWCs (22 April 2022), paragraph 23.

⁹⁹³ Veolia's response to Confidential Provisional Findings, paragraph 33.

11 ERF). This facility came online in 2021 with an estimated merchant capacity of 182,000 tonnes.

(c) [REDACTED]

(d) enfinium is a major competitor to both Teesside and Wilton 11, as it has a greater share than the Parties' combined share of supply for Teesside and the enfinium's share of supply for Wilton 11 was equivalent to the Parties' combined shares.⁹⁹⁴

(e) There are three active RDF export ports within the catchment areas of Teesside and Wilton ERFs. [REDACTED]. The Provisional Findings did not say whether we had asked customers in the local area about their appetite for RDF export.⁹⁹⁵

(f) [REDACTED]

10.259 Veolia also noted that incineration capacity is increasing which means it was conservative to make an assessment based on 2020 shares of supply. Veolia provided Tolvik data on 18 ERFs that have recently opened or are expected to open in the near future.⁹⁹⁶

10.260 More generally, Veolia submitted that the number and size of competitors within and just outside the catchment areas suggest that the Merger will not lead to an SLC in the North East.⁹⁹⁷ In Veolia's view, the entire theory of harm relates to an activity that is 'ancillary to the Parties' businesses' and that it is 'simply not an important competitor in the North East (and the small amount of relevant capacity it controls is located outside that region)'.⁹⁹⁸ Accordingly, Veolia submitted that there is 'no prospect that the Merger will give rise to harmful effects'.⁹⁹⁹

Our assessment of Veolia's representations

10.261 With regard to Veolia's argument about its lack of competitive strength in the North East region (paragraph 10.71), we note that our concerns were specifically in relation to the Wilton 11 and Teesside local areas, and not the

⁹⁹⁴ Veolia's [response to the Provisional Findings](#), paragraph 207

⁹⁹⁵ Veolia's [response to the Provisional Findings](#), paragraph 205

⁹⁹⁶ Veolia's supplemental response on local analysis of ERFs and OWCs (22 April 2022), paragraph 19 and Table 3.

⁹⁹⁷ Veolia's [response to the Provisional Findings](#), paragraph 205

⁹⁹⁸ Veolia's [response to the Provisional Findings](#), paragraph 211

⁹⁹⁹ Veolia's [response to the Provisional Findings](#), paragraph 211

'North East' region as referred to by Veolia. In the Wilton 11 and Teesside areas, the evidence shows that the Merged Entity would have a level of access to merchant capacity that gives rise to an SLC. Similarly, the general argument that number and size of competitors within and outside the catchment areas would prevent an SLC from arising is not borne out by the assessment in each of those regions. Our weighted shares of supply analysis already accounts for the constraints from competitors within the catchment area and considers that the 'out-of-market' constraints from competitors with ERFs outside of the geographic market would not prevent an SLC.

10.262 Paragraphs 10.263 to 10.267 sets out our response to Veolia's other representations on our provisional assessment. As explained in more detail in paragraph 10.266, we have incorporated new evidence gathered in the light of Veolia's representations, specifically in relation to the capacity held by other competitors at the Ferrybridge ERFs and the future constraint from the Skelton Grange that will become operational in the near future.

10.263 We do not consider that Veolia's submissions set out in paragraph 10.258 require us to change our assessment or conclusions on the Wilton 11 or Teesside local areas. We provide our detailed responses below:

- (a) Amey is not pursuing growth in the sector and [REDACTED] and will therefore not be a constraint on the Parties. By excluding Amey, the weighted shares of supply reflect forward-looking concentration. As explained in footnote 990, we have reallocated Amey's shares to the current suppliers (the Parties and its rivals) in proportion to their pre-Merger market shares and therefore the reallocation is based on each suppliers' existing competitive strengths. An alternative approach would be to allocate all of Amey's contracts to suppliers on a random basis (either to the Parties, or the Parties' existing rivals or new entrants). We consider that our methodological approach remains reasonable and more appropriate than the random allocation.
- (b) With respect to the entry of new capacity by Spencer Energy Works ACT, we note that the drive time is 118 minutes from the Teesside ERF, and 122 minutes from the Wilton 11 ERF, and is outside our local catchment size of 106 drive minutes. Accordingly, no weight is given to the Energy Works ACT when calculating the weighted shares of supply.
- (c) As explained in market definition, we do not consider RDF export to be a significant demand-side substitute to disposal by incineration, so we do not consider that it is relevant to our assessment that there are RDF export ports in these local markets (see paragraph 10.231). As part of

this assessment, we spoke to the Parties' customers in the region in order to arrive at our conclusion. In any case, [REDACTED]; we therefore do not consider that RDF export is likely to be a strong out-of-market constraint in the Wilton 11 and Teesside local areas and is unlikely to prevent an SLC from arising.

- (d) With regards to Veolia's submission in paragraph 10.258, we note that the [REDACTED].

10.264 In response to Veolia's argument with regard to entry, we note that only one of these planned ERFs will be located within the Wilton 11 or Teesside catchment area. Enfinium – the owner of this facility – submitted that Skelton Grange has consented capacity of 410,000 tonnes of residual waste per annum; and that Suez has an FSA for 160,000 tonnes.¹⁰⁰⁰ Two competitors – Biffa and Beauparc – have FSAs in place for 205,000. The remaining capacity has not yet been allocated to a third party. We have incorporated the evidence in relation to the Skelton Grange facility in our assessment.

10.265 We are not aware of the timely entry of any other facility in either the Wilton 11 or Teesside catchment areas. Given how long it takes for entry to occur – the Skelton Grange facility will have taken around five years from the planning approval and design stage to becoming operational – we have not considered entry and expansion any further.¹⁰⁰¹

10.266 With regards to Veolia's submission that [REDACTED]. We gathered further evidence from enfinium – the owner of the Ferrybridge ERFs – on whether other waste management companies also have access to CMC at the Ferrybridge ERFs. enfinium submitted:

- (a) At Ferrybridge 1, in addition to Veolia, Renewi, Biffa and FCC have FSAs at the ERFs for 200,000, 120,000 and 50,000 tonnes respectively. In total, enfinium has FSAs for 548,467 tonnes.
- (b) At Ferrybridge 2, in addition to the Parties' FSAs, seven other waste management companies also have FSAs at the ERF. In total, enfinium has FSAs for 600,000 tonnes.

10.267 Incorporating the evidence on Skelton Grange and the two Ferrybridge ERFs, we have calculated that the Parties' combined weighted shares of supply at Wilton 11 to be [REDACTED] (with an increment of [REDACTED]); and [REDACTED] (with an

¹⁰⁰⁰ enfinium response, 31 May 2022.

¹⁰⁰¹ enfinium Website: [Skelton Grange – enfinium waste to energy](#), accessed by the CMA on 22 August 2022

increment of [X]) at Teesside. While the adjustment lowers the combined weighted shares of supply in both areas, we consider that the Parties' combined shares will likely give rise to an SLC in these local markets.

Assessment

10.268 Based on our assessment, we have found that the Merger will result in a combined weighted share of supply exceeding 40%, with an increment of more than 10%, in the Wilton 11 and Teesside local markets. The Merger will therefore result in the removal of a direct and significant constraint on each of the Parties in the Wilton 11 and Teesside local markets and may be expected to result in an SLC in these areas. We consider that overall, having in particular considered Veolia's submissions regarding various local area specific matters, that the remaining constraints post-Merger will not be sufficient to prevent an SLC arising in these local markets.

10.269 We consider that the Merger could lead to adverse effects in the supply of waste disposal services by incineration in the Wilton 11 and Teesside local markets through higher prices and/or worse service levels relative to the situation absent the Merger.

Conclusion

10.270 We have found that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of waste disposal services by incineration in the Wilton 11 and Teesside local markets.

11. SUPPLY OF COMPOSTING SERVICES

Introduction

- 11.15 The Parties overlap in the supply of composting services.
- 11.16 Composting is the process by which a part of the organic matter of waste is decomposed by the activity of microorganisms in the presence of oxygen. The resulting product of this process is compost which, depending on its quality, can be used for soil improvement. There are two broad categories of composting facilities in the UK:¹⁰⁰²
- (a) **Composting of organic waste at in-vessel composting facilities** process mixed organic waste, including food and garden waste, in an enclosed container or vessel.
 - (b) **Open-windrow composting facilities** process unmixed garden waste only.
- 11.17 There are currently around 50 IVC facilities and 250 OWC facilities in the UK.¹⁰⁰³
- 11.18 Disposal of waste through composting takes place at two types of facility, each with a different approach to allocation of capacity. These are:
- (a) PPP-backed composting facilities, commissioned by a local authority, with a proportion of capacity dedicated to the local authority that commissioned the infrastructure, with the remaining capacity sold to the merchant market.¹⁰⁰⁴
 - (b) Merchant composting facilities which are typically operated by regional suppliers and whose capacity is sold entirely on the merchant market.¹⁰⁰⁵
- 11.19 Customers of composting facilities are either local authorities, C&I customers or waste management companies.¹⁰⁰⁶ Different types of customer have different approaches to purchasing access to composting capacity. Local authorities procure disposal services through composting using a tendering

¹⁰⁰² FMN, NHW Chapter, paragraph 12.50.

¹⁰⁰³ FMN, NHW Chapter, paragraph 12.50.

¹⁰⁰⁴ FMN, NHW Chapter, paragraph 12.51.

¹⁰⁰⁵ FMN, NHW Chapter, paragraph 12.51.

¹⁰⁰⁶ FMN, NHW Chapter, paragraph 12.52.

process, which may be for standalone composting services or in combination with other services.¹⁰⁰⁷ C&I customers typically acquire disposal services through composting on the merchant market on an ad hoc, spot basis or by way of competitive tender.¹⁰⁰⁸ Waste management companies may also purchase composting capacity via agreements with third party composting facilities.¹⁰⁰⁹

- 11.20 Suppliers transport waste from customer sites to composting facilities using specialised vehicles.¹⁰¹⁰ Suppliers may transport this waste to a transfer station for temporary storage before transporting to the relevant composting facility.¹⁰¹¹ The price the customer pays for a contract may reflect the supplier's transport costs (among other factors such as staff costs).^{1012,1013}
- 11.21 We have investigated whether the Merger is likely to give rise to horizontal unilateral effects in the supply of this service.
- 11.22 In the following sections we discuss the market definition before carrying out an assessment of competitive effects based on the Parties' local market shares.

Market definition

- 11.23 The CMA has not previously considered the frame of reference for composting services. The European Commission has previously identified the composting of fermentable waste (garden waste and bio-waste) as a separate segment in the broader material recovery market.¹⁰¹⁴
- 11.24 The Parties overlap in the supply of disposal services through composting using both OWC and IVC facilities.¹⁰¹⁵

¹⁰⁰⁷ FMN, NHW Chapter, paragraph 12.52.

¹⁰⁰⁸ FMN, NHW Chapter, paragraph 12.53.

¹⁰⁰⁹ Suez's supplementary response on composting off-takes, 25 March 2022, paragraph 1.1.

¹⁰¹⁰ FMN, NHW Chapter, paragraph 12.54.

¹⁰¹¹ FMN, NHW Chapter, paragraph 12.54.

¹⁰¹² FMN, NHW Chapter, paragraph 15.311.

¹⁰¹³ I.e. the cost of service depends on both the gate fee and cost of getting the waste to the composting facility.

¹⁰¹⁴ EC decision (3 August 2010), [COMP/M.5901 Montagu/GIP/Greenstar](#), paragraph 20.

¹⁰¹⁵ At the end of its phase 1 investigation into the Merger, the CMA did not receive evidence of significant competition between OWC and IVC facilities and therefore it considered these facilities separately. With regard to IVC, the CMA found at Phase 1 that both Parties operate such facilities but it found no local areas of concern (no local catchment areas where the Merged Entity's combined weighted share of supply would exceed 25% with a significant increment). As such, the Phase 1 assessment focused only on the supply of organic waste composting services at OWC facilities. Source: [Phase 1 Decision](#), paragraph 473 and footnote 574.

- 11.25 We discuss product and geographic market definition for supply of disposal services through composting below.

Product market

- 11.26 In this section, we consider whether supply of disposal services through composting using IVC and OWC are separate product markets.
- 11.27 Composting at IVC facilities processes comingled organic waste, including food and garden waste, in an enclosed container or vessel which is monitored and temperature-controlled.¹⁰¹⁶ In contrast, OWC technology is used to process garden waste.¹⁰¹⁷

Parties' views

- 11.28 Veolia submitted that [REDACTED].¹⁰¹⁸
- 11.29 Veolia submitted that garden waste collected separately was normally treated in an OWC facility, whilst food waste and comingled food and garden waste is treated at IVC facilities.¹⁰¹⁹
- 11.30 Veolia submitted that OWC technology was used to process garden waste in an open environment in which the material breaks down in the presence of oxygen, whereas IVC technology was used to process both garden waste and food waste in an enclosed, monitored and temperature-controlled environment.¹⁰²⁰ OWC treatment is [REDACTED] cheaper than IVC treatment, [REDACTED].¹⁰²¹
- 11.31 Veolia submitted that [REDACTED]. Suez submitted that despite IVC treatment being more expensive than OWC, some cost savings can be made through efficient collection planning and [REDACTED].¹⁰²² However, Suez said it expected the share of garden waste in IVC facilities to fall in the future as government policy encouraged separate collection and treatment of food and garden waste.¹⁰²³

¹⁰¹⁶ FMN, NHW Chapter, paragraphs 12.50, 15.317

¹⁰¹⁷ FMN, NHW Chapter, paragraph 15.317

¹⁰¹⁸ Veolia's response to the Issues Letter, paragraph 7.3

¹⁰¹⁹ FMN, NHW Chapter, paragraph 15.317

¹⁰²⁰ FMN, NHW Chapter, paragraph 15.317

¹⁰²¹ Veolia's OWC gate fees are [REDACTED].

¹⁰²² Suez response to CMA phase 2 s.109 notice, 21 December 2021, paragraph 74.2.

¹⁰²³ Suez response to CMA phase 2 s.109 notice, 21 December 2021, paragraph 74.2.

Third party views

- 11.32 We sent questionnaires to the Parties' customers in the Midlands, which is the only region in which the Parties' OWC facilities overlap.¹⁰²⁴ We asked customers whether they considered IVC was an adequate substitute for OWC and received six responses.¹⁰²⁵ Five customers said they currently processed garden waste at OWCs (one customer did not provide a clear response).¹⁰²⁶ These customers said they would either not consider processing garden waste at an IVC due to the cost, or would undertake a review considering cost and location as the driving factors.¹⁰²⁷ Specifically:
- (a) Solihull said it would not consider sending garden waste to be processed at an IVC as it is more expensive and not necessary when processing garden waste alone with no food waste content.¹⁰²⁸
 - (b) Nottingham said it has considered processing garden waste at an IVC in 2004 but found it unaffordable.¹⁰²⁹
 - (c) Shropshire said unit costs for IVC are higher than OWC so would not expect to move more waste to IVC unless this was necessary (ie if garden waste was combined with food waste).¹⁰³⁰
 - (d) Newcastle-under-Lyme said it would not consider IVC for processing garden waste on its own, as IVC is not a good technology as it is more costly than OWC.¹⁰³¹
 - (e) West Northamptonshire Council said that it will review disposal as part of its forthcoming waste strategy and will consider cost and location.¹⁰³²

¹⁰²⁴ [Phase 1 Decision](#), para 500.

¹⁰²⁵ Question wording: Please indicate if you consider in-vessel composting (IVC) facilities to be an adequate substitute for any open-windrow composting (OWC) facilities that you procure. In doing so, please: (a) indicate which of your composting material is processed at (i) an OWC facility; (ii) an IVC facility; and (iii) at both. (b) If your garden waste is currently processed at an OWC, please explain if you have considered processing your waste at an IVC instead; (c) Please explain what factors you consider when choosing between a OWC facility and a IVC facility.

¹⁰²⁶ CMA Phase 2 Customer questionnaire for composting, Q13a.

¹⁰²⁷ CMA Phase 2 Customer questionnaire for composting, Q13.

¹⁰²⁸ Response to the CMA's phase 2 questionnaire from Solihull Metropolitan Borough Council, Q13.

¹⁰²⁹ Response to the CMA's phase 2 questionnaire from Nottinghamshire County.

¹⁰³⁰ Response to the CMA's phase 2 questionnaire from Shropshire.

¹⁰³¹ Response to the CMA's phase 2 questionnaire from Newcastle-under-Lyme Borough Council, Q9a-c, 31 January 2022.

¹⁰³² Response to the CMA's phase 2 questionnaire from West Northamptonshire, Q13a-c, 2 February 2022.

- 11.33 We also asked competitors whether they considered IVC to be an adequate substitute for OWC. Two competitors submitted views broadly consistent with those provided by customers:¹⁰³³
- (a) Biffa said that operating costs are typically higher at an IVC due to ‘high capital cost’ in setting up IVC infrastructure versus an OWC operation.¹⁰³⁴
 - (b) Urbaser said OWC would normally be the preferred option for garden waste because of its ‘lower investment and operational cost’.¹⁰³⁵

Our assessment

- 11.34 We consider OWC composting services to be separate from IVC composting services for the following reasons:
- (a) On the demand-side, if composting services are required for comingled food and garden waste, only IVCs can be used and OWCs are not a substitute for IVCs.
 - (b) If composting services are required for garden waste, while IVC and OWC facilities can be used, the evidence available to us consistently shows that processing garden waste at IVCs is more expensive than doing so at OWCs. Although [§], this will depend on the local authority and current government policy encourages separate collection and treatment of garden waste. Thus, there may be many areas where it is not cost effective to use an IVC for garden waste.
- 11.35 With regard to IVC facilities, both Parties operate such facilities but at Phase 1 the CMA found no local areas of concern.¹⁰³⁶ As such, we focused our investigation on the supply of organic waste composting services at OWC facilities.

¹⁰³³ Three further competitors told us that did not process garden waste at an OWC (Amey, Viridor and FCC). Beuparc did not provide a clear response.

¹⁰³⁴ Response to the CMA's phase 2 questionnaire from Biffa, Q41, 10 February 2022.

¹⁰³⁵ Response to the CMA's phase 2 questionnaire from Urbaser, Q41b, 10 February 2022.

¹⁰³⁶ [Phase 1 Decision](#), paragraph 473 and footnote 574. In IVCs, at the end of its Phase 1 investigation, the CMA found no local catchment areas where the Merged Entity's combined distance weighted share of supply would exceed 25% with a significant increment.

Conclusion on product market

- 11.36 On the basis of the above evidence, we have found that the relevant product market is OWC composting services.

Geographic market

- 11.37 The CMA had not previously considered the geographic frame of reference in this market.¹⁰³⁷

Parties' views

- 11.38 Veolia submitted that [X].¹⁰³⁸ [X]. Suez submitted that waste brought onto its biological treatment facilities was [X] sourced from the region where the facility is located.¹⁰³⁹

Our assessment

Third party views

- 11.39 We asked all of the Parties' customers in the Midlands whether it was important for a waste management company to have a composting facility in the local area. Out of the five that responded to our question, four highlighted the importance of having local composting facilities for reasons including reduced cost, reduced environmental impact and issues with odour.¹⁰⁴⁰
- 11.40 We asked 26 OWC suppliers in the Midlands about the importance of transport costs and how these affect the area over which they compete. Of the six that responded, two indicated that either transport costs were important for customers or that transport costs restricted the distance over which waste is transported. Four further suppliers indicated the question was not applicable to them.¹⁰⁴¹
- 11.41 Overall, evidence from third parties indicates that distance is an important factor in determining which OWC facility is used, and that distance affects the competitiveness of OWCs. The responses indicate that the transport costs are likely to be borne by the customer and those facilities that are less

¹⁰³⁷ [Phase 1 Decision](#), paragraph 481.

¹⁰³⁸ FMN, NHW Chapter, paragraph 15.312 (bullet 2), [Phase 1 Decision](#), paragraph 480.

¹⁰³⁹ Suez response to first notice to Suez, paragraph 3.17.

¹⁰⁴⁰ The other customer's response was not clear.

¹⁰⁴¹ Presumably because they do little collection of waste (ie it is typically dropped off).

far away were preferable to customers, as that reduces transport costs for those customers.

Catchment area analysis

- 11.42 To calculate the catchment area in this case, we analysed evidence on the distance over which waste is transported to the Parties' OWCs, by using the Parties' data on the distances from each of the Parties' sites to its customers.¹⁰⁴² We then ordered customers by distance and identified the shortest travel time that would capture 80% of volumes processed (called a national 80th percentile catchment area).¹⁰⁴³
- 11.43 This analysis showed that 80% of the Parties' customers' waste travelled 46 minutes' drive-time. Our analysis of the distances over which waste is transported showed that the large majority of waste does not travel widely across the UK, and only a minority of waste is transported beyond 46 minutes' drive time.

Conclusion on geographic market

- 11.44 On the basis of the evidence summarised above, we consider that demand is local in nature (in particular because of the importance of proximity to customers because of factors such as transportation costs). On this basis, we have used catchment areas to identify the most significant competitive alternatives available to customers of the merger firms. We estimated the catchment size for disposal by composting is a 46-minute drive time and therefore use this as the basis for our competitive assessment.

Conclusion on the relevant market

- 11.45 We consider that the relevant market is the supply of OWC composting services in local areas.

Competitive assessment

- 11.46 We have assessed the competitive effects of the Merger locally. In order to identify overlaps between the Parties' OWC sites, we used drive-times to

¹⁰⁴² We used the total waste processed instead of merchant capacity as Suez was unable to provide a breakdown of only merchant capacity.

¹⁰⁴³ In this case, we calculated a national catchment area using drive-time and volume of waste travelled. This was preferred to alternative measures, such as individual catchment areas for each site; or driving distance or straight line distance as the measure of distance; or number of customers.

place ‘isochrones’ around each of the Parties’ OWCs.¹⁰⁴⁴ On this basis, we identified four overlaps between the Parties’ facilities.

- 11.47 We consider that the market for the supply of OWC composting services is relatively undifferentiated with evidence from the Parties and third parties indicating that price and distance are the main parameters of competition in this market (see third party comments at paragraphs 11.25 to 11.27 above). In our inquiry, based on evidence from the Parties and third parties, we have not found any other significant parameters of competition. In a relatively undifferentiated market such as this, a merged entity may have a greater incentive to restrict volumes where it has a large share of supply, as the benefits of a higher price would apply to a greater volume than would be the case for a smaller firm.¹⁰⁴⁵ Also, where the market is concentrated among few rivals, price increases may be more likely.¹⁰⁴⁶ Finally our assessment is based on the change in competitive constraints as a result of the merger, and therefore a higher increment is likely to indicate a higher level of concern.¹⁰⁴⁷
- 11.48 In this case, we have assessed the effect of the Merger on competition by calculating the Parties’ combined market shares by capacity in each of the local areas in which their facilities overlap. The higher the Parties’ combined share, the greater the Parties’ incentive to restrict volumes or increase price levels is likely to be. Because of the relatively undifferentiated nature of this market, we have also considered the increment and number of competitors in our analysis.¹⁰⁴⁸
- 11.49 Given that we adopted the same methodological approach for this local area assessment as for disposal by incineration analysis (chapter 10), we have not set our methodological approach in detail in this chapter. In the remainder of this section, we set out below the results and conclusions.

Concentration measure

- 11.50 For the same reasons as for incineration services (as set out in paragraphs 10.250 to 10.252), we consider that it is appropriate to use linear distance-

¹⁰⁴⁴ An isochrone is a line that connects points that are an equal travel time away from a focal point (in our case, the Parties’ OWC sites).

¹⁰⁴⁵ CMA129 paragraph 4.38(b).

¹⁰⁴⁶ CMA129, paragraph 4.38(a).

¹⁰⁴⁷ See for instance Breedon/Cemex, paragraph 178.

¹⁰⁴⁸ The size of the increment influences the Merged Entity’s ability to restrict volumes or raise prices compared to the pre-Merger situation while the number of competitors indicates the degree of customer choice in the local area.

weighted shares of supply by capacity, as the measure of concentration for our assessment.

Results of our local area assessment

11.51 In this section, we set out the results of our local area assessment for the four overlaps.

11.52 We used supplier merchant capacity data for Parties and third parties to estimate linear distance-weighted shares of supply, by capacity within each catchment area.

Weighted shares of supply results

11.53 Table 11.1 below shows the linear distance-weighted shares of supply for all four overlaps.¹⁰⁴⁹

Table 11.8: Parties' local area shares of supply for composting services (OWCs), overlaps, 2020

<i>Entity</i>	<i>Veolia or Suez facility</i>	<i>Catchment area size</i>	<i>Combined share of supply</i>	<i>Increment</i>	<i>Number of other competitors</i>
Ling Hall	Veolia	46 mins	[30-40%]	[5-10%]	10
Packington	Suez	46 mins	[30-40%]	[10-20%]	12
Telford	Veolia	46 mins	[30-40%]	[0-5%]	6
Coven	Veolia	46 mins	[30-40%]	[0-5%]	8

Source: Analysis of Parties customer and supplier data

11.54 As noted in paragraphs 11.33 and 11.34, in relatively undifferentiated markets such as this, shares of supply and the concentration of rivals are the key factors in assessing whether an SLC is likely. As such we do not consider the Parties are closer than the distance weighted shares of supply suggest. Therefore, in assessing whether the Merger will result in an SLC in any of these local areas we have considered the weighted combined share, the increment and number of competitors operating in the local area. Our starting point is that we would be concerned if the combined share is

¹⁰⁴⁹ [REDACTED]. However, this does not impact the local area shares in the overlap areas. Note of call [REDACTED]. [REDACTED].

particularly high, unless the increment is very low and there are a number of competitors in the local area. We consider each of the four areas in turn.

- 11.55 While the weighted share in Coven is [30-40%], the increment arising from the merger is only [0-5%]. There are 8 competitors other than the Parties. Taking into account the number of competitors in the market, and Veolia's relatively modest share (suggesting customers have a choice of other suppliers in the area), and the low increment, we therefore consider that the Merger will not result in an SLC in this area.¹⁰⁵⁰
- 11.56 In Telford the weighted share is [30-40%] and the increment is less than [0-5%]. There are 6 competitors other than the Parties. As with Coven, given the relatively modest share, low increment, and the number of competitors we consider that the Merger will not result in an SLC in this area.
- 11.57 The combined weighted share in Packington is [30-40%], while the increment is [10-20%]. There are 12 competitors other than the Parties operating in the catchment of Packington. Taking both the relatively modest level of the shares and the number of competitors in the area, we consider that the Merger will not result in an SLC in this area.
- 11.58 The combined weighted share in Ling Hall is [30-40%] and the increment is [5-10%]. There are 10 competitors other than the Parties operating in the catchment of Ling Hall. As for Packington, taking both the relatively modest level of the shares and the number of competitors in the area, we consider that the Merger will not result in an SLC in this area.

Conclusion

- 11.59 Based on the above evidence we consider that the Merger is not likely to give rise to horizontal unilateral effects in the supply of OWC services.

¹⁰⁵⁰ While the CMA can be concerned with mergers involving small increments, this is typically where the combined market share is high (ie the acquirer has market power), and/or the overall concentration is high.

12. SUPPLY OF NON-HAZARDOUS COMMERCIAL AND INDUSTRIAL WASTE COLLECTION SERVICES

Introduction

- 12.15 This chapter considers the supply of non-hazardous commercial and industrial waste collection services. This service involves the collection of mixed waste streams, as well as single specific waste streams (eg paper/cardboard or glass) from C&I customers. Once the waste is collected from the customer's premises it is the responsibility of the waste collection supplier to dispose of the waste, either at a waste transfer station (where the operator of the waste transfer station takes responsibility for its disposal) or at a disposal facility (eg ERF).¹⁰⁵¹ Collection contracts are awarded through tenders or through bilateral contract negotiations and are typically for one to three years.¹⁰⁵²
- 12.16 The customer base for the non-hazardous C&I waste collection service is broad – it includes SME businesses, local shops, large, national, multisite businesses such as supermarkets, and industrial customers (eg factories).
- 12.17 Suppliers also vary in their size and scope. Some suppliers are small and operate in a specific local area or region, while other suppliers are large and operate across multiple regions in the UK. The largest suppliers (as discussed below) are specialist waste management companies including Veolia, Suez and Biffa. However, waste management companies are not the only entities competing for contracts. Brokers and facilities management (FM) companies operate in the market, connecting C&I customers with waste management companies to collect and dispose of waste.
- 12.18 We have engaged with these different categories of market participants. During the course of our inquiry, we received questionnaire responses from 11 competitors and 24 customers. 14 of the customers were what we have classified as being 'national customers'. In our analysis we have considered a customer to be a 'national customer' if it has sites from which waste needs to be collected (and contracts for) in two or more regions in the UK. In some parts of our analysis – which we make clear in the Chapter – we have used an annual contract value of at least £250,000 as a proxy for larger customers (who are also likely to be national customers). As discussed in our analysis,

¹⁰⁵¹ [Veolia Overview Submission](#), paragraph 77

¹⁰⁵² [Veolia Overview Submission](#), paragraph 78

we have focused on national customers given fewer suppliers operate across regions and therefore national customers are more likely than other customers to face reduced competition as a result of the Merger. In addition, we collected customer contract data from 14 competitors. We also held calls with nine competitors.

- 12.19 Veolia submitted that we have an insufficient sample size which is not representative of the market.¹⁰⁵³ Further, Veolia submitted that we should have spoken to customers of competitors since speaking only to the customers of the Parties results in selection bias. We have addressed these concerns in Chapter 6.
- 12.20 The chapter is structured as follows. We have first assessed the market definition. We then present the evidence on indicators of competition. This includes our examination of the evidence on the factors that customers consider to be important when selecting a supplier. One important factor identified by customers is access to disposal infrastructure and we have assessed the Parties' positions with regard to this. We also present the evidence on the importance of route density, market structure using market shares, tender analysis, the Parties' internal documents and the views of customers and competitors regarding who are credible suppliers. Having assessed that evidence we finally consider the evidence on entry and expansion.

Market definition

Product market

- 12.21 The Parties overlap in the supply of non-hazardous C&I waste collection services.

Parties' views

- 12.22 During the CMA's Phase 1 investigation Veolia submitted that the appropriate product market is the supply of non-hazardous C&I waste collection services without any further segmentation by type of customer or type of waste.¹⁰⁵⁴ Further, Veolia submitted that:

¹⁰⁵³ [Veolia's response to Provisional Findings](#), paragraph 54.

¹⁰⁵⁴ [CMA Phase 1 Decision](#), paragraph 201.

- (a) the logistics of collection are broadly similar regardless of the type of waste collected;
- (b) C&I customers organise calls for tenders in relation to all their waste without distinguishing between types of waste;
- (c) Veolia does not believe there are any material differences in competitive dynamics between different types of customer; and
- (d) there are a large number of suppliers capable of serving all types of customers, either directly or through brokers.¹⁰⁵⁵

12.23 Veolia submitted that many suppliers can and do compete for national customers and neither Veolia nor Suez has national coverage.¹⁰⁵⁶

12.24 Below, we consider whether:

- (a) there are separate markets for the provision of non-hazardous C&I waste collection services according to customer type;
- (b) there are separate markets for the provision of non-hazardous C&I waste collection services according to type of waste collected; and
- (c) supply of non-hazardous C&I waste collection services by brokers and FM companies are in the relevant market.

Customer type

12.25 We have considered whether there are separate products markets for non-hazardous C&I waste collection for national customers and C&I waste collection for other customers. The relevant product market is identified primarily by reference to demand-side substitution.¹⁰⁵⁷ Veolia categorises customers as ‘national accounts’ where [X]. Other suppliers such as Suez and Biffa also have a national customer category but have not defined this customer type in a precise manner. For the purposes of our analysis, we consider a national customer to be one that operates in two or more regions of the UK, [X].

¹⁰⁵⁵ CMA Phase 1 Decision, paragraph 201.

¹⁰⁵⁶ Veolia response to CMA Issues paper, 17 November 2021, paragraphs 2.25-2.28.

¹⁰⁵⁷ CMA129, paragraph 9.7

Third party views

- 12.26 In order to assess the demand for national supply we asked national customers (ie those active in more than one region) which factors they consider to be most important when deciding which supplier should provide its non-hazardous waste collection service. 14 responded.
- 12.27 The evidence from these customer responses indicates that geographical reach is an important consideration when deciding which supplier to use for their waste collection services.¹⁰⁵⁸ Reasons for this include that customers want:
- (a) a consistent service across their business sites, including a consistent approach to tracking and compliance with environmental regulations;¹⁰⁵⁹
 - (b) to minimise the distance that their waste travels, ie they want the supplier to have a presence in all regions of the UK to reduce their carbon footprint;¹⁰⁶⁰ and
 - (c) to keep subcontracting to a minimum.¹⁰⁶¹
- 12.28 We also asked customers whether it is important to have a single supplier providing all of their waste collection services across all their business sites. A majority of national customers that responded to this question (9 out of 13) considered it important to have a single supplier to provide waste collection services across all their sites.¹⁰⁶² Reasons for this were because:
- (a) it was easier to manage a single supplier across business sites rather than multiple suppliers, from an administrative perspective;¹⁰⁶³

¹⁰⁵⁸ In this respect, we are relying only on responses from the Phase 2 questionnaires. We have not consolidated the Phase 1 and Phase 2 responses because the relevant question wording differed between questionnaires and so we consider that they are not directly comparable.

¹⁰⁵⁹ Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

¹⁰⁶⁰ Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

¹⁰⁶¹ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED].

¹⁰⁶² Although we had 14 responses overall, one respondent did not answer this question. Four of the thirteen national customers which answered this question did not consider it important to have a single supplier across all their business sites. One customer ([REDACTED]) said that while it is important to reduce the number of service providers, no company offers full national coverage. The remaining three customers stated that having a single supplier is not as important as other factors including meeting environmental and sustainability credentials, providing good value, and providing the best service in the local area.

¹⁰⁶³ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

- (b) having a single supplier across business sites had cost benefits or economies of scale;¹⁰⁶⁴ and
- (c) having a single supplier ensured consistency across their business sites.

Conclusion on customer type

- 12.29 Most customers who operate multiple sites across different regions and who responded to our questionnaire have told us that it is important that they have a single supplier to provide waste collection services across all their sites (paragraph 12.14).
- 12.30 Although the evidence indicates that conditions of competition are different for national customers than for other customers, and we have not seen evidence to show that national customers would switch to use a number of different local or regional suppliers in the event that prices for national coverage were to increase, we do not consider it necessary to come to finely balanced judgements on what is ‘inside’ or ‘outside’ the market.¹⁰⁶⁵ Instead, we have taken conditions of competition for national customers into account in our competitive assessment.

Type of waste

Parties’ views

- 12.31 Veolia submitted that the appropriate product market is the supply of non-hazardous C&I waste collection services without any further segmentation by type of waste.¹⁰⁶⁶ Further, Veolia submitted that:
- (a) the logistics of collection were broadly similar regardless of the type of waste collected; and
 - (b) C&I customers organise calls for tenders in relation to all their waste without distinguishing between types of waste.
- 12.32 Veolia, however, also submitted that national C&I customers tended to be large companies with sophisticated procurement teams and could split the

¹⁰⁶⁴ Responses to the CMA’s phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED].

¹⁰⁶⁵ [CMA129](#), paragraphs 9.4–9.5

¹⁰⁶⁶ FMN, NHW Chapter, paragraph 13.13.

collection services into lots by the different waste streams.¹⁰⁶⁷ Veolia submitted that large customers frequently split contracts between several waste management providers based upon the type of waste collected.¹⁰⁶⁸ Veolia provided the examples of [X] and [X] as customers that split their contracts into lots by different waste streams.

- 12.33 Veolia also submitted an analysis that identified the C&I suppliers for the 10 largest grocery chains, the 20 largest restaurant chains, and the five largest pub chains operating in the UK.¹⁰⁶⁹ According to Veolia, some of these businesses frequently split contracts between several different waste management providers, by waste stream and geography.

Third party views

- 12.34 Some third parties told us that on the demand-side, C&I waste collection contracts are not typically separated by waste type:
- (a) Evidence received in response to our customer questionnaire indicates that C&I waste collection contracts are often not separated by waste type:
 - (i) We asked customers whether they currently use or would consider using different suppliers for different waste streams.¹⁰⁷⁰ The majority of the national customers that responded to this question (8 out of 13) indicated that having a single supplier collecting all of their waste streams was preferable to having multiple suppliers.¹⁰⁷¹
 - (ii) A minority of national customer respondents (5 of the 13) indicated they currently do or would consider using different suppliers for different waste streams (but did not indicate why they would choose to take this approach).¹⁰⁷²
 - (b) Some third-party competitors submitted that general waste and recyclates are collected by the same supplier. For example, Grundon

¹⁰⁶⁷ Veolia response to CMA Issues Paper, 17 November 2021, paragraph 2.28.

¹⁰⁶⁸ Veolia supplemental response on large C&I customers, dated 13 May 2022, paragraph 3.

¹⁰⁶⁹ Veolia supplemental response on large C&I customers, 13 May 2022.

¹⁰⁷⁰ In the questionnaire sent to C&I customers during the Phase 2 investigation, we asked customers: 'Whether it is important for you to have a single supplier to provide of your waste collection services for all of the business sites located in the UK. Please explain your reasoning, including on whether you use or would consider using different suppliers in different regions of the UK.'

¹⁰⁷¹ Responses to the CMA's C&I waste customer questionnaire.

¹⁰⁷² Although we received 14 responses overall, one national customer did not respond to this specific question.

was not aware of a customer which tenders separately for general waste, recyclates, and food waste. Similarly, Mitie submitted that in its experience, general waste and dry mixed recycling are collected by the same supplier.¹⁰⁷³

12.35 On the other hand, we have also heard from third parties about customers who do separate their C&I waste collection contracts by waste type. These third parties explained that certain single waste streams can be valuable and accordingly the customer will not always pay for the collection services (and if the waste material itself has more value than the collection service the customer may instead be remunerated for allowing a supplier to collect their waste):

- (a) [REDACTED].¹⁰⁷⁴
- (b) [REDACTED] confirmed that it has contracts with [REDACTED] and [REDACTED] for the collection of cardboard fibre.¹⁰⁷⁵ [REDACTED] provided us with information regarding its contracts with [REDACTED] and [REDACTED] for the collection of cardboard fibre only. [REDACTED] told us that:
 - (i) Cardboard is bundled up at [REDACTED] stores and that [REDACTED] backhauls this waste to its distribution centres. [REDACTED] then uses its logistics arm or subcontracts a third-party logistics company to collect the baled cardboard from [REDACTED] distribution centres so it can be recycled by [REDACTED]. Therefore, logistics for the collection of this kind of waste – in which the waste is collected from distribution centres – are different from those for the collection of other waste streams by other suppliers where waste is typically collected from each individual business site.¹⁰⁷⁶
 - (ii) Its contract with [REDACTED] is based on a rebate, the value of which is determined by market indices. The price that [REDACTED] pays to [REDACTED] for the cardboard is the relevant paper fibre commodity index, plus or minus any agreed adjustments. [REDACTED] does not explicitly pay [REDACTED] to collect the cardboard waste, rather, the collection costs are accounted for in the rebates [REDACTED] pay to [REDACTED]. When bidding for paper fibre contracts, bidders can bid on whatever basis they choose, but [REDACTED] told us that rebates based on adjustments to a

¹⁰⁷³ Note of call with Mitie, 14 June 2022.

¹⁰⁷⁴ Note of call [REDACTED].

¹⁰⁷⁵ Note of call [REDACTED].

¹⁰⁷⁶ Note of call [REDACTED].

market index are common and are also used in their contracts with [X] and [X].¹⁰⁷⁷ [X] told us that it regularly competes against the Parties and Biffa for these specialised single waste stream contracts as well as other specialist providers such as Smurfit Kappa and Saica Paper.¹⁰⁷⁸

- 12.36 The remuneration method of these single waste stream commodities contracts differs compared to general waste collection contracts. With general waste collection contracts, customers pay suppliers a fee which is set to cover the costs of collecting the waste and disposing of it. Conversely, with single waste stream commodity contracts, the difference between the rebate paid and the price of the commodity on the open market covers the cost of collection. In the contract data that [X] submitted to us, we were unable to separate the costs of collection from the rebates paid to customers. [X] told us that, when bidding for paper fibre contracts, bidders can bid on whatever basis they choose, but the method of pricing based on adjustments to a commodity index previously described is common.¹⁰⁷⁹
- 12.37 [X] submitted that the level of subcontracting was not a factor when it recently lost its waste collection contract with [X].¹⁰⁸⁰ Rather, price was the main factor which drove the customer's decision to switch.

Our assessment

- 12.38 From the demand-side perspective, we note that the majority of national customers which responded to our investigation indicated a preference for a single supplier collecting all of their waste streams.
- 12.39 The evidence from third parties also indicates that general waste and dry mixed recycling are not segregated and the collection of these is covered by one contract.
- 12.40 The evidence provided by [X] suggests that contracts for the collection of single waste streams which can be sold as commodities (such as cardboard fibre) are different compared to other C&I waste collection contracts. Specifically, [X] explained that the logistics used to collect the waste, and the method of remuneration for its [X] and [X] contracts differ from other C&I waste collection contracts. Reconomy similarly told us that its Eurokey

¹⁰⁷⁷ Note of call [X].

¹⁰⁷⁸ Note of call [X].

¹⁰⁷⁹ Note of call [X].

¹⁰⁸⁰ Note of call [X].

recycling subsidiary buys plastic from its customers and sells it on the commodities market and utilises third party logistics companies to collect the waste.

- 12.41 From the supply-side, we note that Veolia, Suez and Biffa are also able to (and do) compete for these single waste stream contracts. This suggests there is a degree of supply-side substitutability between competing for single waste stream contracts and contracts for several waste streams. In particular, [REDACTED] told us that it regularly competes against the Parties and Biffa when it bids for paper fibre contracts and in the past it has competed for general waste contracts.
- 12.42 To inform our assessment as to whether we should segment the market by type of waste because of supply-side factors, we asked the Parties to provide contract data for all of their current C&I waste that had an annual contract value in excess of £250,000.¹⁰⁸¹ Our analysis found that the majority of these C&I customers procure several waste streams together:
- (a) Veolia collects, on average, [REDACTED] different waste types (out of [REDACTED] listed by Veolia).¹⁰⁸² ¹⁰⁸³ Overall, [REDACTED] out of [REDACTED] of Veolia's national customer contracts ([REDACTED]) included the collection of at least four waste streams.¹⁰⁸⁴
 - (b) Suez collects, on average [REDACTED] different waste types from its customers (out of [REDACTED] listed by Suez).¹⁰⁸⁵ Overall, [REDACTED] of Suez's national customer contracts included at least [REDACTED] waste streams.
- 12.43 This evidence suggests that the from both the demand-side and the supply-side different waste types are in the same relevant market.

¹⁰⁸¹ We chose the £250,000 annual contract value as a materiality threshold to reduce the administrative burden on the Parties. As explained in the introduction to this chapter, the focus of our analysis is on the larger C&I customers and the £250,000 threshold is a proxy for these customers.

¹⁰⁸² [REDACTED] of Veolia's [REDACTED] national customer contracts analysed included the collection of only one waste stream and [REDACTED] contract included the collection of two waste streams.

¹⁰⁸³ As explained above, in this chapter, we have focused our analysis customers with a wider geographic reach, referred to as national customers. Although we consider that there is not a bright line distinction between national, regional, and local customers, for the purposes of this particular analysis, we have considered national customers to be any customer which is active in more than one region of the UK, in line with the Parties' datasets.

¹⁰⁸⁴ As explained above, our analysis in this Chapter is focused on national customers. Although we consider that there is not a bright line distinction between national, regional, and local customers, for the purposes of this analysis, we have considered national customers to be any customers which is active in more than one region of the UK.

¹⁰⁸⁵ [REDACTED].

Conclusion on type of waste

- 12.44 The evidence suggests that, on the demand-side, it is common for customers to contract a single supplier to collect all waste types. However, this is not universally the case and the evidence also shows that there are a significant number of customers which contract different suppliers for different waste streams. Moreover, the evidence indicates that some customers switch in and out of using a single supplier to collect all their waste and using multiple suppliers segmented by type of waste.
- 12.45 We have also examined the evidence on customers who segregate waste types and tender for the collection of those waste types separately. This evidence suggests that although there are some characteristics of these contracts, such as those held by [X] for [X] and [X], that differ from other waste collection contracts (eg in terms of the collection logistics and remuneration), Veolia, Suez and Biffa also compete for these contracts for single waste streams against specialist suppliers.
- 12.46 Overall, we consider that all non-hazardous C&I waste collection services for all non-hazardous waste types (including contracts which only include a single waste stream) should be included within the relevant product market. We have taken account of any waste segmentation by customers, as well as suppliers which specialise in collecting single waste streams, within our competitive assessment.¹⁰⁸⁶

Supply from brokers and FM companies

- 12.47 We have examined the evidence on the demand-side as to whether customers, or a proportion of customers, prefer waste management companies to directly collect their non-hazardous C&I waste and whether, in response to a worsening of price, service, or terms, they are likely to switch to having their waste collected by a broker or FM company using subcontractors.¹⁰⁸⁷
- 12.48 We have also examined the evidence on the supply-side whether companies collecting non-hazardous C&I waste can (and currently do) both collect directly and use subcontractors.

¹⁰⁸⁶ CMA129, paragraphs 9.4 and 9.5.

¹⁰⁸⁷ CMA129, paragraph 9.7

Parties' view

- 12.49 Veolia submitted that subcontracting is common in the C&I market.¹⁰⁸⁸ It told us that the only supplier that has close to full national coverage is Biffa which covers 95% of UK postcodes. All other suppliers vary in their geographic coverage and, irrespective of whether they are waste management companies, brokers or FM companies, rely on subcontracting to provide services to customers with a large geographic footprint. Veolia also submitted that the industry trend has been to adopt a broker model.¹⁰⁸⁹
- 12.50 Veolia submitted that suppliers could compete for national accounts customers by subcontracting to other providers and that brokers and FM companies are strong competitors for national customers.¹⁰⁹⁰ In particular, Veolia submitted that:
- (a) brokers and FM companies are particularly well-placed to serve national customers by subcontracting regional and local suppliers while allowing customers to deal with a single supplier (the broker or FM company);
 - (b) brokers and FM companies exert strong competitive pressure on waste management companies. This is evidenced by Veolia's tender data which shows that brokers participate in tenders against Veolia more often than any single competitor other than Biffa (see paragraphs 12.125 to 12.129 for Veolia's tender data submissions). Veolia faced brokers in [REDACTED]% of tenders for national accounts customers according to Veolia's tender data; and
 - (c) brokers have advantages over Veolia and other waste management companies because they can utilise the most efficient supplier in each area.
- 12.51 In the same submission detailed in paragraph 12.19, Veolia indicated that some of the businesses included in its analysis procured their C&I services from brokers.¹⁰⁹¹ Veolia provided examples of several brokers including [REDACTED] as having won contracts with large national customers including supermarkets, restaurant chains, and pub chains. This evidence is

¹⁰⁸⁸ Veolia's [response to the provisional findings](#), paragraph 226.

¹⁰⁸⁹ Veolia's [response to the provisional findings](#), paragraph 219.

¹⁰⁹⁰ Veolia response to CMA Issues Paper, 17 November 2021, section paragraph 2.29-2.35.

¹⁰⁹¹ Veolia supplemental response on large C&I customers, 13 May 2022.

corroborated later in this chapter (for example, the market shares in Table 12.3).

- 12.52 Although brokers and FM companies rely on subcontractors, Veolia submitted that subcontracting itself does not prevent effective competition. Veolia told us that [REDACTED].¹⁰⁹² Indeed, Veolia submitted that around [REDACTED] of its C&I revenues for national accounts are subcontracted to other suppliers.
- 12.53 Further, as regards to Suez, Veolia submitted that [REDACTED]% (by revenue) of Suez's customers that are active in [REDACTED] or more regions are served by Suez with some element of subcontracting.¹⁰⁹³ Veolia submitted that in its experience, [REDACTED].¹⁰⁹⁴ Therefore, Veolia submitted that it is irrational for the CMA Inquiry Group to suggest that some customers have a preference for a single supplier nationwide and that Suez is only one of three (alongside Veolia and Biffa) that can do this.¹⁰⁹⁵
- 12.54 Veolia submitted that our approach to excluding brokers and FM companies from the relevant market was incorrect.¹⁰⁹⁶ Veolia submitted that a variety of brokers and FM companies compete for and win contracts with national customers.¹⁰⁹⁷

Third party views

- 12.55 We asked customers whether they would consider using a broker and/or FM company in the future to manage their waste collection services.
- (a) A large majority of customers (eight out of 12) that responded to this question said that they would consider using a broker or FM company.¹⁰⁹⁸ Four of these eight customers said they would only consider using a broker or FM company if it made commercial sense.¹⁰⁹⁹ These customers submitted that they either expect brokers and FM companies to charge higher prices than a supplier which self-performs since they add an extra layer into the supply chain,¹¹⁰⁰ or recent tender experience has shown that brokers are not as

¹⁰⁹² Veolia's [response to the provisional findings](#), paragraph 219.

¹⁰⁹³ [Overview submission](#) by Veolia, 7 March 2022, paragraph 82.

¹⁰⁹⁴ Veolia response to CMA Working Paper on the supply of C&I non-hazardous waste collection services, 19 April 2022.

¹⁰⁹⁵ [Overview submission](#) by Veolia, 7 March 2022, paragraph 82.

¹⁰⁹⁶ Veolia's [response to the provisional findings](#), 9 June 2022, paragraph 219.

¹⁰⁹⁷ Veolia's [response to the provisional findings](#), 9 June 2022, paragraph 220.

¹⁰⁹⁸ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹⁰⁹⁹ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹¹⁰⁰ Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

competitive on price.¹¹⁰¹ In addition, two of the customers said they would be happy if service levels could be guaranteed by the broker or FM company.¹¹⁰² One customer indicated this was because having multiple suppliers (under one broker) makes it harder to manage the suppliers against the service level agreement.¹¹⁰³

- (b) Four of the customers said they would not consider using a broker or FM company. One customer ([REDACTED]) stated this was because they had often found brokers to be more expensive than dealing directly with a waste contractor. Similarly, [REDACTED] told us that it is unlikely to consider using a broker because it is more commercially and environmentally beneficial for it to deal with waste management providers directly. The other two customers ([REDACTED] and [REDACTED]) have not found it necessary to consider the use of a broker or FM company. [REDACTED] told us that while there were possible benefits to working via a broker, it did not outweigh the benefits of using a single-supplier model.¹¹⁰⁴

Conclusion on supply from brokers and FM companies

- 12.56 Overall, the evidence set out above indicates that brokers and FM companies compete for and win national customer contracts.
- 12.57 The majority of customers said that they would consider using a broker and/or FM company in the future.
- 12.58 On the basis of the available evidence, we have found that supply of non-hazardous C&I waste collection services by brokers and FM companies should be included in the relevant product market.

Conclusion on product market

- 12.59 On the basis of the above evidence, we have concluded that the relevant product market is the supply of non-hazardous C&I waste collection services. This includes all waste types and supply by brokers and FM companies.

¹¹⁰¹ Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

¹¹⁰² Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

¹¹⁰³ Response to the CMA's phase 2 questionnaire from [REDACTED].

¹¹⁰⁴ See paragraph 12.1 for more detail on the benefits of using a single self-performing supplier.

Geographic market

12.60 Previous merger investigations considered the supply of non-hazardous C&I waste collection services on a national basis, although ultimately left the geographic scope open.¹¹⁰⁵

Parties' views

12.61 Veolia initially submitted that it was not appropriate to consider segmentation on a regional basis and that the appropriate market definition is national.¹¹⁰⁶ In particular, Veolia initially submitted that:

- (a) Waste collection vehicles are mobile assets and that sites that can be used as vehicle depots are easy to find;¹¹⁰⁷
- (b) Brokers can assist a supplier in delivering a national contract by finding subcontractors to provide collection services in geographic areas where the supplier has insufficient assets or coverage;¹¹⁰⁸ and
- (c) Barriers to entry in the market are low and suppliers active in one part of the country can therefore easily expand into other parts.¹¹⁰⁹

12.62 Veolia subsequently submitted that customers with a large geographic footprint can choose to procure nationally or split contracts into lots by region. Veolia provided two examples of national customers which have split their waste collection contracts into regional lots:¹¹¹⁰

- (a) [X] has separate waste collection suppliers for sites within the London M25 ring road and for those sites in the rest of the country; and
- (b) [X] has recently tendered its waste collection contract in regional lots.

12.63 Veolia also submitted that some large C&I customers, for example [X], split their waste collection contracts by region and waste stream.¹¹¹¹

¹¹⁰⁵ OFT's decision of 4 June 2013 in case [ME/6040/13](#), anticipated acquisition by Kier Group plc of May Gurney Integrated Services plc, paragraph 21.

¹¹⁰⁶ FMN, NHW Chapter, paragraph 13.19.

¹¹⁰⁷ FMN, NHW Chapter, paragraph 13.16.

¹¹⁰⁸ FMN, NHW Chapter, paragraph 13.16.

¹¹⁰⁹ FMN, NHW Chapter, paragraph 15.113.

¹¹¹⁰ Veolia response to CMA Issues Paper, 17 November 2021.

¹¹¹¹ Veolia supplemental response on large C&I customers, 13 May 2022.

12.64 Suez submitted that it may be appropriate for the CMA to consider separate national and regional market definitions.¹¹¹²

Third party views

12.65 As set out in paragraph 12.12, the majority of national customers that responded to our questionnaire considered it important to have a single supplier across all their sites. One of Veolia's customers stated that it did not have the appetite to divide its waste collection contracts into regional lots as it would be costly to manage multiple contracts and deliver the services (eg extra staff).¹¹¹³ None of the national customers which responded to our questionnaire indicated that they procure their services in regional lots.

12.66 We asked competitors whether they had any national customers which split their contracts into regional lots and whether this commonly happens in the market. [X] told us that it does not have any national customers that procure services by region and that it was not very common.¹¹¹⁴ [X] said that the majority of national customers just want one single supplier managing the contracts across the UK. [X] submitted that it is aware of national customers that have divided their contracts into regional lots, but these were a rarity rather than the norm.¹¹¹⁵ [X] submitted that, while its customers may be happy to have several regional suppliers rather than one national supplier collecting their waste, customers still prefer a single point of contact and organisation responsible for managing the service.¹¹¹⁶

Conclusion on geographic market

12.67 Overall, the evidence indicates that national customers have a preference for procuring waste collection services across all their sites nationally, rather than at a regional level.

12.68 We have found that the relevant geographic market is national.

¹¹¹² Suez's response to CMA phase 2 s.109 notice, 21 December 2021, question 1.

¹¹¹³ Note of call [X].

¹¹¹⁴ Note of call [X].

¹¹¹⁵ Note of call [X].

¹¹¹⁶ Note of call [X].

Conclusion on market definition

12.69 We have concluded that the relevant market is the supply of non-hazardous C&I waste collection services in the UK.

Indicators of competition

How competition works

12.70 Veolia submitted that there are over 100,000 C&I customers in the UK who need to have their waste collected. Veolia itself has around [REDACTED] commercial customers and it estimated that Biffa has around [REDACTED] commercial customers.¹¹¹⁷ Suez told us that it has 27,500 commercial customers.¹¹¹⁸

12.71 Veolia submitted that C&I waste collection contracts were negotiated either through tenders or through bilateral contract negotiations.¹¹¹⁹ Whereas municipal waste collection contracts are typically for a long duration, C&I waste collection contracts are for a much shorter duration.¹¹²⁰ Veolia submitted that prices were usually determined [REDACTED] and were meant to cover the costs of [REDACTED].¹¹²¹ The evidence received from third parties corroborated Veolia's submissions that contracts are negotiated bilaterally [REDACTED] and that prices cover the cost of [REDACTED].^{1122, 1123}

12.72 To understand the key factors that drive customer choice of supplier, we asked the Parties' national C&I customers which factors they consider to be most important when deciding which supplier should provide their company's waste collection service.¹¹²⁴ We provided customers with a list of factors and asked them to indicate how important each factor was on a scale from 1 to 5 (where 1 is not very important and 5 is very important) and to provide an

¹¹¹⁷ FMN, NHW chapter, paragraph 15.96.

¹¹¹⁸ Suez site visit slides.

¹¹¹⁹ FMN, NHW chapter, paragraphs 15.73-15.74.

¹¹²⁰ FMN, NHW chapter, paragraph 12.9.

¹¹²¹ FMN, NHW chapter, paragraph 15.73-15.74.

¹¹²² Note of call [REDACTED].

¹¹²³ Note of call [REDACTED].

¹¹²⁴ The question asked was: Using the table below, please list factors you believe are most important when deciding which supplier(s) should provide your company's waste collection service. To the extent that the factors already listed in the table are relevant, please: a. Indicate on a scale from one to five (where one is not very important and five is very important), how important you believe each factor is; and b. Provide an explanation for your rating. In doing so, please refer to any specific criteria and weighting you use when assessing bids

explanation for their rating. Fourteen national customers responded to this question and the results are presented below in Table 12.1.¹¹²⁵

Table 12.9: Selection criteria considered important by customers when deciding which supplier to use

<i>Selection criteria</i>	<i>Average score</i>
Reliability of service	4.9
Quality of service	4.6
Geographical reach	4.6
Access to disposal infrastructure	4.3
Price	4.3
Track record	4.3
More environmentally friendly / sustainable	4.2
Financial standing	4.1
Innovation capabilities	3.8
Provider's size	3.8

Source: CMA analysis of customer responses.

12.73 The results show that all of the average ratings from customers are high, therefore, customers consider that all of these factors are important. However, the results also suggest that reliability of service is the most important factor, followed by quality of service and geographic reach. Innovation capabilities and provider's size are seen as the least important factors but are considered important nonetheless.

12.74 The ratings that suppliers receive for several of the factors listed in the table above, such as reliability and quality of service, price, track record, and financial standing are a function of a supplier's underlying assets and position in the market. For the purpose of our competitive assessment we have therefore examined the underlying asset or attribute of access to disposal infrastructure.

¹¹²⁵ We asked a similar question to customers during the CMA's Phase 1 Investigation. This also showed that reliability of service, quality of service, and geographical reach were important factors for customers.

12.75 Therefore, in the next sub-section, we consider the importance of access to disposal infrastructure, after which we present the evidence from market shares, tender analysis, the Parties' internal documents, and third party evidence.

Access to disposal infrastructure

12.76 In this section, we assess the extent to which access to disposal infrastructure plays a role in competition in the supply of non-hazardous C&I waste collection services to national customers. Access to disposal infrastructure was considered important by 13 of the 14 customers that responded to our questionnaire, and on average these 14 customers rated access to disposal infrastructure to be 4.3 out of 5 in terms of importance. Of the 13 customers that considered this important, seven said it was because of their environmental commitments.¹¹²⁶ Specifically, customers wanted transparency over the disposal process as they wanted to ensure that waste was not sent to landfill.

12.77 Our questionnaire did not distinguish between whether customers considered it important for suppliers to have access to their own infrastructure, or whether it is important that suppliers have access to third party infrastructure. The free text responses indicate that some customers have interpreted this as meaning suppliers have access to their own disposal infrastructure.¹¹²⁷

Parties' views

12.78 Veolia submitted that the fact the Parties' controlled merchant capacity at disposal facilities does not give them any significant advantage when competing for C&I waste collection contracts.¹¹²⁸ In particular, Veolia submitted that:

- (a) Customers do not specify any particular facility for the treatment or disposal of waste or, in many cases, even the means of treatment or disposal;

¹¹²⁶ Response to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹¹²⁷ For example, [REDACTED] told us that "It is important for [REDACTED] to have transparency and traceability of our waste so that our business can take responsibility for where our waste ends up. Working with a supplier which has its own disposal infrastructure helps support this".

In addition to [REDACTED], several other customers noted their commitment to environmental policies, such as zero waste to landfill, drove their high rating for 'access to disposal infrastructure'.

¹¹²⁸ Veolia supplemental response on treatment and disposal of C&I non-hazardous waste, 13 April 2022.

- (b) Suppliers have a number of alternatives to owning or operating their own facilities, such as subcontracting, spot contracts, and fuel supply agreements; and
 - (c) Suppliers, including the Parties, make frequent use of treatment and disposal facilities owned and operated by third parties.
- 12.79 Veolia submitted that the Parties rely [REDACTED] on third party disposal facilities and dispose of [REDACTED] of their waste at third party facilities.¹¹²⁹ Therefore, the Merger will not confer any advantage to the Parties since the increased volume of disposal infrastructure will be matched by a proportionate increase in contracts that could be serviced by such infrastructure. Moreover, the [REDACTED].
- 12.80 Veolia also submitted analysis which shows that every region of the country has numerous disposal options.¹¹³⁰ For example, in each region of the UK except London, there were [REDACTED] active landfills in 2020, excluding these operated by the Parties.
- 12.81 Veolia also submitted that we overstated the environmental advantages of owning and operating treatment and disposal infrastructure that offers an alternative to landfill.¹¹³¹ Veolia submitted that approximately only [REDACTED] of Veolia's national account customers contracts have specific requirements regarding the use of landfill. Veolia indicated that several suppliers that serve national customers are able to commit to 100% diversion from landfill for residual waste collection services while owning no or minimal disposal infrastructure.
- 12.82 Finally, Veolia submitted that our conclusions in the Provisional Findings on access to disposal infrastructure contradict market reality.¹¹³² Veolia noted that, while Biffa has the most significant share of supply in the market for C&I waste collection, it currently does not own or operate any ERFs and has a limited geographic footprint of active landfills.
- 12.83 Suez, however, submitted that some customers want to be comfortable about where their waste is being disposed of.¹¹³³ For example, some customers have 'zero waste to landfill' objectives. If a supplier has its own disposal facilities, it can provide assurances over where and how the

¹¹²⁹ Veolia's [response to provisional findings](#), paragraphs 241-242.

¹¹³⁰ Veolia's [response to provisional findings](#), paragraph 243.

¹¹³¹ Veolia's [response to provisional findings](#), paragraphs 244-246.

¹¹³² Veolia's [response to provisional findings](#), paragraph 247.

¹¹³³ Transcript of hearing with Suez, 13 April 2022.

customer's waste will be disposed of. Suez further stated that this differentiates its business from brokers, as brokers cannot provide the same degree of certainty around where and how a customer's waste will be disposed of.

12.84 We have considered these submissions in the context of other evidence provided by customers and the Parties' internal documents.

12.85 We have assessed access to disposal infrastructure in two ways:

- (a) first, we have assessed whether suppliers can access their own infrastructure to dispose of their C&I waste. This is because access to own disposal infrastructure might give Veolia and Suez some cost advantage over some other rivals, which might make the Parties closer competitors to each other than to some other suppliers which do not have their own infrastructure; and
- (b) second, we have assessed whether suppliers can easily access third party infrastructure to dispose of their C&I waste and whether some suppliers have a competitive advantage over others in this respect.

Access to own disposal infrastructure

12.86 As reported above, Veolia submitted that a supplier having access to its own disposal infrastructure is not necessary to compete effectively in the market. Suez submitted that it might offer some advantage.

12.87 Veolia also pointed out that the market leader, Biffa, does not own or operate any ERFs and has, according to Veolia, limited geographic footprint of active landfill facilities. We have addressed issues relating to Biffa in the next subsection on access to third party disposal infrastructure.

12.88 The Merged Entity will operate the largest network of ERFs in the UK (paragraph 10.97). Further, the Government has set out measures to be taken so that, by 2035, the amount of municipal waste sent to landfill is reduced to 10% or less of the total amount of municipal waste generated (by weight), meaning the attractiveness of landfill as a disposal option is likely to further decline in the near future (paragraph 5.14).¹¹³⁴ This is likely to

¹¹³⁴ DEFRA, [Waste Management Plan for England](#), January 2021, page 6.

increase the importance of having access to alternative disposal methods, including ERFs.

- 12.89 Veolia submitted that [REDACTED] of the Parties' C&I waste is disposed of at third party facilities. We asked the Parties to provide figures on the proportion of the Parties' C&I waste which is disposed of using merchant capacity which is controlled by the Parties. This could be at ERFs owned by the Parties or by third parties. The information provided by Veolia shows that [REDACTED].¹¹³⁵ Suez processes [REDACTED] of all the C&I waste it collects using Suez controlled merchant capacity.¹¹³⁶
- 12.90 The Parties' internal documents provide some indication that access to disposal capacity is an important consideration in this market. For example:
- (a) A Veolia internal document discusses the development of a new ERF in [REDACTED].¹¹³⁷ In the document, Veolia states that [REDACTED]. The document indicates that [REDACTED]. This therefore provides evidence of a link between competitiveness in C&I waste collection and access to disposal infrastructure.
 - (b) Another Veolia internal document discusses a potential new client and conducts a SWOT analysis of its competitors for the contract.¹¹³⁸ [REDACTED].
 - (c) In its bid document for a contract with [REDACTED].¹¹³⁹
 - (d) A Veolia internal [REDACTED] document lists [REDACTED].¹¹⁴⁰
 - (e) A Veolia internal document lists the strengths, weaknesses, opportunities, and threats of [REDACTED], [REDACTED], and [REDACTED].¹¹⁴¹ On the one hand, one of Veolia's strengths is said to be its infrastructure, while one of [REDACTED] weaknesses is that it uses third party infrastructure, and it doesn't have any of its own disposal sites
- 12.91 Also, there is some evidence from the Parties' internal documents that indicates that the presence of the Parties' own disposal infrastructure is an important determinant of whether they compete for certain contracts (paragraph 5.92). A further example from Veolia's internal documents is a

¹¹³⁵ Veolia response to Section 109 Notice and additional questions of 22 June 2022.

¹¹³⁶ Suez response to Section 109 Notice and additional questions of 22 June 2022.

¹¹³⁷ Veolia internal document, VES-000002176 / VECMA00003120.

¹¹³⁸ Veolia internal document, VES-000001137 / VECMA00000297.

¹¹³⁹ Veolia internal document, VES-000001035 / VECMA00019838.

¹¹⁴⁰ Veolia internal document, VES-000007460 / SON_CMA-0000202-0001.

¹¹⁴¹ Veolia internal document, VES-000008102 / SON_CMA-0000153-0001.

[REDACTED].¹¹⁴² [REDACTED]. Therefore, it seems that even if customers do not select suppliers on the basis of disposal infrastructure, in this way it nevertheless plays an important role in the competitive dynamic and how closely the Parties compete.

12.92 Competitors have also told us that access to disposal infrastructure can confer a competitive advantage on suppliers.

- (a) [REDACTED] submitted that the Parties (although not Biffa) also have a large network of disposal facilities across the country which also allow them to minimise travel distances (and costs) when disposing of waste, and the Parties have control over the costs of disposal when using their own facilities.¹¹⁴³
- (b) [REDACTED].¹¹⁴⁴
- (c) [REDACTED] submitted that, if a supplier has control of its own disposal facilities and it has little reliance on third party facilities, this can only strengthen any bids that the supplier puts forward.¹¹⁴⁵ Further, while access to disposal infrastructure is not the sole factor in determining whether a bid will be successful, it is a key component. [REDACTED] also submitted that if a supplier controls its own disposal facilities, it will help strengthen a supplier's bid because it will have more traceability over the waste it disposes, regardless of whether the waste goes to landfill or an ERF. [REDACTED] said that waste traceability is not the sole factor which determines whether a bid will be successful, but it is a key component.
- (d) [REDACTED] submitted that Veolia and Biffa are building polymer plants 'because they know if they can control the market for plastics within the C&I sector, they have control over the value of the material' which is 'hugely stunting competition'.¹¹⁴⁶

Access to third party disposal infrastructure

12.93 C&I suppliers that do not have access to their own infrastructure will have to purchase recycling and waste disposal capacity from third parties.

¹¹⁴² Veolia internal document, VES-000001948 / VECMA00001672.

¹¹⁴³ Note of call [REDACTED]

¹¹⁴⁴ Note of call [REDACTED]

¹¹⁴⁵ Note of call [REDACTED]

¹¹⁴⁶ Note of call [REDACTED].

- 12.94 Veolia submitted that each region of the country has numerous disposal options and that in every region of the country there were [X] active landfills in 2020, excluding those operated by the Parties.¹¹⁴⁷ However, we are conscious that the presence of a facility does not necessarily mean that it has capacity for third party disposal (for example, capacity might be tied to local authority disposal). We are also conscious that use of landfill is in decline, may be more expensive than incineration and some customers do not want to use landfill.
- 12.95 We asked competitors to explain whether they have been denied access to treatment or disposal services by other waste management companies. [X] told us that ‘In a region where an EfW operator also operates a C&I collections fleet, it may be selective of which collection competitors are allocated capacity, or only offer capacity if gate fee was above market’.¹¹⁴⁸ [X] told us that it ‘does not always receive competitive rates from other waste management companies, meaning our local C&I collection prices to customers are higher’.¹¹⁴⁹ Similarly, [X] told us that ‘we are frequently given disposal costs which are commercially unviable’.¹¹⁵⁰
- 12.96 [X] told us that suppliers with access to controlled merchant capacity at ERFs have an advantage over suppliers that do not. In particular, [X] said that the larger suppliers in the market are often anchor tenants at ERFs which gives them access to preferential rates when disposing of waste at these facilities. On the other hand, [X] pays a merchant rate which is substantially higher which it believes puts it at a competitive disadvantage relative to these larger suppliers. [X] believes that upstream suppliers, which have a strong position in local disposal facilities are able to charge higher fees for waste disposal to suppliers in the downstream C&I waste collection market, including [X]. This reduces [X] ability to offer competitive prices when competing in the C&I waste collection market.
- 12.97 [X] further submitted that Biffa has significant buyer power due to the volume of waste it collects, which allows it to negotiate lower rates for disposal.¹¹⁵¹ [X] similarly submitted that, while Biffa does not currently operate any ERFs, it has a competitive advantage because of the volume of waste it collects.¹¹⁵² These volumes are attractive to third party ERFs –

¹¹⁴⁷ Veolia’s [response to provisional findings](#), paragraph 243

¹¹⁴⁸ Response to the CMA’s phase 2 questionnaire [X].

¹¹⁴⁹ Response to the CMA’s phase 2 questionnaire [X].

¹¹⁵⁰ Response to the CMA’s phase 2 questionnaire [X].

¹¹⁵¹ Note of call [X].

¹¹⁵² Note of call [X]

which require consistency of waste volumes in order to operate their facilities efficiently – and therefore allows Biffa to negotiate long-term, low gate fees.

- 12.98 Overall, the evidence received from competitors indicates that third party waste disposal capacity is not always accessible for some suppliers; and the cost of access might be offered at prices above the competitive level. In addition, suppliers which collect large volumes of C&I waste may be able to negotiate more competitive gate fees at third party disposal facilities, which gives them further competitive advantages.¹¹⁵³ Taken together, this might restrict the ability of some C&I suppliers from being able to compete strongly with other suppliers that have access to their own infrastructure or control large volumes of waste.
- 12.99 We are mindful that an analysis of the importance of disposal infrastructure to competition in non-hazardous C&I waste collection services should take into account Biffa's market position.
- 12.100 We note that while Biffa does not currently own and operate its own ERFs, it is constructing two facilities that are due to be operational in 2024–2025. Around two-thirds of the capacity of the two facilities will be used to dispose of Biffa's C&I waste.¹¹⁵⁴
- 12.101 In response to Veolia's submissions regarding Biffa's lack of ERFs, we sought to understand how Biffa disposes of its waste. [X] submitted that it relies on third party facilities to dispose of its C&I waste and disposal costs account for around [X] of the overall costs of C&I waste collection.¹¹⁵⁵ [X] told us that it is [X] collector of C&I waste in the UK and it expects much of the waste that will be disposed of at its [X] ERFs to be its own. [X].
- 12.102 Regarding its historical disposal practices, [X] told us that 'in the last decade, with landfill tax being as high as it is and also given the demands of customers to avoid landfill, we and others have been exporting waste as refuse derived fuel to mainland Europe'.¹¹⁵⁶ On [X] in ERFs, [X] also stated 'we've got [X] waste that's our responsibility because of our C&I collection business. Because that gives us the responsibility for the disposal. So it is

¹¹⁵³ Let's Recycle notes that EfW gate fees will vary in terms of the volume of material supplied, contract length and location Let's Recycle website: [Landfill tax and landfill rates, RDF and energy from waste \(letsrecycle.com\)](https://letsrecycle.com), accessed by the CMA on 22 August 2022.

¹¹⁵⁴ Note of call with Biffa, 5 May 2021.

¹¹⁵⁵ Note of call [X].

¹¹⁵⁶ Note of call [X].

in our interest, really. And because we have control of the waste, it felt like an opportunity to invest'.¹¹⁵⁷

- 12.103 One competitor, [REDACTED], submitted that historically, Biffa has exported a large amount of waste overseas as RDF.¹¹⁵⁸ [REDACTED] also submitted that Biffa uses Andusia, which is an RDF exporter and that Biffa is Andusia's biggest customer.¹¹⁵⁹
- 12.104 Although Biffa has exported much of the C&I waste it collects as RDF export in the past, this is not likely to be as viable in the future. In particular, some foreign governments, including the Netherlands and Sweden, have imposed taxes on waste which is imported from overseas.¹¹⁶⁰ Further, the UK Government is seeking to ban or restrict the export of waste to non-OECD countries through the new Environment Act.¹¹⁶¹ Therefore, in the future, access to disposal infrastructure will become more critical and Biffa has taken the decision to invest in its own ERFs.

Conclusion on importance of access to disposal infrastructure

- 12.105 Most (13 out of 14) national customers told us that access to disposal infrastructure is an important consideration. This is corroborated by the evidence from the Parties' internal documents.
- 12.106 The Parties have access to their own infrastructure and recycle and dispose some of their C&I waste using their respective networks of assets. Smaller C&I suppliers that do not have access to their own infrastructure have to purchase third party waste disposal capacity. Competitors indicated that access is not always available, and the price of access is typically higher than what they consider to be the competitive price in this market.
- 12.107 The largest supplier in the market, Biffa, does not currently operate its own ERFs and relies on access to third party disposal infrastructure. However, no other supplier has the scale of Biffa which may give it some cost advantages, relative to other suppliers, regarding accessing third party

¹¹⁵⁷ Note of call [REDACTED].

¹¹⁵⁸ Note of call [REDACTED].

¹¹⁵⁹ Note of call [REDACTED].

¹¹⁶⁰ Veolia website: [Sweden introduces energy from waste tax on refuse derived fuel \(RDF\)](#), accessed by the CMA on 22 August 2022; MRW website: [Covid and Dutch tax hit RDF exports](#), accessed by the CMA on 22 August 2022

¹¹⁶¹ GOV.UK website: [World-leading Environment Act becomes law](#), accessed by the CMA on 22 August 2022

incineration sites.¹¹⁶² Moreover, the evidence indicates that Biffa is investing in ERF facilities because of the increased cost of disposing via export and landfill.

- 12.108 Indeed, we consider that the evidence indicates that the importance of access to ERF infrastructure is likely to increase in the future given: the waste hierarchy and the Government's policy regarding landfill; some customers' demands that their waste is not disposed of via landfill; that the Government is seeking to ban the export of waste to non-OECD countries; and the increased costs of export in some EU countries.
- 12.109 Overall, the evidence indicates that having cost effective access to disposal infrastructure can give suppliers a cost advantage in the market. The Parties are two of the few competitors in the market that have this advantage due to the number of ERFs they operate and the volume of merchant capacity they control. This will be of increased importance to the Parties in the future following legislative changes.
- 12.110 Biffa has scale, which may help it achieve advantageous terms at third party incineration sites, and it will soon have access to its own ERFs as well.¹¹⁶³ The Merged Entity too will have scale. No other competitor will have either scale or its own ERF infrastructure. We therefore consider that Veolia, Suez and Biffa have some material advantages not available to other competitors.

Route density

- 12.111 Customers told us that price is an important determinant of competition (Table 12.1). One way in which suppliers can compete aggressively on price is if they have sufficient route density in an area.
- 12.112 [X] submitted that route density is very important to competition in this market.¹¹⁶⁴ Specifically, [X] submitted that if it can collect waste from seven or eight businesses on an industrial estate rather than one, that drives down the cost of operating the service. In turn, this allows [X] to earn a margin on

¹¹⁶² In addition to Biffa's (and the Merged Entity's) scale of non-hazardous C&I waste collection, the overall volume of waste material being made available for incineration also includes waste from non-hazardous municipal waste collection where Biffa's share is sizeable. We have found that Biffa has a share of non-hazardous municipal waste collection of around [10-20%] by number of households (Table 8.2) and around [20-30%] by number of contracts (Table 8.3). The Merged Entity would account for [30-40%] on either measure.

¹¹⁶³ Biffa's Protos ERF, being built in partnership with Covanta, is expected to be operational in 2024.

¹¹⁶⁴ Note of call with [X].

the service and to price services more competitively. [REDACTED] further submitted that it has scale and route density, which gives it service flexibility [REDACTED] .

12.113 The Parties also submitted that route density is important in the C&I collection market. Veolia told us that the [REDACTED].¹¹⁶⁵ Veolia stated that [REDACTED]. Suez submitted that to grow in the C&I waste collection market, it tries to gain [REDACTED] in order to grow the business and make it more competitive.¹¹⁶⁶

12.114 [REDACTED].¹¹⁶⁷ [REDACTED].

12.115 Overall, the evidence from the Parties and competitors indicates that route density is an important driver of competition. This is especially likely to be the case at the local level where the greater route density a supplier achieves in an area, the more competitive it will be in that area. In the next section, we consider market shares which provide a good insight into competition at the national level.

Market shares

Parties' views

12.116 Both Parties submitted that there is very limited public data on which to base market share estimates.¹¹⁶⁸ However, Veolia submitted several market share estimates using different bases and market size estimates. These all purported to show that the Parties' combined share of supply is below [20-30%] on any basis, with the increment resulting from the Merger being no higher than [5-10%].¹¹⁶⁹ Veolia further submitted that the different estimates of shares provided have evidential value in that they consistently show low shares.¹¹⁷⁰

12.117 Veolia's share estimates relate to the C&I market as a whole. However, as explained in the introduction to this chapter, our concerns relate to national C&I customers; and Veolia's estimates do not provide shares for this part of the market.

¹¹⁶⁵ Veolia response to second Section 109 Notice, paragraph 112.10.

¹¹⁶⁶ Suez main party hearing, 13 April 2022. See also, Suez site visit slides, 15 February 2022, slide 22

¹¹⁶⁷ Note of call with [REDACTED].

¹¹⁶⁸ FMN, NHW chapter 15.79; and Suez's response to first Phase 1 S109, paragraph 17.11

¹¹⁶⁹ FMN, NHW Chapter, paragraphs 15.79-15.94; Veolia's response to the Issues Paper, paragraphs 2.2.

¹¹⁷⁰ Veolia's response to the CMA Issues Paper, 17 November 2021, paragraphs 2.3-2.6.

Methodology

- 12.118 We requested data¹¹⁷¹ from the Parties and other C&I suppliers on the contracts they held that had an annual contract value in excess of £250,000. As explained in paragraph 12.28, we chose this materiality threshold to focus our analysis on larger national customers. Veolia submitted that approximately [X] per cent of its multiregional C&I contracts, by value, lie above this threshold.
- 12.119 Veolia submitted that our estimates are based on an incomplete and illogical contract sample. In particular, Veolia state that the defining ‘national’ customers as those having sites in more than one region and the use of a £250,000 materiality threshold is a poor proxy for identifying national customers. Veolia believe this is inappropriate because: (i) it conflates high value needs and short contracts with low value needs and longer contracts; (ii) it excludes relevant suppliers which compete for contracts below the threshold; (iii) customers with large volumes of waste which are only present in one region of the UK are excluded; and (iv) it does not account for national customers using different suppliers for different waste streams. As a result, Veolia submitted, our estimated market shares understate the market size and inflate the Parties’ shares.¹¹⁷²
- 12.120 Veolia’s submission on the materiality threshold misconstrues its underlying purpose. The purpose is not to use the £250,000 annual contract value as a proxy for ‘national customers’ but simply as a practical means to focus our analysis of market shares on larger national customers. Some national customers may have smaller value contracts below this level. However, excluding these contracts does not affect the analytical probity of the assessment. Indeed, if the shares were to change materially if lower value contracts were included, it would suggest that the conditions of competition would likely to be different for those smaller customers, and in that scenario it would be appropriate for us to continue to assess larger contracts separately. If shares were *not* to change materially if lower-value contracts

¹¹⁷¹ The data variables included the value of the contract, the start and end dates of the contract, the number of regions from which the supplier collects waste from the customer, and the value of services that the supplier subcontracts for each contract, including the proportion that is subcontracted to Veolia, Suez and Biffa.

¹¹⁷² Veolia’s [response to provisional findings](#), paragraph 235-236.

were included, then the choice of threshold will not have had any impact on our assessment.

- 12.121 By using an annual contract value of at least £250,000 in calculating market shares, we consider we are capturing the main concerns which may arise among national customers. We note that the segment of the market above this contract value is worth over £300 million and therefore we consider that these customers provide a significant basis on which to assess the impact of this Merger.
- 12.122 Our materiality threshold is based upon annual contract value meaning that we do not conflate high value needs and short contracts with low value needs and long contracts. Further, as explained above in the market definition section, we have chosen to consider only customers which are active in two or more regions because our focus is on customers which have a preference for a supplier with a broad geographic coverage. Therefore, customers that are present in only one region of the UK and which produce large waste volumes are not relevant for our analysis.
- 12.123 We asked suppliers to list all the commercial waste collection contracts they currently hold along with information such as the annual contract value and the contract duration. 14 C&I suppliers, including the Parties, responded to our data request, while a further nine indicated that they did not hold any contracts with national customers that had an annual value in excess of £250,000.¹¹⁷³
- 12.124 We gathered additional evidence following the publication of our Provisional Findings relevant to our market share estimates. In particular, three changes to our evidence base have resulted in changes to our provisional market share estimates:
- (a) First, we received further information on some large national contracts that have been won/lost by suppliers.¹¹⁷⁴

¹¹⁷³ 13 C&I suppliers, including the Parties, responded to our data request prior to the PFs. 6 indicated that they did not hold any contracts that had a value in excess of £250,000 and 7 suppliers provided data on their customers. Since our Provisional Findings, we have collected further information from seven other suppliers of non-hazardous C&I waste collection services, six of which are brokers. A further three suppliers confirmed they have no national customers with annual contract values greater than £250,000.

¹¹⁷⁴ Since the publication of the PFs, some recent wins and losses including between suppliers in relation to contracts including in the Provisional Findings have been reallocated as follows: (i) Veolia's revenue has increased as it has won the [X] contract (excluding cardboard fibre) from [X]; (ii) Suez's revenue has decreased as it has lost its contract with [X] and its contract with [X] has come to an end; (iii) Biffa's revenue has decreased as a result of being awarded the [X] contract. There is a corresponding decrease in Suez's revenue shares.

- (b) Second, we received more recent information from [X] which includes updated contract data including cardboard collection contracts (also known as commodity contracts) won by [X] for [X] and [X].¹¹⁷⁵ Although we have revised [X] share by incorporating most of the new data, we have excluded two large contracts with [X] and [X] from our share of supply estimates. This is because the reported revenues from these contracts also include the [X]. On this basis, these contracts have not been included in the share of supply table because the revenue is not generated on the same basis as the contracts held by the other suppliers in the table. As explained in more detail below, excluding all of the revenues from the [X] and [X] contracts understates [X] market share, as some of the revenue would relate to the collection of cardboard from those two customers.
- (c) Third, Mitie provided further information on its contracting arrangements. Specifically, Mitie clarified which of its national customers require only C&I waste collection services and which customers require C&I waste collection services as part of a wider FM contract where other services are bundled alongside it (which has reduced Mitie's share).

12.125 We note that not all C&I suppliers responded to our request for data. However, based on the other evidence gathered during our investigation (third party submissions, Parties' Internal Document, Parties' bid data), we consider that our dataset is sufficiently complete to allow us to calculate reliable and robust market shares estimates. Most importantly, we received responses from the major national waste management firms – including Biffa which is the largest player in the market – and from the significant broker and FM companies as identified by the Parties and third parties.

12.126 Using this dataset, we estimated market shares for national customers (ie those customers that operate in more than region) on two bases:

- (a) Value of work performed, by annual revenue;¹¹⁷⁶ and
- (b) Value of contracts won, by annual revenue.

¹¹⁷⁵ Until February 2022, [X] collected all materials from [X]. Since then, Veolia have won the contract to collect general (non-recyclable) waste and food from [X], with the exception of cardboard fibre which [X] have retained.

¹¹⁷⁶ This has been calculated by taking the total contract value and netting off the revenue which is subcontracted to other waste management companies.

Results

12.127 Table 12.2 below presents our share of supply estimates for national customers based upon the value of work performed by the supplier.

Table 12.10: Estimated market share for non-hazardous C&I waste collection services for national customers (value of work performed by the supplier)

<i>Entity</i>	<i>Revenue (£m)</i>	<i>Share of supply (%)</i>
Veolia	[£x]	[20-30%]
Suez	[£x]	[5-10%]
<i>Merged Entity</i>	[£x]	<i>[20-30%]</i>
Biffa	[£x]	[60-70%]
Bagnalls & Morris	[£x]	[0-5%]
First Mile	[£x]	[0-5%]
Beauparc	[£x]	[0-5%]
Grundon	[£x]	[0-5%]
DS Smith	[£x]	[0-5%]
Total	[£x]	

Source: CMA calculations based on revenue received from the Parties and third parties.

12.128 These share estimates demonstrate that the market for C&I waste collection services when considering only national customers is highly concentrated. The Parties and Biffa collectively account for [90-100%] of the market and other suppliers such as First Mile, Beauparc, Grundon and DS Smith have very low shares.

12.129 On the basis of the above shares, the HHI will increase from 4,665 pre-Merger, up to 4,905 post-Merger which strongly indicates that an already very concentrated market will become more concentrated. The Merger will combine the second and third largest competitors in the market, although Suez is significantly smaller than either Veolia or Biffa.

12.130 Veolia submitted that the estimates based upon the value of work performed are methodologically unsound.¹¹⁷⁷ This is because, if Veolia wins a contract

¹¹⁷⁷ Veolia's [response to provisional findings](#), paragraph 238.

and a significant proportion of it is subcontracted to another supplier, and the customer strongly valued self-performance, the customer would simply not award to Veolia. Therefore, the estimates based upon the value of work performed are not instructive about a hypothetical market for national customers with a strong preference for self-performance.

- 12.131 We consider that the shares based on the value of work performed reflect suppliers' ability to win work, either directly or through subcontracting. However, this does not reflect suppliers' ability to win contracts directly (whether the supplier performs the contract or not). Further, these shares do not effectively take account of the preferences of customers which would consider using a broker. Table 12.3 sets out market shares on the basis of value of contracts won.

Table 12.11: Estimated market share for non-hazardous C&I waste collection services for national customers (total value of contract won)

<i>Entity</i>	<i>Revenue (£m)</i>	<i>Share of supply (%)</i>
Veolia	[£<]	[20-30%]
Suez	[£<]	[5-10%]
<i>Merged Entity</i>	[£<]	[20 – 30%]
Biffa	[£<]	[50-60%]
Novati	[£<]	[5-10%]
DS Smith	[£<]	[5-10%]
Bagnalls and Morris	[£<]	[0-5%]
Reconomy	[£<]	[0-5%]
Roydon	[£<]	[0-5%]
Greenzone	[£<]	[0-5%]
First Mile	[£<]	[0-5%]
Mitie	[£<]	[0-5%]
Grundon	[£<]	[0-5%]
Futur First	[£<]	[0-5%]
Total	[£<]	100%

Source: CMA analysis.

- 12.132 Similar to the share of supply estimates for work performed, the market for C&I waste collection services on the value of national customer contracts

won is highly concentrated. The Parties' combined share of [20-30%] incorporates an increment of [5-10%] and would result in the top two firms accounting for [70-80%] of the market, post-Merger.

- 12.133 Biffa's share includes the revenues generated by its SWR Newstar and Simply Waste subsidiaries.
- 12.134 Novati and DS Smith are the two largest brokers in the market and both have a share of [5-10%] respectively. The remaining competitors collectively account for 15% of the market. Therefore, the Merger represents a significant increase in concentration in a market that is already highly concentrated. The market shares imply that the HHI will increase from 3,096 pre-Merger to 3,282 post-Merger meaning a highly concentrated market will become even more concentrated.
- 12.135 We consider that the Parties' combined share of [20-30%] likely understates the Parties' strengths in winning national contracts (and hence how closely they compete) for some customers. This is because a substantial minority (four out of 12) national customers that responded to our questionnaire said that they would not consider using brokers (as described in paragraph 12.41). Therefore, brokers are less close competitors to the Parties than suppliers which can self-perform because a substantial proportion of customers would not consider brokers as an alternative to the Parties. Excluding brokers from the share analysis results in the Parties' combined share being [30-40%] and Biffa's share [50-60%].
- 12.136 We note that the above estimates do not include all of the regional and local suppliers which are subcontracted by other suppliers. Therefore, they do not tell us the true level of concentration in the market. However, we believe they are a good indicator of closeness of competition for those customers which prefer to not use brokers. The responses to our questionnaire suggest that a sizeable minority (four out of 12) national customers would not consider using a broker and another four out of 12 respondents said they would only use a broker if it made commercial sense.

Conclusion on market shares

- 12.137 Our preferred measure is the value of contracts won. This is because this measure includes shares for brokers which the majority of customers have told us they would consider using. Overall, the analysis shows that the market is already highly concentrated with Biffa and Veolia being the two largest suppliers accounting for [70-80%] of the market the basis of the value of contracts won. Suez is the third largest supplier in the market, but it is significantly smaller than Biffa and Veolia with a [5-10%] share of supply.

When considering the value of contracts won, Novati and DS Smith are each of a similar size to Suez. All other responding suppliers have very low shares.

12.138 The evidence indicates that the Merger will result in further consolidation of an already concentrated market, with the loss of a material constraint.¹¹⁷⁸

Tender analysis

Parties' submissions

12.139 Veolia submitted tender analysis for all the contracts ([REDACTED] in total) that had a total contract value above £250,000 that Veolia bid for the period between 2016 and 2020. The data was provided to the best of Veolia's knowledge and was primarily compiled using data recorded in Veolia's [REDACTED] platform.

12.140 Veolia submitted that the quality and completeness of the information included for each of the opportunities in the [REDACTED] database varied greatly.¹¹⁷⁹ Where information is not available from the [REDACTED] database, Veolia's Sales team has attempted to provide the information on a best efforts basis.

12.141 Veolia submitted that, when considering tenders for 'national' customers, ie customers which operate in more than one UK region, the bidding demonstrates that Suez is a weak competitive constraint, winning [REDACTED]% of tenders won by number, and [REDACTED]% by value.¹¹⁸⁰ In addition, Veolia submitted that it faces a number of similar or stronger constraints, including from brokers, with Biffa being the strongest constraint. Veolia also undertook tender analysis by considering customers which operate in more than six, eight, and ten regions of the UK. In all these cases, Veolia submitted that the results confirm that:

- (a) Suez is not a strong competitor to Veolia. [REDACTED];
- (b) When considering the value of tenders won for customers [REDACTED]; and
- (c) [REDACTED].¹¹⁸¹ [REDACTED].

¹¹⁷⁸ CMA129, paragraph 4.12(a) states that 'While the focus of the CMA's assessment is on the change in the competitive constraints on the merger firms arising from the merger, where one merger firm has a strong position in the market, even small increments in market power may give rise to competition concerns'.

¹¹⁷⁹ Veolia response to second Section 109 Notice of the Phase 1 investigation dated 26 March 2021, paragraph 4.9 and Table 2.

¹¹⁸⁰ Veolia supplemental response, Veolia / Suez C&I bidding data analysis for national customers, 7 April 2022.

¹¹⁸¹ We have combined Biffa and SWR Newstar in the figures.

- 12.142 Veolia submitted that we have placed insufficient weight on the tender data in our assessment.¹¹⁸² Veolia submitted that the tender data contains the best available information on the closeness of competition and this evidence is dismissed in favour of ‘spurious market share estimates and highly ambiguous responses from a tiny fraction of third parties who responded’. Veolia also submitted that the tender data clearly show that brokers and FM companies are able to compete for national customers and that brokers have won national contracts in recent years and exert much more competitive constraint on Veolia than Suez does.¹¹⁸³ Finally, Veolia submitted we should consider the cumulative constraint from competitors, including brokers.
- 12.143 Suez also submitted a dataset containing [X] tenders of which [X] were for national customers, each with an expected value greater than £250,000 in which Suez competed between 2016-2020. We have also conducted analysis on Suez’s tender data.
- 12.144 We note that both sets of tender data have many missing data points in terms of which suppliers competed for contracts and which suppliers ultimately won contracts. For example, of the [X] national contracts listed in Veolia’s tender data, [X] contained no information on which supplier won the contract. Similarly for Suez, of the [X] national contracts listed in the tender data, [X] contained no data on which supplier won the contract.

Results of the tender analysis

Veolia tender data

- 12.145 We have carried out the analysis on Veolia’s tender data on two bases, both of which give some insight into competition for contracts:
- (a) Loss analysis – which looks at how frequently suppliers win contracts when Veolia does not win;
 - (b) Participation analysis – which looks at how frequently suppliers bid for contracts;

¹¹⁸² Veolia’s [response to the Provisional Findings](#), 9 June 2022, paragraph 223.

¹¹⁸³ Veolia’s [response to the Provisional Findings](#), 9 June 2022, Paragraph 219.

12.146 This analysis was conducted on national customer tenders which Veolia has bid for. Veolia told us that it classifies national accounts customers in its internal systems as [REDACTED].¹¹⁸⁴

12.147 Veolia's submissions were based on the analysis of the tender data that was set out in the Provisional Findings. In response to Veolia's submissions, we have conducted further analysis to consider the issues raised by Veolia in the submissions. In particular, we have considered whether any missing data or inaccuracies could be compensated for by using alternative data sources.

12.148 Using Suez's contract data and Suez's tender data, we have identified one additional national customer contract that Suez appear to have won for [REDACTED]. The contract winner was initially blank, but Suez's contract data shows it won this customer and it is a national customer. Veolia has also identified two Suez wins in its tender data which it subsequently does not believe Suez won:

- (a) [REDACTED] – which Suez's tender data shows was won by [REDACTED]. We have therefore amended the tender data to indicate this customer as a [REDACTED] win; and
- (b) [REDACTED] – Veolia understands that Suez carried out some work for [REDACTED]. We have not changed the tender data for this customer as Suez ultimately won work from this customer.

12.149 Once these amendments to the Veolia tender data have been accounted for, the results of this analysis are presented below in Table 12.4 and Table 12.5:

¹¹⁸⁴ Veolia response to CMA Issues Paper dated 11 November 2021, Paragraph 2.12.

Table 12.12: Results of tender analysis using Veolia's tender data (number of contracts), 2016-2020

<i>Entity</i>	<i>Wins</i>	<i>Number of tenders participated in</i>
<i>Sample Size</i>	[X]	[X]
Veolia	[X]	[X]
Biffa	[X]	[X]
Suez	[X]	[X]
Unidentified brokers	[X]	[X]
1 st Waste	[X]	[X]
DS Smith	[X]	[X]
Mitie	[X]	[X]
Reconomy	[X]	[X]
SWR Newstar ¹¹⁸⁵	[X]	[X]
UKWSL (Novati)	[X]	[X]
Refood	[X]	[X]
Simply Waste ¹¹⁸⁵	[X]	[X]
Wards	[X]	[X]
Smurfit Kappa	[X]	[X]
Circom	[X]	[X]
ACM	[X]	[X]
Greenzone	[X]	[X]

Source: CMA calculations using the Parties' tender data

Note: The figures in 'tenders participated in' do not fully reconcile with the figures of 'wins' since in some tenders the winner was not known or recorded by the Parties.

¹¹⁸⁵ SWR Newstar and Simply Waste were acquired by Biffa March 2019 and October 2020 respectively. Therefore, we do not consider these brokers to be independent constraints, rather, they are part of the constraint imposed by Biffa. Nevertheless, this data covers a period prior to their acquisition by Biffa.

Table 12.13: Results of tender analysis using Veolia's tender data (value of contracts £m), 2016-2020

<i>Entity</i>	<i>Value of wins</i>	<i>Value of tenders participated in</i>
Veolia	[REDACTED]	[REDACTED]
Biffa	[REDACTED]	[REDACTED]
Suez	[REDACTED]	[REDACTED]
Unidentified brokers	[REDACTED]	[REDACTED]
1 st Waste	[REDACTED]	[REDACTED]
DS Smith	[REDACTED]	[REDACTED]
Mitie	[REDACTED]	[REDACTED]
Reconomy	[REDACTED]	[REDACTED]
SWR Newstar ¹¹⁸⁵	[REDACTED]	[REDACTED]
UKWSL (Novati)	[REDACTED]	[REDACTED]
Refood	[REDACTED]	[REDACTED]
Simply Waste ¹¹⁸⁵	[REDACTED]	[REDACTED]
Wards	[REDACTED]	[REDACTED]
Smurfit Kappa	[REDACTED]	[REDACTED]
Circom	[REDACTED]	[REDACTED]
ACM	[REDACTED]	[REDACTED]
Greenzone	[REDACTED]	[REDACTED]

Source: CMA calculations using Veolia tender data

Note: The figures in 'tenders participated in' do not fully reconcile with the figures of 'wins' since in some tenders the winner was not known or recorded by the Parties.

12.150 The analysis shows that [REDACTED] is by far Veolia's strongest competitor for national C&I contracts. It has won more national customer contracts ([REDACTED] when accounting for [REDACTED] and [REDACTED]) in the tenders that Veolia participated in than any other supplier (with the exception of Veolia) and it has participated in more national customer tenders than any other supplier. Indeed, in the tenders that Veolia participated in, [REDACTED] won more than twice as many contracts as all the other suppliers combined (excluding Veolia).

12.151 Suez has won [REDACTED] of the [REDACTED] national customer contracts which Veolia did not win. The dataset also shows that some brokers have won national

customer contracts, including 1st Waste ([REDACTED] contracts), DS Smith ([REDACTED] contracts), Reconomy ([REDACTED] contracts) and Novati ([REDACTED] contracts).

12.152 When considering contract wins on the basis of the value of contracts, DS Smith and SWR Newstar (now owned by Biffa) won a higher value of contracts than Suez. According to the data, DS Smith have won [REDACTED] of contracts, of which [REDACTED] is accounted for by a contract with [REDACTED]. However, DS Smith has told us that [REDACTED].¹¹⁸⁶ We understand that this is why the value of some of the tenders that DS Smith participated in is so large in the tender data that Veolia submitted (Table 12.5) [REDACTED]. Regarding [REDACTED], we understand that Veolia collects [REDACTED] in England, while this waste is collected by [REDACTED] in [REDACTED].¹¹⁸⁷

12.153 SWR Newstar was acquired by Biffa after the period covered by the tender data and therefore we have assessed it as part of the constraint imposed by Biffa. In other words, to the extent that SWR Newstar provided a competitive constraint on Veolia and/or Suez independent from the constraint imposed by Biffa, that constraint has now gone. Although this evidence indicates that in the past SWR Newstar, as a broker, has been able to win contracts of substantial value, we do not consider it appropriate to extrapolate the ability of SWR Newstar to win contracts to other brokers in general.

12.154 We have found that [REDACTED] has also won large value contracts. [REDACTED] has won [REDACTED]. We believe this contract is also a specialised contract for cardboard fibre for two reasons:

- (a) In Veolia's tender data, Veolia state that [REDACTED];
- (b) DS Smith told us [REDACTED] (along with various other packaging and waste management suppliers).¹¹⁸⁸

12.155 Following DS Smith, Smurfit Kappa, and SWR Newstar / Biffa, the win data indicates that Suez [REDACTED], Novati, which has won [REDACTED] worth of contracts.

12.156 Similarly, the evidence from the participation analysis shows that Suez competes in more tenders than any other supplier (with the exception of Biffa) and that the total value of tenders that Suez has competed in exceeds all other suppliers (with the exception of Biffa).

¹¹⁸⁶ Note of call with DS Smith, 24 June 2022.

¹¹⁸⁷ Veolia supplemental response on large C&I customers, 13 May 2022 and [REDACTED].

¹¹⁸⁸ Note of call with DS Smith, 24 June 2022.

- 12.157 In response to Veolia's submissions on large C&I customers, we also conducted loss analysis and participation analysis on only those contracts which are estimated to be worth more than £1 million. Above this threshold, Suez won [X] contracts, which is the same number as Novati and DS Smith, but is second only to Biffa which has won [X] contracts. When considering contract wins on the basis of value, Suez has won the third highest value of contracts ([X]) behind DS Smith ([X]) and Biffa ([X]).
- 12.158 Further, when considering bids for contracts valued at more than £1 million, Suez competes for more contracts than any other supplier (with the exception of Biffa). In particular, Suez competed for [X] contracts worth a combined total of [X]. This compares to Biffa, which competed for [X] contracts worth a combined total of [X], DS Smith, which competed for [X] contracts worth a combined total of [X], and Novati, which competed for [X] contracts worth a combined total of [X].

Suez tender data

- 12.159 Suez's tender data did not provide any information on which supplier won, other than for [X] national customer tenders where Suez won. However, Suez did provide data on who it competed with in [X] national customer tenders. Of these [X] national customer tenders, Suez faced Veolia in [X]% ([X] out of [X]) of tenders and Biffa in [X]% of tenders ([X] out of [X] tenders). Suez's tender data also showed it did not face Reconomy in any of the [X] tenders and only faced Mitie in [X]% ([X] out of [X]) of its tenders.

Our assessment of the tender analysis

- 12.160 The results from our analysis of Veolia's tender data show:

- (a) Biffa is by far the strongest competitor to Veolia;
- (b) Suez is a relatively weak constraint on Veolia compared to Biffa but a stronger constraint than almost all other suppliers;
- (c) Brokers are also a relatively weak constraint on Veolia.

- 12.161 The tender data show that [X] is the next largest competitor to Veolia after [X]. However, the majority of the value of [X] wins in tenders that it competed against Veolia is from a [X] paper fibre contract where the remuneration process differs from collection contracts for general waste. Although Suez and Veolia do compete for such contracts, the value in the data of the contracts cannot be separated between the collection service and the value of the material being collected, and therefore in assessing

competition in C&I waste collection services the figures are inflated. We are not aware of any standalone paper fibre contracts in the tender data which Suez have won.

- 12.162 [X] and [X] are the only competitors to have won a greater value of contracts than Suez when competing against Veolia. Therefore, treating SWR Newstar as part of Biffa, and when comparing the value on contract wins for comparable contracts (ie for the collection of general waste), Suez is the next strongest competitor to Veolia after Biffa. However, the constraint that Suez impose on Veolia is nowhere near as great as Biffa, and Suez are only marginally stronger than brokers. In particular, DS Smith, Novati, and Reconomy impose some weak constraint on Veolia.
- 12.163 Veolia has included unidentified brokers in the tender data provided to us. The data shows that there were [X] national customer contracts where an unidentified broker has participated in the tender. Because the competitors are unidentified we have not been able to corroborate this position. However, we note that Veolia did not consider that these unidentified competitors won any of the contracts from these [X] tenders and therefore have placed limited weight on these unidentified suppliers as a competitive constraint.
- 12.164 Suez's tender data showed that both Veolia and Biffa are strong constraints on Suez when competing for national contracts. However, Suez did not face strong competition from other suppliers, including brokers and FM companies, when competing for national customers.
- 12.165 The contract data collected from Suez shows that it currently holds [X] national customer contracts with a value greater than £250,000 which it has won directly (ie it has not been sub-contracted by a broker) since 2017. However, Veolia's tender data shows that Suez won only [X] national customer contracts since 2017. We consider that the Veolia tender data is still likely to miss a number of Suez wins.

Conclusion on Parties' tender data

- 12.166 Overall, the tender data for national customer contracts suggests that:
- (a) Biffa is a strong constraint on both of the Parties;
 - (b) Suez imposes a limited competitive constraint on Veolia but nevertheless a stronger constraint than all other competitors other than Biffa and DS Smith.
 - (c) Veolia imposes a strong competitive constraint on Suez; and

- (d) other suppliers in the market, including brokers, impose a limited competitive constraint on both Parties.

12.167 The tender data submitted by the Parties is subject to some limitations. The Veolia tender data fails to identify the winning supplier in a significant proportion of tenders. The limitations within the Suez tender data are even more extensive, as the vast majority of tenders contain no information on which supplier ultimately won the contract. Notwithstanding these limitations, the tender data is informative and we have considered it in the round along with the other evidence collected during the investigation.

Internal documents

12.168 The Parties' internal documents provide some insight on which suppliers the Parties consider to be their strongest competitors in the market.

12.169 A Veolia internal document [REDACTED].¹¹⁸⁹

12.170 A Suez internal document dated December 2020 on sales and retention strategy for C&I customers in the [REDACTED].¹¹⁹⁰ [REDACTED]. This suggests that Veolia and Biffa are stronger competitors in the market than Suez.

12.171 In a Suez internal strategy document from May 2020, [REDACTED].¹¹⁹¹ This suggests that Suez believes Biffa and Veolia are strong competitors for national customer contracts.

12.172 These internal documents indicate that Biffa is a strong competitor to both Parties when competing for national customers. Veolia's document suggests that Suez is its next closest competitor after Biffa. Suez's documents indicate that Veolia and Biffa are its strongest competitors. Credible suppliers

12.173 We asked national customers to list which suppliers they consider to be credible if they were to re-tender their current C&I waste contracts and we asked competitors who they would consider to be their strongest competitors for C&I customers. The results of this analysis are presented in this section.

¹¹⁸⁹ Veolia internal document, VECMA00016846

¹¹⁹⁰ Suez internal document, VES-000006287.

¹¹⁹¹ Suez internal document, VES-000011873.

Parties' views

- 12.174 Veolia submitted that customers mentioned Suez on fewer occasions than Veolia and Biffa, and a similar number of times to brokers.¹¹⁹² Veolia noted the discrepancy between the position that brokers do not compete for national customers, while at the same time some brokers receiving a similar number of mentions from customers to Suez. Veolia also submitted that the proxy that we have used for national customers may be inappropriate given that several regional suppliers are mentioned.
- 12.175 Veolia similarly submitted that as competitors also listed regional suppliers their responses suggest that the questions we asked competitors do not correspond to the theory of harm.¹¹⁹²
- 12.176 Veolia submitted that we unduly dismissed brokers and FM companies and that third party evidence indicates that brokers and FM companies are strong competitors.¹¹⁹³
- 12.177 Veolia also submitted that our Provisional Finding that SWRNewstar and Simply Waste are not independent constraints because they have been acquired by Biffa is irrelevant.¹¹⁹⁴ Veolia submitted that [REDACTED] it is relevant that Biffa continues to operate these companies on a broker model under the same brands.
- 12.178 Veolia also submitted that our wording of the questions in the questionnaires shaped the responses.¹¹⁹⁵ Specifically, we asked suppliers about 'competitors for integrated contracts (ie contracts that include several services across the waste management supply chain)'. Veolia submitted that this was inappropriate because 'integrated contracts' was not a relevant concept in the context of C&I waste collection contracts and the phrasing of the question introduced bias as it prompted respondents to list firm of that type.
- 12.179 Finally, Veolia submitted that it is inappropriate to treat non-responses as zero when calculating average scores as it has a disproportionate impact on the scores.

¹¹⁹² Veolia response to CMA's Working Paper on the supply of C&I non-hazardous waste collection services.

¹¹⁹³ Veolia's [response to the provisional findings](#), paragraphs 218-222.

¹¹⁹⁴ Veolia's [response to the provisional findings](#), paragraphs 221.

¹¹⁹⁵ Veolia's [response to the provisional findings](#), paragraphs 249.

Evidence from customers

12.180 We asked the Parties' customers to list the suppliers that they would consider to be credible if they were to re-tender their current C&I waste collection contracts in the near future and to indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong).¹¹⁹⁶ In total, nine national customers responded to our questionnaire. Table 12.6 summarises the results from our phase 2 questionnaire.

Table 12.14: Average strength rating of the Parties and competitors according to customers

<i>Entity</i>	<i>Number of mentions</i>	<i>Average rating</i>	<i>Average rating (non-mentions=0)</i>
Veolia	7	4.4	3.4
Biffa	8	3.7	3.3
Suez	2	5.0	1.1
DS Smith	2	3.0	0.7
Novati	2	3.0	0.7
Viridor	2	2.5	0.6

Source: CMA calculations

Note: We note that Viridor's C&I waste collection business has recently been acquired by Biffa (in September 2021) and is no longer active in the market.

12.181 When calculating the average ratings, we have taken two approaches. This is because non-mentions of a supplier can be interpreted as meaning either (i) that the supplier is non-credible, or (ii) that the customer is only familiar with certain suppliers. In the first case, a non-mention of a supplier would warrant a zero rating and in the latter case the non-mention would be discounted. We have presented both ways of scoring in the table above. However, we have put more weight on the scores that treat non-mentions as zero, ie a non-mention means it is non-credible. This is because we consider that customers are likely to be aware of a broad range of suppliers in the

¹¹⁹⁶ The question asked was: Using the table below, please list the suppliers you would consider as credible if you were to re-tender the services listed in question 2 in the near future (please pick up to three contracts that need to be re-tendered soonest). In doing so, please:

- List the type of waste that would need to be collected as part of the tender;
- List the criteria you would use to assess the bidders;
- Rank the suppliers in order of preference;
- Indicate on a scale from one to five (where one is not very strong and five is very strong);
- Provide an explanation for your rating. In doing so, please refer to the selection criteria you would consider to be important in such a tender.

market that can serve their needs, given the relatively short-term nature of C&I contracts and the frequency with which they are re-tendered.¹¹⁹⁷

12.182 Biffa and Veolia were identified most frequently and given the highest average ratings when adjusted for non-mentions as zero:¹¹⁹⁸

- (a) Customers said that Biffa has good national coverage, as well as having a strong track record and good pricing.¹¹⁹⁹
- (b) Customers said that Veolia prices competitively, provides a good quality service, has strong infrastructure, and good sustainability credentials.^{1200,}

12.183 Two of the nine respondents listed Suez as a credible supplier and Suez's average strength rating is 1.1. This is considerably lower than Veolia and Biffa. Suez's customers provided a range of views on its strengths including that Suez is a national provider, provides large coverage, is known for its performance, and provides strong service delivery.¹²⁰¹ However, Suez was also said to be strong in England, but less so in Scotland and Wales and one customer said it has had performance issues.¹²⁰²

12.184 A number of other suppliers were also mentioned by two customers:

- (a) DS Smith was mentioned by two customers and received an average rating of 0.7. Customer comments included that DS Smith is competitively priced and that it is a large, strong company.¹²⁰³ However, customers also noted it will subcontract a greater proportion of its contracts compared to other suppliers and that it is less competitive and has been impacted by the refuse derived export tax;¹²⁰⁴

¹¹⁹⁷ This is in contrast to local authority contracts of the kind examined in Chapters 8 to 10 which involve longer term contracts.

¹¹⁹⁸ We asked a similar question to customers during the CMA's Phase 1 Investigation. The results of this showed Biffa was the strongest competitor, followed by Veolia, Suez, Reconomy, then DS Smith. We have not combined the scoring from the Phase 1 questions with the responses to the questionnaire, as the questions asked were not exactly the same. However, we have included the written responses to the Phase 1 questions to provide context for the scores.

¹¹⁹⁹ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

¹²⁰⁰ Responses to the CMA's phase 2 questionnaire from [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

¹²⁰¹ Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED], and responses to the CMA's phase 1 questionnaire from [REDACTED] and [REDACTED].

¹²⁰² Responses to the CMA's phase 1 questionnaire from [REDACTED] and [REDACTED].

¹²⁰³ Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

¹²⁰⁴ Response to the CMA's phase 2 questionnaire from [REDACTED] and response to the CMA's Phase 1 questionnaire from the [REDACTED].

- (b) Novati (a broker) was also listed twice by customers and received an average rating of 0.7; and
- (c) Viridor was also mentioned by two customers but we note that Viridor has recently withdrawn from the market after its collection business was acquired by Biffa.¹²⁰⁵

12.185 Nine suppliers were each mentioned once by national customers.¹²⁰⁶

12.186 Overall, the evidence from customers indicates that Veolia and Biffa are the two strongest suppliers in the market. Suez and DS Smith were the only other suppliers with more than one customer rating them. Customers indicated that while Suez has a large coverage across the UK, it may be stronger in some regions than others and overall, provided mixed feedback on Suez's strengths.

12.187 Therefore, this evidence indicates that Veolia and Biffa are close competitors. We consider that the evidence further suggests that Veolia and Biffa exert a strong constraint on Suez but that Suez (and the other C&I suppliers), exert a weaker constraint on Veolia and Biffa.

Evidence from competitors

12.188 We asked the Parties' competitors to list which suppliers they would consider to be their strongest competitors for C&I customers and to rank suppliers in order of overall strength, indicate the strength of each supplier on a scale from one to five (where one is not very strong and five is very strong).¹²⁰⁷ In total, nine competitors provided ratings for competitors in the market.

¹²⁰⁵ Biffa's website: [Biffa acquires Viridor collections business and certain recycling locations](#), accessed by the CMA on 18 May 2022.

¹²⁰⁶ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

¹²⁰⁷ The question asked was:

Using the table below, please list the suppliers you would consider to be your strongest competitors for integrated contracts (ie contracts that include several services) of C&I customers across the waste management supply chain. In doing so, please:

- a. *Rank the suppliers in order of overall competitive strength (including yourself);*
- b. *Indicate the strength of each competitor on a scale from one to five (where one is not very strong and five is very strong); and*
- c. *Provide an explanation for your rating and how the competitors differ from each other.*

Table 12.15: Average strength rating of the Parties and competitors according to competitors

Entity	Number of mentions	Average rating	Average rating (non-mentions=0)
Veolia	8	5.0	4.4
Suez	7	4.6	3.6
Biffa	6	4.5	3.0
FCC	2	3.5	0.8

Source: CMA calculations.

Note: the table omits suppliers with only one mention

12.189 From the nine competitor responses, Veolia was listed most often (by eight competitors) and it received an average strength rating of 4.4 when treating non-mentions as zero. Suez was listed by seven competitors and it received an average strength rating of 3.6 across these seven competitors when treating non-mentions as zero. Biffa was listed by six competitors and it received an average strength rating of 3.0 when treating non-mentions as zero. After the Parties and Biffa, FCC was listed by two competitors, followed by a tail of nineteen competitors which each received one mention with average strength scores below one.

12.190 Veolia submitted that our wording of the question in the questionnaire shaped the responses we received because the question referred to ‘integrated contracts’ and ‘suppliers active across the waste management supply chain’.¹²⁰⁸ The responses we received from suppliers included mentions of competitors which are not active across the supply chain, including Mitie, Novati, and Reconomy. Therefore, we consider that the responses suggest that suppliers’ responses were not shaped by the wording of the question.

12.191 [X] submitted that:

- (a) it was able to compete directly for customers, using its own facilities, covering all or a large part of the UK. However the choice of suppliers (with their own facilities, covering all or a large part of the UK) available

¹²⁰⁸ Veolia’s [response to the provisional findings](#), paragraph 249.

to customers operating across the whole of the UK is more limited;^{1209, 1210} and

- (b) its main competitors for customers operating across the whole of the UK are Veolia, followed by brokers, while Suez largely competes for ‘multi-regional’ customers.¹²¹¹

12.192 Overall, competitor responses indicate that Veolia, Biffa and Suez are the strongest competitors. [X] rated Veolia as a strong competitor and scored it 5 out of 5 for strength and said that apart from itself, Veolia had the widest national and breadth of service coverage across the UK’.¹²¹² [X] listed Biffa and Veolia as its two strongest competitors, giving both a strength rating of 5 out of 5.¹²¹³ [X] said that Veolia and Biffa are ‘true national businesses’ while [X] said that Veolia is its strongest competitor.^{1214 1215}

12.193 [X] gave Suez a rating of 5 in its scoring and said that ‘Suez’s national presence is less than that of Biffa and Veolia, but has significant capabilities across the UK’.¹²¹⁶ It also said that that Suez is a ‘non-event in terms of national C&I’ and it has ‘withered on the vine over a decade’.¹²¹⁷ [X] rated Suez as a weaker competitor compared to Veolia and Biffa.¹²¹⁸

12.194 These ratings are also reflected in other evidence we have received from competitors. [X] stated in its calls that ‘ Suez is a multi-regional business, but that it is not as strong when competing for national customers.’¹²¹⁹ [X] similarly stated in a call that that while Suez, Veolia and Biffa are the only suppliers capable of competing for national contracts, Suez does not have the same level of national coverage compared to Veolia and Biffa, and it relies more on subcontracting for national customer contracts.¹²²⁰ [X] said that Suez is also a ‘true national business’ alongside Veolia and Biffa, but to a lesser extent.¹²²¹

¹²⁰⁹ Response to the CMA’s phase 1 questionnaire from [X].

¹²¹⁰ Note of call [X].

¹²¹¹ Note of call [X].

¹²¹² Response to the CMA’s phase 2 questionnaire from [X].

¹²¹³ Response to the CMA’s phase 2 questionnaire from [X].

¹²¹⁴ Note of call [X].

¹²¹⁵ Response to the CMA’s phase 2 questionnaire from [X].

¹²¹⁶ Response to the CMA’s phase 2 questionnaire from [X].

¹²¹⁷ Note of call [X].

¹²¹⁸ Response to the CMA’s phase 2 questionnaire from [X].

¹²¹⁹ Note of call [X].

¹²²⁰ Note of call [X].

¹²²¹ Note of call [X].

12.195 [X] rated brokers collectively 5 out of 5 for strength¹²²² and said its main competitors for customers that want to procure their services on a national scale are Veolia followed by brokers.¹²²³ However, [X] also told us that brokers are not as credible because some customers prefer suppliers which self-deliver as they have more confidence in the service.¹²²⁴ [X] indicated that it would not be able to win large national contracts (paragraph 12.207). Our market share estimates indicate that [X] currently holds [X] national C&I customer contracts and is at least half the size of Suez.

Constraints from brokers and FM companies

12.196 Suez submitted that the more subcontracting a supplier does, [X].¹²²⁵ This is because some customers have a preference for minimising the amount of subcontracting that a supplier undertakes. In particular, some customers request reassurances about how and where their waste will be disposed of. Suez stated it can provide these reassurances to customers since it is active across the waste management supply chain, whereas brokers [X]. Suez further submitted that this is likely to become increasingly important with the introduction of the new Environment Act 2021 which is seeking to increase the UK's recycling rate up to 65 percent.¹²²⁶ This means that it will be more important for waste management companies and their customers to understand and control where their waste is treated.

12.197 Our analysis of the contract data from the Parties and their competitors supports the view that waste management firms subcontract a proportion of their services to other waste management companies. For national customers, we found that Veolia subcontracts [20-30%] of the total value of its C&I waste collection operations, with the equivalent figures for Suez and Biffa being [30-40%] and [5-10%] respectively.

12.198 By contrast, brokers and FM companies act as intermediaries and subcontract 100% of the C&I waste collection services that they provide to their customers.

12.199 In paragraph 12.51, we explained that customers typically prefer to have a single supplier providing waste collection services across all their sites. The

¹²²² Response to the CMA's phase 2 questionnaire from [X].

¹²²³ Note of call [X].

¹²²⁴ Note of call [X].

¹²²⁵ Transcript of hearing with Suez, 13 April 2022, pp 69-83.

¹²²⁶ UK Parliament Website: [Environment Act 2021 - Parliamentary Bills - UK Parliament](#), accessed by the CMA on 22 August 2022

responses to the question referred to in paragraph 12.51 do not indicate whether the respondents consider brokers to be a 'single supplier'. However, seven of the nine respondents which said they prefer to use a single supplier across all their sites also said they would consider using a broker.

12.200 Evidence from national customers indicated that the Parties – where they were the sole supplier of C&I services – have subcontracted part of the service to other waste management companies.¹²²⁷ For example [X] told us that suppliers can subcontract to areas where they require additional strength.

12.201 We asked customers which suppliers they would consider to be credible if they were to re-tender their current C&I waste collection contract in the near future. Only two brokers/FM companies were listed by more than one of the nine national customers that answered this question: Novati and DS Smith which were each listed by two customers.¹²²⁸ One customer gave a lower rating to Novati than to Suez and Biffa and noted that Novati, as a waste broker, placed an additional barrier between the customer and the contractor. This led to a lack of control and longer response times if any issues arose.¹²²⁹ The other customer ranked Novati ahead of Biffa and Suez but behind Veolia, but did not provide an explanation for these rankings.¹²³⁰ The two customers which provided ratings for DS Smith use DS Smith for cardboard and plastic recycling rather than for its general waste broker business. Therefore, DS Smith's rating from customers reflects their experience of DS Smith's cardboard and plastic recycling business rather than its broker business.

12.202 Overall, responses from customers indicate that they had mixed views on brokers/FM companies. A third of respondents indicated a preference to not use brokers, a third said they would consider using them if it was commercially beneficial, and a third said they would consider using them without explanation.

12.203 However, some national customers indicated that they have a preference for their supplier to self-perform the majority of the contract, or sub-contract less of the services to other waste management companies. [X] explained that it prefers a single supplier as it brings benefits from a simplicity perspective,

¹²²⁷ Responses to the CMA's phase 2 questionnaire [X], [X], [X] and [X].

¹²²⁸ We asked a similar question to customers during the CMA's Phase 1 Investigation and only one broker was listed by more than one customer (out of seven responses): Reconomy received three mentions.

¹²²⁹ Response to the CMA's phase 2 questionnaire [X].

¹²³⁰ Response to the CMA's phase 2 questionnaire [X].

but also acknowledged that subcontracting may be necessary in areas (for example geographies) where the contractor requires additional strength. [X] said that it would want a 'single provider that can manage all of our waste requirements' and for only a 'small proportion of services' to be provided by subcontractors. [X] also told us that it was important to use a single supplier, as it enabled a 'single, clear strategic direction' with the supplier. It made it 'easier to negotiate one single arrangement' and liaise with one single supplier. In [X] view, it ensured consistency of service across its estate when working with only one supplier.

12.204 Veolia submitted that we relied on two comments from customers to support our Provisional Findings that some customers prefer suppliers that self-perform contracts.¹²³¹ We also gathered evidence from suppliers on the importance that customers place on self-performance and subcontracting.

12.205 [X] submitted that it sells itself to customers on its ability to self-perform its collection service.¹²³² [X] further submitted that some customers have more confidence in a service which is self-delivered. [X] noted that customer concerns over health & safety would be addressed by contracting to a national supplier. However, [X] also stated that as data and technology improves, the broker model can be more effective. This is because local operators can provide real time confirmation of jobs, provide weight data, etc, meaning the experience of using a broker may not be so different from using a supplier which self-performs.

12.206 One third party, [Company Y], submitted that:

- (a) some customers with multiple sites and contracts worth over £250,000 per year can be served by providers with only a local or regional footprint.¹²³³ This respondent submitted that there are numerous local, regional and national collections businesses, as well as brokers, who service customers with spend over £250,000 per year.¹²³⁴
- (b) brokers have demonstrated their ability to compete for and win national customers; and

¹²³¹ Veolia's [response to the provisional findings](#), paragraph 229

¹²³² Note of call [X].

¹²³³ [X] [Company Y Response to Provisional Findings](#)

¹²³⁴ [X] [Company Y Response to Provisional Findings](#)

- (c) there are many credible options outside of [X] and the Merging Parties for brokers, FM providers and regional waste collectors to subcontract work across the UK.¹²³⁵

12.207 [X] similarly submitted that four or five years ago, many customers had reservations about brokers because they do not operate their own collection trucks.¹²³⁶ However, [X] also noted that the use of real time data allows it to demonstrate to customers that it can monitor service levels which has helped to alleviate the concerns of some customers.

12.208 [X] submitted that some customers prefer suppliers which self-deliver over brokers and FM companies. This may be because the customer has had a bad experience with a broker or it may be because it believes it can manage the waste collection supplier itself without the need for a broker.¹²³⁷

12.209 [X] submitted that there is a strong preference for suppliers to self-deliver.¹²³⁸ [X] also submitted that it will not bid for national accounts customers if it has to subcontract more than 40-50% of the contract because it is unlikely to win.

12.210 [X] submitted that larger national companies probably find it easier to use a self-performing national supplier rather than a broker for waste collection as a supplier which self-performs is likely to have more oversight over where and how the waste is disposed of.¹²³⁹ Beuparc also submitted that while brokers have been relatively successful recently, some larger customers are starting to question the simplicity of broker contracts. In particular, when customers try to audit broker contracts for waste traceability, it is very onerous to audit all the subcontractors.

12.211 [X] submitted that some national customers, in particular supermarkets and some other large national customers such as [X], have a fear of using a broker.¹²⁴⁰ [X] believe these customers do not see the value of the broker model and would prefer to go direct to a supplier which self-performs.

12.212 The above evidence indicates that some customers have a preference for suppliers that have the ability to mainly self-perform contracts for various reasons including concerns about the level of performance of the supplier

¹²³⁵ [X] [Company Y Response to Provisional Findings](#)

¹²³⁶ Note of call [X].

¹²³⁷ Note of call [X].

¹²³⁸ Note of call [X].

¹²³⁹ Note of call [X].

¹²⁴⁰ Note of call [X].

and the traceability of waste. However, two suppliers submitted that data and technology was potentially helping to alleviate the concerns of some customers and another said price was more important. Even so, suppliers that self-perform, such as [REDACTED], market themselves to customers on their ability to self-perform and some brokers believe their business model sometimes puts them at a competitive disadvantage relative to the Parties and Biffa.

12.213 Some of Veolia's internal documents suggest that some customers may prefer suppliers that self-perform or substantially self-perform contracts rather than subcontract.¹²⁴¹ For example, one such Veolia internal document from January 2019 sets out [REDACTED].

12.214 A Veolia internal document from February 2022 discusses [REDACTED] as a potential new client.¹²⁴² The document states: [REDACTED].

12.215 In response to Veolia's submissions on the internal document which refers to [REDACTED], we spoke to Suez regarding this contract.¹²⁴³ Suez confirmed that the customer switched to another supplier in April 2022. Suez understood that [REDACTED] had a desire for no subcontracting, but this was not explicitly stated as a reason why the customer switched supplier. However, [REDACTED] did inform Suez that part of the reason for switching supplier was to [REDACTED].

12.216 Another Veolia internal document produced for the purpose of an [REDACTED].¹²⁴⁴ [REDACTED]:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED];

(d) [REDACTED];

(e) [REDACTED].

12.217 The above suggests that Veolia see rivals which are brokers, or which do not self-perform a large proportion of the contract, as weaker competitors.

¹²⁴¹ Veolia internal document, VES-000001035.

¹²⁴² Veolia internal document, VES-000008075.

¹²⁴³ Suez response to RFI5, paragraphs 1701.-170.3.

¹²⁴⁴ Veolia internal document, VES-000001137.

- 12.218 The internal documents described above are just three examples of customers potentially showing a preference for minimising the volume of subcontracting by suppliers. However, we believe they show that self-performance and subcontracting can be factors which customers care about.
- 12.219 Veolia submitted that we have relied on a small number of Veolia's internal documents to support our findings and that none of these documents can be used to infer any general conclusion on the importance of self-supply.¹²⁴⁵ In response, we consider that the internal documents are probative but we have used this evidence in conjunction with other evidence to come to an assessment based on all of the evidence in the round. We note that Veolia has not pointed us to any internal documents which show that national customers are ambivalent about subcontracting.
- 12.220 We also looked at the extent to which brokers and FM companies supply national customers. We asked the Parties' C&I competitors to provide data on the contracts they currently hold that have an annual value of more than £250,000. Out of the 18 competitors that responded, eight were either brokers or FM companies.¹²⁴⁶
- 12.221 [REDACTED].¹²⁴⁷ [REDACTED].
- 12.222 [REDACTED] contract data shows that it has [REDACTED] customers that are active in more than one region of the UK and which are worth more than £250,000 per annum.¹²⁴⁸ These contracts generated £[REDACTED] million per annum in revenue for [REDACTED]. However, [REDACTED] indicated that £[REDACTED] million of this revenue came from customers which acquire C&I waste collection services as part of a wider FM contract where several other services are bundled alongside waste collection which the Parties do not overlap in. For these contracts, [REDACTED] told us that it competes with other FM companies, such as ISS and OCS, rather than the Parties and Biffa.¹²⁴⁹
- 12.223 Veolia identified DS Smith as a credible bidder for large national customers in its submissions. DS Smith submitted that it has national customer

¹²⁴⁵ Veolia's [response to the provisional findings](#), paragraph 230.

¹²⁴⁶ The brokers and FM companies which responded to our information request were: DS Smith, Novati, Reconomy, Roydons Recycling, Greenzone, Mitie, Futur First, and ISS. Of these respondents, only ISS did not have national customer contracts with an annual value greater than £250,000. We also received responses from SWR Newstar and Simply Waste, however we have considered these suppliers to be part of the competitive constraint imposed by Biffa.

¹²⁴⁷ Note of call [REDACTED].

¹²⁴⁸ Response to the CMA's phase 2 questionnaire from [REDACTED].

¹²⁴⁹ Note of call [REDACTED].

contracts with three national customers for the collection of all C&I waste,¹²⁵⁰ as well as contracts with [X] for the collection of cardboard fibre only.¹²⁵¹ Several of the supermarkets and national restaurant chains which Veolia submitted are customers of DS Smith are in fact not customers of DS Smith.¹²⁵²

12.224 [X] submitted that the largest national customers are the supermarket chains based upon the volume of waste they produce. [X] submitted that while brokers (including itself) have won national customer contracts, brokers are not as competitive for contracts with the supermarket chains. [X] said that it cannot compete on the basis of price with the Parties and Biffa for contracts with supermarkets that involve the collection of general waste. For example, [X] recently lost a tender bid for the collection of general waste from [X], which it previously held, where it believes the difference in price offered by itself and Veolia was substantial.

12.225 [X] said that it does not bid for the collection of general waste from large national customers, because it cannot compete on price with the Parties and Biffa. This is because, as a broker, it does not have the infrastructure that the Parties and Biffa have. The Parties and Biffa have sufficient route density that they could pick up waste at a reasonable cost. [X] also indicated that the Parties' large network of disposal facilities gives them a competitive advantage, as previously discussed in paragraph 12.78(a).

12.226 [X] said that it bid for a contract with [X] two years ago and a contract with [X] more recently.¹²⁵³ In both cases, [X] told us that the contracts were awarded to Veolia on the basis of price. [X] also told us that supermarkets, and other large national customers such as [X], often have a fear of using a broker. This is because these customers do not see the value of using a broker and would prefer to go direct to the supplier. [X] said that it does not make it past the first stage for one in four bids because the customer does not want to outsource to lots of smaller suppliers. [X] told us that contracts become harder to win when the value exceeds £1 million and it has very little chance of success when competing for anything valued above £2 million. When competing for contracts valued above £2 million, the contract will likely

¹²⁵⁰ Response to the CMA's phase 2 questionnaire from [X].

¹²⁵¹ Note of call [X].

¹²⁵² Specifically, Veolia submitted that [X] are customers of DS Smith in its supplemental response on large C&I customers dated 13 May 2022. [X]

¹²⁵³ Note of call [X].

go to either the Parties or Biffa which [X] believe are the three largest suppliers.

12.227 Veolia identified SWRNewstar and Simply Waste as credible bidders, but we note that Biffa acquired both and therefore we do not consider these to be additional constraints on the Parties.^{1254, 1255, 1256}

12.228 The evidence from third parties and the Parties' internal documents indicates that there are varying preferences among national customers in terms of the levels of self-performance and subcontracting they are comfortable with. While some national customers may be comfortable using the services of brokers for their C&I waste collection, the evidence from third parties and the Parties' internal documents suggests that brokers will not be able to cater for those national customers that have a preference for a single supplier that self-performs most or all of the services. In sum, there is a spectrum of customer preferences for self-performance and, while the Parties compete over the entire spectrum of preferences, brokers only compete on part of the spectrum.

12.229 The evidence overall indicates that brokers and FM companies compete for and win contracts for national C&I customers. However, those brokers/FM companies individually win far fewer contracts than the Parties and Biffa. The largest brokers and FM companies in the market (Novati and Mitie) are comparable in size to Suez.

Third party views on the Merger

12.230 We asked the Parties' C&I customers whether they had any concerns about the impact of competition of this Merger. Four national customers expressed concerns about the Merger at a national level:¹²⁵⁷

- (a) [X] told us that 'the industry feels very monopolistic with few suppliers in the market with national coverage';¹²⁵⁸

¹²⁵⁴ Biffa's website: [Acquisition of Simply Waste](#), 9 October 2020, accessed by the CMA on 18 May 2022.

¹²⁵⁵ Let's Recycle website: [Biffa ties up £25m SWRNewstar acquisition](#), 23 March 2019, accessed by the CMA on 18 May 2022.

¹²⁵⁶ Biffa has also recently acquired: Shanks, Wards, Company Shop, and Green Circle Polymers. Therefore, these suppliers will also not be considered independent constraints on the Parties.

¹²⁵⁷ There were also four non-national customers which raised concerns about the Merger ([X], [X], [X], and [X]). [X] told us that Veolia are dominant in their local area and the Merger will mean another supplier is removed from the market. The other three customers noted a general concern that there will be one less supplier in the market available to them which will reduce competition.

¹²⁵⁸ Response to the CMA's phase 2 questionnaire from [X].

- (b) [X] told us that the Merger would ‘reduce the number of players at a national level’;¹²⁵⁹
- (c) [X] said that the Merger is ‘a slight concern that it limits our options when it comes to a national service provider, but can also see the potential benefits of one service provider with more coverage and less reliance on subcontracts’;¹²⁶⁰ and
- (d) [X] said the Merger limits the number of suppliers it could approach to deliver services, which may mean it has to utilise brokers more frequently which could increase its service costs.¹²⁶¹

12.231 The majority of customers did not express concerns about the Merger. Two customers believe the Merger could lead to efficiencies and drive down costs¹²⁶² and four customers believe that there will still be a sufficient choice of suppliers in the market post-Merger.¹²⁶³ [X] told us that it currently receives good service from Veolia and thus has no concerns about the Merger¹²⁶⁴ and [X] said that the Merger may potentially offer opportunities in the form of more innovative waste management solutions as well as stronger national coverage.¹²⁶⁵ The remainder of customers expressed no concerns about the Merger without providing an explanation.

Conclusion on credible suppliers

12.232 Overall, the evidence shows that Veolia and Biffa are the two strongest suppliers in the market. The evidence also indicates that while Suez competes for national customers, it is not as strong as Veolia and Biffa. Competitors indicated that Suez’s coverage is not as broad as Veolia and Biffa’s and it therefore may need to rely more on subcontracting. As we set out above, some customers may have a preference for minimising subcontracting by suppliers.

12.233 The evidence collected indicates that some brokers, such as DS Smith Mitie, Novati, and Reconomy, win national C&I contracts. We heard mixed evidence around the strength of brokers. Biffa stated that brokers are the

¹²⁵⁹ Response to the CMA’s phase 2 questionnaire from [X].

¹²⁶⁰ Response to the CMA’s phase 2 questionnaire from [X].

¹²⁶¹ Response to the CMA’s phase 2 questionnaire from [X].

¹²⁶² Response to the CMA’s phase 2 questionnaire from [X] and [X].

¹²⁶³ Responses to the CMA’s phase 2 questionnaire from [X], [X] and [X]. Response to the CMA’s phase 1 questionnaire from [X].

¹²⁶⁴ Response to the CMA’s phase 2 questionnaire from [X].

¹²⁶⁵ Response to the CMA’s phase 1 questionnaire from [X].

next strongest competitors after itself and Veolia, but some brokers told us that they are not as successful when competing for national customer contracts as the Parties or Biffa.

Assessment

- 12.234 We have assessed the effect of the Merger on the supply of non-hazardous waste collection services to national C&I customers.
- 12.235 We have found that Biffa and Veolia are by some distance the largest suppliers for national customers. Biffa alone accounts for around half of the market and collectively Biffa and Veolia account for [70-80%]. Suez has an estimated share of [5-10%]. Therefore, the Merger will result in further consolidation of an already highly concentrated market.
- 12.236 Veolia imposes a strong competitive constraint on Suez. This is supported by the Parties' bidding data. Suez imposes a limited competitive constraint on Veolia but nevertheless a stronger constraint than all other competitors other than Biffa and DS Smith.
- 12.237 Regarding the Parties' competitors, Biffa is a strong competitor to both Parties. This is supported by the bidding data, market shares, the Parties' internal documents and views of both customers and competitors.
- 12.238 The evidence indicates that brokers compete against the Parties but generally offer only a weaker constraint. We have found:
- (a) apart from Novati and DS Smith, brokers have a smaller market share than Suez;
 - (b) although brokers do compete for national customers and win some contracts, no broker wins more contracts than either Veolia or Suez;
 - (c) customers rated only Novati and DS Smith as credible suppliers in addition to Veolia, Biffa and Suez (broadly on a par with Suez);¹²⁶⁶
 - (d) some national customers told us that they would not use brokers for various reasons;

¹²⁶⁶ Customers also rated Viridor broadly on a par with DS Smith and Novati but we have discounted Viridor as a competitive constraint given it has exited the C&I collection market.

- (e) customers have not rated brokers highly (or commonly) as credible suppliers and instead have rated Biffa, Veolia and Suez as their strongest options;
- (f) competitors have not rated brokers highly; and
- (g) Suez competes against Veolia and Biffa for more larger value contracts than do the brokers.

12.239 We have found, therefore, that Suez is one of a number of smaller competitors in the market, together with Novati and DS Smith, offering customers choice beyond Biffa and Veolia.

12.240 However, the evidence also indicates that the Parties and Biffa have several capabilities that brokers do not which suggests Suez is a closer competitor to Veolia than are the brokers.

12.241 In particular, we have assessed whether the Parties have particular advantages when it comes to access to disposal infrastructure, which is considered as an important factor of competition by most national customers.

12.242 We have found that ERFs are important disposal infrastructure and that having access to such facilities is likely to be even more important in the future. We have found that suppliers with their own disposal infrastructure have a greater ability to control disposal costs and capacity which likely confers a competitive advantage over smaller C&I suppliers that need to rely on third-party capacity. The Merger will result in two of the largest owners of ERF infrastructure combining.

12.243 The largest supplier in the market, Biffa, does not yet operate its own ERFs and relies on third party disposal infrastructure. Biffa, however, has significant scale which is likely to give it the ability to secure more favourable terms at third-party disposal sites compared to most other competitors (not including the Parties), which are significantly smaller (we note that the level of the gate fee is dependent on volume). The Merged Entity too will have considerable scale which might result in more favourable terms at third-party disposal sites compared to smaller suppliers. Biffa is also investing in its own ERFs.

12.244 No other supplier has the scale of Biffa or the Merged Entity, or its own ERFs (as do Veolia and Suez and, in the near future, Biffa). On this basis, we believe that the Parties (and Biffa) hold important competitive capabilities that are not possessed by other suppliers.

- 12.245 We have also found that route densities play a role in helping some suppliers to compete on price.
- 12.246 Therefore, we have found that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of non-hazardous C&I waste collection services.
- 12.247 We consider that adverse effects are likely to be higher prices for C&I customers and a poorer quality of service (eg collections may be less frequent or less reliable) compared to the situation without the Merger.

Entry and expansion

- 12.248 We have considered whether entry or expansion, as a direct response to the Merger, would prevent the SLC.¹²⁶⁷ The entry or expansion must be: (a) timely; (b) likely; and (c) sufficient to prevent an SLC.¹²⁶⁸ These conditions are cumulative and must be satisfied simultaneously.¹²⁶⁹
- 12.249 We asked competitors whether they have any plans to expand their C&I business in the UK over the next two years. The competitors' expansion plans are summarised below; these were provided in written responses to the CMA's questionnaires.
- 12.250 [X] told us that a key pillar of its strategy is [X].¹²⁷⁰ [X] went on to explain that [X]. It further explained that [X].
- 12.251 [X] and [X] both told us that they plan to [X].¹²⁷¹ [X] and [X] told us that they intend to [X].¹²⁷² [X] specifically told us that it is seeking to [X]. [X] told us that it has [X].¹²⁷³
- 12.252 There were some competitors who specifically stated that [X]. For example, [X] told us that it is not seeking to expand its C&I collection business and [X] similarly told us that it [X] (Viridor has recently sold its C&I collection

¹²⁶⁷ CMA129, paragraph 8.28

¹²⁶⁸ CMA129, paragraph 8.31

¹²⁶⁹ CMA129, paragraph 8.32

¹²⁷⁰ Response to the CMA's phase 2 questionnaire from [X].

¹²⁷¹ Responses to the CMA's phase 2 questionnaire from [X] and [X].

¹²⁷² Responses to the CMA's phase 2 questionnaire from [X] and [X].

¹²⁷³ Response to the CMA's phase 2 questionnaire from [X].

business to Biffa (the **Biffa/Viridor transaction**)).¹²⁷⁴ [REDACTED], an FM company, told us that [REDACTED].¹²⁷⁵

12.253 Veolia submitted that the above expansion plans presented by competitors are credible and we have not sufficiently explained why we have dismissed the above evidence.¹²⁷⁶

12.254 The CMA's Merger Assessment Guidelines state that entry and expansion should be sufficient in scope to prevent an SLC from arising as a result of the Merger.¹²⁷⁷ In particular, the entry or expansion needs to be successful over a sustained period of time. The above evidence suggests that the expansion plans of competitors are unlikely to materially change the competitive dynamics of the market over the next few years. In particular, we have not seen any evidence to indicate that these expansion plans are likely to be sufficient enough to constrain the Merged Entity and that the gains in market share can be sustained.

The Biffa/Viridor transaction

12.255 We have also considered Veolia's submission that our concerns in this theory of harm are inconsistent with the CMA's approach to the *Biffa/Viridor* transaction.¹²⁷⁸ More specifically, Veolia submitted that it was [REDACTED] (and find that the Merger does not give rise to a realistic prospect of an SLC in relation to C&I services).

12.256 As the Competition Appeal Tribunal has noted, merger decisions of the CMA do not constitute precedents and each case turns on its own facts.¹²⁷⁹ While the CMA has, in this investigation, considered the evidence available to it in relation to the *Biffa/Viridor* transaction, the Group is required to consider whether an SLC is likely to arise in this case by taking into account all of the available evidence, rather than being tied to positions reached in previous proceedings.

12.257 In assessing whether the *Biffa/Viridor* transaction should be called in for a formal investigation, the CMA's mergers intelligence committee (**MIC**) considered whether there was (at that time) a reasonable chance that the

¹²⁷⁴ Responses to the CMA's phase 2 questionnaire from [REDACTED] and [REDACTED].

¹²⁷⁵ Response to the CMA's phase 2 questionnaire from [REDACTED].

¹²⁷⁶ Veolia's [response to the provisional findings](#), paragraph 20.

¹²⁷⁷ [CMA129](#), paragraphs 8.31 to 8.39.

¹²⁷⁸ FMN, NHW Chapter, paragraphs 15.78-15.113; Veolia supplemental response on evidence in the working papers, 13 May 2022, Annex 1.

¹²⁷⁹ [2020] CAT 12, paragraph 93 ([Ecolab Inc v CMA](#))

test for a reference to an in-depth phase 2 investigation will be met.¹²⁸⁰ The CMA's mergers intelligence committee (**MIC**) considered the facts and market conditions as they stood at the time of that assessment (and therefore on the basis of a less concentrated market in which the Parties remained under independent ownership), rather than engaging in a detailed analysis of possible counterfactuals.

12.258 For the reasons set out above, we do not believe it is appropriate to conduct the kind of comparative assessment suggested by the Parties in relation to the respective roles that each of Veolia and Biffa and Suez and Viridor play within the market. Each transaction considered by the CMA is examined based on the specific characteristics of the merger parties in the market and market dynamics at the relevant time. While each case turns on its own facts, we note that our assessment takes place within the context of a market that is more concentrated than that at the time of the consideration of the *Biffa/Viridor* transaction (given the increase in market concentration brought about by that transaction).

Conclusion

12.259 We find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of non-hazardous C&I waste collection services.

¹²⁸⁰ [Guidance on the CMA's mergers intelligence function](#) (CMA56), December 2020, paragraph 1.2. Where the CMA is assessing whether to investigate a merger, it considers whether there is a reasonable chance that the test for a reference to an in-depth phase 2 investigation will be met.

13. OPERATION AND MAINTENANCE OF WATER AND WASTEWATER TREATMENT FACILITIES

Introduction

13.15 In this chapter we assess the effect of the Merger on the supply of operation and maintenance services for water and wastewater treatment facilities to industrial customers. In our assessment, we have considered how closely the Parties compete with one another and whether the removal of the constraint the Parties place on each other is likely to lead to an SLC in the supply of O&M services to industrial customers. As part of this assessment, we have also considered the competitive constraints placed on the Parties by other O&M operators.

13.16 The chapter is structured as follows:

- (a) Description of services
- (b) Market definition
- (c) Competition in the market
- (d) Assessment
- (e) Entry and expansion
- (f) Conclusion

13.17 During the course of our investigation, we contacted all 31 of the Parties' customers and all 17 competitors for which the Parties provided contact details.

Description of services

13.18 Water and wastewater treatment facilities provide the quantity and quality of water required, according to customer specifications, for the supply of treated water, drinking water, or wastewater treatment.

13.19 Businesses that use water as part of their processes and/or which generate wastewater may require water management services. In particular, businesses may require water treatment services if they use water for

industrial purposes (including for cooling or in boilers).¹²⁸¹ This water must be of suitable quality and may therefore need to be treated to meet the requirements of the industrial customer, both in terms of quality (degree of water purity required) and quantity (volume of water required).¹²⁸² Similarly, businesses may produce wastewater in the course of their industrial process that would need to be either reused in its process or discharged into the natural environment or public water mains.¹²⁸³ The wastewater typically must be treated to a suitable quality to meet regulatory requirements.

- 13.20 O&M services for water and wastewater treatment facilities may be carried out by the owner of the facility (ie the industrial business) or contracted out to a third party, such as Veolia or Suez. Veolia submitted that approximately [REDACTED] of all industrial water O&M activities are self-supplied.¹²⁸⁴
- 13.21 O&M contracts that are outsourced often include: (i) specialist, routine and reactive maintenance; (ii) biosolids treatments and recycling; (iii) network management activities; (iv) optimisation and lifecycle programmes; and (v) capital delivery programmes.¹²⁸⁵ O&M contracts may require [REDACTED],¹²⁸⁶ which may be called in case of any issues with the facility.
- 13.22 O&M contracts typically transfer much of the risk in operating and maintaining a facility to the O&M service provider, as the provider is generally responsible for breakdown and maintenance risks associated with the facility, as well as ensuring the facility is compliant with all relevant regulations.¹²⁸⁷
- 13.23 There is a wide range of businesses that require such services, including businesses active in food and beverage, pharmaceuticals and manufacturing. Moreover, as discussed in the section on ‘The Nature of Competition, customers have heterogeneous requirements. The annual value of the Parties’ O&M contracts ranges from approximately £[REDACTED] to approximately £[REDACTED].
- 13.24 The Parties also provide services for the design and construction (D&C) of equipment and solutions used in water and wastewater treatment facilities. Once such facilities have been constructed, the customer may require such

¹²⁸¹ Suez response to Phase 1 First S109, 19 February 2021, paragraph 1.1.

¹²⁸² EC’s decision of 14 December 2021 in case M.9969, [Veolia/Suez](#), paragraph 238.

¹²⁸³ Suez response to Phase 1 First S109, 19 February 2021, paragraph 1.1.

¹²⁸⁴ Veolia site visit, slide 66.

¹²⁸⁵ FMN, WMS Chapter, paragraph 12.4.

¹²⁸⁶ FMN, WMS Chapter, paragraph 12.39.

¹²⁸⁷ FMN, WMS Chapter, paragraph 12.4.

services to be operated and managed. The O&M services could be provided by the original D&C provider if that provider also offers O&M services. The CMA considered these D&C services as part of its Phase 1 investigation, but these D&C services are not considered further in these provisional findings except so far as relevant to consideration of the supply of O&M services for water and wastewater treatment facilities to industrial customers.¹²⁸⁸

Market definition

13.25 Previous European Commission merger investigations that have considered the O&M of water and wastewater treatment facilities have left the market definition open.¹²⁸⁹ The European Commission considered segmentation by customer type (industrial customers vs municipalities), facility type (water treatment vs wastewater treatment), customer industry and between O&M and D&C of water and wastewater treatment facilities.

Product market

13.26 The Parties overlap in the supply of O&M services for water and wastewater treatment facilities to industrial customers.¹²⁹⁰

13.27 In order to identify what other significant competitive alternatives should be included in the relevant market, or whether the relevant market should be segmented or narrower in scope, we considered:

- (a) the extent to which customers are able to switch to self-supplying O&M services;
- (b) whether it is appropriate to segment the market on the basis of the type of water treated; and
- (c) whether it is appropriate to segment the market on the basis of the nature of the contract (ie the customer industry or size of contract).

¹²⁸⁸ The CMA's Phase 1 Decision concluded that 'the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the D&C of technological solutions and equipment for water and wastewater treatment systems in the UK'. [CMA's Phase 1 Decision](#), paragraph 713.

¹²⁸⁹ EC's decision of 27 April 2010 in case COMP/M.5724, *Suez Environnement/Agbar*; EC's decision of 28 October 2010 in case COMP/M.5934, *Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group*; EC's decision of 19 July 2017 in case COMP/M.8452, *Suez/GE Water And Process Technologies*; EC's decision of 14 December 2021 in case M.9969, [Veolia/Suez](#).

¹²⁹⁰ [CMA129](#), paragraph 9.6 states that 'Product market definition starts with the relevant products of the merger firms'.

Parties' views

- 13.28 Veolia submitted that customers could switch to self-supply and, in fact, estimated that approximately [X]% of all business requiring water or wastewater treatment facilities for industrial activities self-supply their O&M services.¹²⁹¹ Veolia submitted that industrial customers, regardless of whether they had self-supplied in the past, would have engineering capability and technical expertise to self-supply. In Veolia's view, the increased degree of automation and digitisation and the support available from external consultants strengthens the ability of customers to self-supply.¹²⁹²
- 13.29 Veolia submitted that while self-supply was not possible for all industrial customers, it nonetheless placed a significant constraint on the Parties' competitive position.¹²⁹³ Veolia submitted that this was shown in [X], where [X], and because [X]. Veolia submitted that the [X]¹²⁹⁴ which shows that self-supply is an alternative for both large and small industrial customers.¹²⁹⁵
- 13.30 In addition to the submissions on the general constraint from self-supply, Veolia further indicated that self-supply was not only a constraint at the initial tender stage but would act as a strong competitive constraint for the full duration of its contracts, as customers can always internalise 'an outsourced activity if they consider that this would result in cost savings'.¹²⁹⁶
- 13.31 Veolia submitted that the market testing carried out during both the CMA Phase 1 investigation and our Phase 2 inquiry indicated that self-supply was viable. Veolia pointed towards two submissions in which customers indicated that self-supply may have been possible if staff were transferred under TUPE. Veolia submitted that it was common for 'on-site O&M employees' to transfer under TUPE; and that it was those employees that had the necessary technical expertise.¹²⁹⁷
- 13.32 In relation to those customers that had not considered self-supply as an option, Veolia submitted that only a small number (five in total) indicated that

¹²⁹¹ Veolia site visit, slide 66.

¹²⁹² Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.35–8.39.

¹²⁹³ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.35.

¹²⁹⁴ We note that the average value of contract Veolia bid for was £15 million and the median value was £4 million.

¹²⁹⁵ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.34-8.36.

¹²⁹⁶ Veolia's [response to the Provisional Findings](#), paragraph 275

¹²⁹⁷ Veolia's [response to the Provisional Findings](#), paragraphs 269-270.

they preferred to outsource out of the thousands of companies that have industrial water/wastewater facilities.¹²⁹⁸ Veolia further submitted that the evidence we collected from customers showed that [REDACTED].¹²⁹⁹

Third party views

- 13.33 We asked customers whether they had considered switching from outsourcing to self-supplying the O&M of their water and wastewater facilities. Out of the eight customers that responded, five indicated that they had not considered switching from outsourcing to self-supply.¹³⁰⁰ Two of the three customers that had considered switching referred to previous experience of self-supply, though one of these noted that it chose to outsource due to their O&M supplier's greater level of management and support on a day to day basis.¹³⁰¹ The other customer that considered switching submitted that labour costs could be prohibitive and noted the difficulties of self-supply in a potentially dangerous environment.¹³⁰²
- 13.34 During the Phase 1 investigation, the CMA asked the Parties' customers how easy it would be for them to switch to self-supplying their O&M requirements:¹³⁰³
- (a) Three out of five customers indicated that it was difficult to self-supply O&M services.¹³⁰⁴ While two of these customers submitted that self-supply may be possible if staff would transfer under TUPE from their current supplier, both customers noted they would lack the technical expertise and the ability to innovate if these services were brought in-house. Both customers also noted that there would be additional costs associated with self-supply. Further, both submitted that outsourcing allowed them to focus on their core business.¹³⁰⁵

¹²⁹⁸ Veolia's [response to the Provisional Findings](#), paragraph 271

¹²⁹⁹ Veolia's [response to the Provisional Findings](#), paragraph 271.

¹³⁰⁰ Responses to the CMA's questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹³⁰¹ Responses to the CMA's questionnaire from [REDACTED] and [REDACTED]. These customers did not explain whether they had positive or negative experiences of self-supply.

¹³⁰² Response to the CMA's phase 2 questionnaire from [REDACTED].

¹³⁰³ In particular, we asked customers to indicate on a scale of 1-5 (1 being very difficult and 5 being very easy), how easy it would be for the customer to switch its O&M requirements in-house.

¹³⁰⁴ Response to the CMA's phase 1 questionnaire from [REDACTED], [REDACTED], and [REDACTED]. Note: we excluded customer responses where it was unclear if the responses were referring to the industrial O&M market.

¹³⁰⁵ Responses to the CMA's questionnaire from [REDACTED] and [REDACTED]; note of call with [REDACTED].

- (b) The other two customers were positive regarding their ability to switch to self-supply. One customer told us that self-supply would be very easy because it had previously self-supplied;¹³⁰⁶ and the other customer stated that if it could TUPE staff from its current supplier, self-supply would be fairly straightforward.¹³⁰⁷

- 13.35 While some customers considered that it would be possible to self-supply if staff were transferred under TUPE,¹³⁰⁸ we understand that only the onsite staff would be captured under TUPE rather than the management or technical staff of a supplier, who may support more than one industrial customer.¹³⁰⁹ As discussed below, some customers place particular value on access to their O&M supplier's management and technical staff. In addition, there are risks relating to the effectiveness of TUPE as some staff may choose not to transfer, although this may adversely impact their employment rights. Indeed, one customer submitted that it had considered self-supply, but ultimately chose to outsource because of the risk that key staff would not transfer and the customer would therefore lose that skillset.¹³¹⁰ Therefore, self-supply may not be a viable option for some customers.
- 13.36 We also held calls with customers as part of our inquiry. We asked customers whether they would be able and willing to self-supply (as discussed in more detail in paragraphs 13.19 to 13.24). Six of the seven customers we spoke to told us that they would be unwilling or unable to self-supply their O&M services because they did not have the technical expertise and it was not part of their core business.¹³¹¹ One of these customers told us that while it would have been able to self-supply at a cheaper CAPEX cost, it had decided to outsource due to [REDACTED].¹³¹²
- 13.37 Overall, customers provided varied views on their ability and willingness to self-supply. This is indicative of heterogeneity among industrial customers procuring O&M services for water and wastewater facilities.
- 13.38 Further, one competitor submitted that some customers did not have the capability to self-supply and that it did not consider customers that self-supply to be part of the relevant market. This competitor stated that the operation of water and wastewater facilities is 'absolutely critical' to some

¹³⁰⁶ Responses to the CMA's questionnaire from [REDACTED], [REDACTED] and [REDACTED]

¹³⁰⁷ Response to the CMA's questionnaire from [REDACTED].

¹³⁰⁸ Response to the CMA's questionnaire from [REDACTED].

¹³⁰⁹ Transcript of hearing with Suez, 13 April 2022, page 96.

¹³¹⁰ Note of call with [REDACTED].

¹³¹¹ Notes of calls with [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹³¹² Note of call with [REDACTED].

customers, including manufacturers of whisky, beer and pharmaceuticals, and there are significant risks associated with any shutdowns. This competitor submitted that for certain manufacturers, therefore, the prospect of operating complex water or wastewater treatment plants is challenging.¹³¹³

Conclusion

- 13.39 Overall, we consider that even if, as submitted by Veolia, [X]% of all industrial water O&M activities are self-supplied and some customers are able to switch to self-supply, this does not in itself mean that self-supply is a good option for customers that currently outsource these services. The willingness and ability of some customers to self-supply does not mean that the remaining set of customers would be similarly willing and able to do so. Rather, the decision of the remaining customers to outsource the O&M of water and wastewater treatment facilities may reflect customer-specific requirements or a strong preference to outsource O&M services, and this may mean that, for those customers, self-supply is not a sufficiently good demand-side substitute to warrant inclusion in the relevant market. We therefore considered it appropriate to attach more weight to the views of those customers and other evidence related to customers that do not outsource.
- 13.40 Evidence from customers showed that some of them expressed a clear preference to outsource the O&M services in order to focus on their core business. A subset of customers also did not consider self-supplying when they last tendered their contracts. For these and similar customers, we consider that self-supply is unlikely to be a feasible alternative both at the time of tender and throughout the contract.
- 13.41 In our analysis, we consider self-supply as an out of market constraint.

Segmentation by type of water treatment facility Parties' views

- 13.42 Veolia submitted that the market definition should be left open, but that the skills and resources required to operate and maintain water and wastewater treatment facilities are essentially the same. Therefore, almost all O&M

¹³¹³ Note of call with [X].

suppliers offer O&M services for both water and wastewater treatment facilities.¹³¹⁴

- 13.43 Suez submitted that the relevant market includes O&M services to both water and wastewater treatment facilities for industrial customers.¹³¹⁵

Third party views

- 13.44 We note that there is no demand-side switching, and as such we have examined the possible segmentation of the market by the type of water treatment facility from the supply-side only.
- 13.45 We asked customers whether suppliers of O&M services differed on the basis of various factors, including the type of water treated (ie water or wastewater). Two out of five customers that responded submitted that suppliers differed on the basis of type of water treated.¹³¹⁶ A different customer submitted that treatments for water and wastewater were fundamentally different and required different types of equipment such as tanks, pumps and filtration systems, but noted that the same suppliers tend to bid for water and wastewater contracts.¹³¹⁷
- 13.46 We also asked competitors whether O&M suppliers differed on the basis of type of water treated. Two competitors submitted that suppliers differed on this basis but did not provide examples.¹³¹⁸ One of these competitors stated that the water and wastewater markets have different risks, which ‘could have’ an effect on the bidders. We note that both of these competitors provide both water and wastewater O&M services. During a call, another competitor submitted that O&M suppliers usually offer services to both water and wastewater facilities.¹³¹⁹ This competitor also submitted that water and wastewater are intrinsically linked and there is not a great distinction between the two. In particular, treating wastewater often involves recycling the wastewater as clean water for the facility.¹³²⁰

¹³¹⁴ FMN, WMS Chapter, paragraph 13.3. Veolia stated that it is only aware of [X] as a supplier that provides services for wastewater treatment facilities only.

¹³¹⁵ Suez response to Phase 1 First S109, 19 February 2021, paragraph 1.11.

¹³¹⁶ Responses to the CMA’s questionnaire from [X] and [X].

¹³¹⁷ Response to the CMA’s questionnaire from [X].

¹³¹⁸ Responses to the CMA’s questionnaire from [X] and [X].

¹³¹⁹ Note of call [X].

¹³²⁰ Note of call [X].

Conclusion

- 13.47 The evidence on whether the competitive conditions vary by type of water treatment facility is relatively mixed. We have, however, observed that the same suppliers provide O&M services for both water and wastewater facilities.¹³²¹ As there is no requirement to make bright-line determinations when defining the market, we consider the extent of any differences in the technical conditions in the O&M of different types of water within the competitive assessment.¹³²²

Segmentation by customer industry and size of contracts

Parties' views

- 13.48 Veolia submitted that there was no segmentation between industrial customers on the basis of controlled, advanced and/or high-risk industries and/or by the size/complexity of contracts. In particular, O&M suppliers were capable of supplying all types of customers and customers had access to a wide range of potential suppliers, irrespective of those customers' specific size, requirements or industry.¹³²³

Third party views

- 13.49 We asked customers whether suppliers differed on the basis of customer industry. Four out of five customers submitted that there is segmentation on the basis of customer industry.¹³²⁴ However, one of these customers indicated that some suppliers do not bid for O&M contracts within specific sectors as a matter of preference rather than a decision being based on whether they possess the technical capability to supply customers in those industries.¹³²⁵
- 13.50 We also asked customers whether suppliers differed on the basis of size of contract. Three out of five customers submitted there is segmentation on the basis of size of contracts.¹³²⁶ This was consistent with evidence we have

¹³²¹ For example, Veolia, Suez.

¹³²² CMA129, paragraph 9.5.

¹³²³ FMN, WMS Chapter, paragraph 15.13 and [Phase 1 Decision](#), paragraph 565-566.

¹³²⁴ Response to the CMA's questionnaire from [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹³²⁵ Response to the CMA's questionnaire from [REDACTED].

¹³²⁶ Response to the CMA's questionnaire from [REDACTED], [REDACTED] and [REDACTED].

received from two competitors, which was that there was segmentation on the basis of customer industry and size.¹³²⁷

Conclusion

- 13.51 Overall, we consider that variation on the basis of customer industry and/or size suggests that there is heterogeneity in the market and conditions of competition may vary accordingly. However, the distinction between these segmentations is not clearly defined, and any differentiation is best considered within the competitive assessment below.

Conclusion on product market

- 13.52 For the reasons set out above, we conclude that the relevant product market is the supply of O&M services for water and wastewater treatment facilities to industrial customers, excluding self-supply.

Geographic market

- 13.53 The European Commission, in previous decisions, considered the geographic market to be at least national.¹³²⁸

Parties' views

- 13.54 Veolia submitted that although there are differences in regulation between England & Wales, Scotland and Northern Ireland, these do not materially affect the ability of suppliers to compete for customers.¹³²⁹ Suez submitted that it is appropriate to assess market shares on at least a UK-wide, and likely an EEA and UK-wide, basis.¹³³⁰

Third party views

- 13.55 Two competitors told us that companies without a UK physical presence rarely compete in the UK, and that companies without a UK presence would need to sub-contract in order to do so.¹³³¹

¹³²⁷ Response to the CMA's questionnaire from [X] and [X].

¹³²⁸ EC's decision of 27 April 2010 in case [COMP/M.5724](#), *Suez Environnement/Agbar*; EC's decision of 28 October 2010 in case [COMP/M.5934](#), *Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group*.

¹³²⁹ FMN, WMS Chapter, paragraph 13.6.

¹³³⁰ Suez's response to the first notice to Suez, paragraph 1.13.

¹³³¹ Responses to the CMA's questionnaire from [X] and [X].

- 13.56 Nine out of twelve customers also submitted that they would not consider using a non-UK supplier without a local presence.¹³³² These customers referred to the need for onsite and local support, the need for a rapid response time and the strict regulations in the UK. However, we note that there seems to be a difference between the onsite personnel, who may TUPE across to a new supplier, and back-office technical support, which could in principle be supplied from abroad. Of the remaining three customers, one was undecided on whether it would consider a non-UK supplier and another submitted that it would depend on the scope of the O&M project as support is essential for turnarounds or equipment failures.¹³³³
- 13.57 We consider that the evidence shows that most customers have not considered suppliers without existing UK operations and competition from firms operating outside the UK is rare. Further, we have not found evidence to suggest that the geographic scope should be narrower than UK-wide.

Conclusion on geographic market

- 13.58 For the reasons set out above, we conclude that the relevant geographic market for the supply of O&M services for water and wastewater treatment facilities to industrial customers is the UK.

Conclusion on the relevant market

- 13.59 Based on the above evidence, we conclude that the relevant market is the supply of O&M services for water and wastewater treatment facilities to industrial customers in the UK, excluding self-supply.

Competition in the market

- 13.60 In this section we consider how closely the Parties compete and the extent to which other suppliers pose a constraint on the Parties. In doing so, we consider the Parties' submissions, evidence from third parties and internal documents.

¹³³² Responses to the CMA's questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. We asked customers to explain if they would consider suppliers of O&M that do not have a physical presence in the UK, but are active outside the UK to serve their O&M needs. Phase 1 and phase 2 results are combined.

¹³³³ Response to the CMA's questionnaire from [REDACTED] and [REDACTED].

The nature of competition

- 13.61 In assessing the effect of the Merger, we asked industrial customers what factors they consider important in deciding which supplier to use and to rank each factor on a scale of one to five (where one is not very important and five is very important). The parameters of competition that customers rated were:
- (a) quality of service;
 - (b) technical expertise / know-how;
 - (c) reliability of service;
 - (d) financial standing;
 - (e) track record; and
 - (f) regulatory certifications.
- 13.62 Customers rated quality of service and technical expertise / know-how the most highly (indeed, all customers gave these two factors a rating of 5).
- 13.63 Evidence from the Parties and third parties indicates that, in addition to the factors listed above, variation in customer requirements may exclude some suppliers in certain circumstances, or make it more difficult for them to compete. Contracts are individually negotiated, typically involving a tender process though in some instances customers will instead conduct market checks.^{1334,1335}

Parties' views

- 13.64 Veolia submitted that while O&M services are tailored to specific requirements of customers based on the type and nature of facilities, the essential elements of O&M requirements were similar between customer groups, and technical requirements did not differ across industries or size of facility.¹³³⁶ Veolia stated that risk varies depending on factors including [REDACTED].¹³³⁷ Veolia also submitted that the heterogeneity of customers supports its view that all competitors are able to respond to the bespoke requirements

¹³³⁴ Note of call with [REDACTED].

¹³³⁵ FMN, WMS Chapter, paragraph 15.6.

¹³³⁶ Veolia's response to the Issues Paper, paragraph 8.46; Veolia's Supplementary Submission, paragraph 40.

¹³³⁷ Veolia's response to the CMA's working paper, page 4.

of the customers [REDACTED].¹³³⁸ Further, Veolia stated that there was no differentiation between suppliers to large, more complex contracts and small, less complex contracts.¹³³⁹ In particular, Veolia submitted that:

- (a) Smaller competitors could win large contracts. Veolia gave the example of Alpheus that won the O&M contract for GSK's antibiotic facility in Scotland. The annual contract value of £[REDACTED] is [REDACTED] than [REDACTED]. Veolia also gave the example of the Qualitech/Plater JV serving Johnson Matthey, which had a contract value of £[REDACTED],¹³⁴⁰ as well as [REDACTED].¹³⁴¹
- (b) Other than servicing MOD or regulated water contracts, there were no onerous legal requirements that suppliers have to adhere to in relation to industrial customers. Veolia submitted that it expected all its competitors hold the requisite ISO and engineering accreditations.¹³⁴²
- (c) All competitors could provide 24/7 services with local resources or resources acquired through TUPE. Veolia also submitted that all competitors provided emergency call out services directly, or through specialist suppliers, which were only required in the event of major breakdowns.¹³⁴³
- (d) The ability of a wide range of suppliers to compete for existing client-specific contracts was strengthened by the transfer of staff under TUPE to a new operator, ensuring that the necessary technical knowledge was also transferred.¹³⁴⁴

13.65 Veolia submitted that it provides its customers with [REDACTED] that require pricing to [REDACTED].¹³⁴⁵ Similarly, Suez submitted that it negotiates with the customer for its O&M contracts [REDACTED].¹³⁴⁶

13.66 In the Provisional Findings, we stated that customers are also heterogeneous in the extent to which they would be willing and/or able to self-supply. In this

¹³³⁸ Veolia's response to Provisional Findings, paragraph 283; Veolia's response to the CMA's working paper, page 4.

¹³³⁹ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.46; Veolia's Supplemental response on operation and maintenance of water and wastewater treatment facilities for industrial customers paragraph 40.

¹³⁴⁰ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.48.

¹³⁴¹ Veolia's [response to the Provisional Findings](#), paragraph 282.

¹³⁴² Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.54.

¹³⁴³ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.55.

¹³⁴⁴ Parties' joint response to the CMA's Phase 1 RFI4, 15 October 2021 (the **Parties' response to Phase 1 RFI4**), paragraph 1.4.

¹³⁴⁵ FMN, WMS Chapter, paragraph 15.2.

¹³⁴⁶ FMN, WMS Chapter, paragraph 15.6.

regard, Veolia submitted that it could not, at the time of competing for a tender, identify which industrial customers could not or would not self-supply and therefore the possibility of self-supply is a strong constraint for all industrial customers.¹³⁴⁷ Veolia submitted [X].¹³⁴⁸

Third party views

- 13.67 Third party evidence shows that, in the market for the supply of O&M services for water and wastewater treatment facilities, industrial customers have heterogenous requirements. In particular:
- (a) All five responding customers identified that they considered references / experience in the same sector was an important factor in selecting a provider.¹³⁴⁹ For example, [X] said that while it did not discount a supplier with no experience in its industry, it preferred a supplier with previous knowledge and expertise in its specific industry.¹³⁵⁰ [X] told us that it would look specifically for a supplier with experience of managing the water treatment of [X] because the requirements of its plant are unique.^{1351, 1352} These customers indicated that the chemical composition of the water or wastewater that is treated at their plant requires significant and specific skills and therefore experience in other industries may not be sufficient.
 - (b) Two competitors also indicated that the customer base is heterogenous, especially in terms of the risk associated with contracts.¹³⁵³ [X] said that customers have 'different requirements' and [X] said that the market is broadly segmented into three categories of risk: industries with controlled risk such as food and beverage, advanced risk industries such as pharmaceuticals and high-risk, cutting

¹³⁴⁷ Veolia's response to the CMA's working paper on O&M of water and wastewater facilities for industrial customers, page 8.

¹³⁴⁸ Veolia's [response to the Provisional Findings](#), paragraph 274.

¹³⁴⁹ Responses to the CMA's phase 1 questionnaire from [X], [X], [X], [X] and [X]. At Phase 1, we asked customers to explain the factor they considered to be most important in deciding which provider to use for the O&M of their water or wastewater facility. Five relevant customers responded to this question. We excluded responses from customers that were not referring to the industrial O&M market.

¹³⁵⁰ In particular, [X] submitted that while the processes are widely used, there are unique ways of managing the types of effluents [X] has on site. This includes management of PH control, which requires significant skill. Responses to the CMA's questionnaire from [X] and note of call with [X].

¹³⁵¹ Note of call with [X]. [X] noted that this is because of the levels of contaminants in the water and the size and scale of their plant means that it is an expensive operation. Therefore, the supplier needs to have experience in the right field to be able to minimise costs and meet performance requirements.

¹³⁵² Another customer (Saica Paper) submitted that specific paper mill know-how is necessary due to the particular chemistry involved in papermill effluent treatment plants that make it a unique environment to operate. Note of call with Saica Paper, 8 June 2022.

¹³⁵³ Response to the CMA's RFI from [X]; and note of call with [X]

edge industries such as power generation. Nijhuis identified that different levels of knowledge, techniques and certifications were needed for different categories of customers.

13.68 The third party evidence indicates that the conditions of competition vary according to customer requirements. In particular:

- (a) As discussed in paragraph 13.35 and 13.36 above, most customers that responded to our questionnaire told us that there was a different set of bidders depending on customer industry and/or size of contract. For example, Novartis Grimsby said that the ability of O&M suppliers is 'heavily dependent' on sectors,¹³⁵⁴ and [X] stated that suppliers needed a certain scale to provide O&M to its facilities because they require 'a lot more personnel and technical capability than a small facility'.¹³⁵⁵
- (b) [X] submitted that the O&M market was very fragmented and, while there were smaller players that could provide certain solutions to some customers, a small provider would not work for [X] due to the size and scope of its systems.¹³⁵⁶
- (c) Three further market participants (a customer and two competitors) submitted that Veolia and Suez are two of a limited number of competitors with the scale and know-how necessary to service large water and wastewater O&M contracts, and that small companies did not have the requisite know-how and insurances for large contracts.¹³⁵⁷ [X] submitted that Veolia and Suez both specialise in supplying customers that are in particularly water intensive industries. Alpheus further stated that customers prefer 'blue-chip' companies with the financial capabilities to provide millions of pounds worth of insurance, and this is a barrier to some suppliers.¹³⁵⁸ [X] submitted that there were strong barriers to suppliers that currently only have lower risk contracts in winning higher risk contracts.¹³⁵⁹

¹³⁵⁴ Responses to the CMA's questionnaire from [X].

¹³⁵⁵ Responses to the CMA's questionnaire from [X].

¹³⁵⁶ Note of call with [X].

¹³⁵⁷ Responses to the CMA's questionnaire from [X]; note of call with [X]; note of call with [X].

¹³⁵⁸ Note of call with [X].

¹³⁵⁹ Response to the CMA's RFI from [X].

The Parties' internal documents

13.69 [REDACTED].¹³⁶⁰

13.70 A number of the Parties' internal documents discussed a range of solutions for customers (see 'Internal documents' below). Furthermore, a Veolia internal document from May 2019 that provides an overview of opportunities and ongoing contracts for Veolia shows that [REDACTED].¹³⁶¹

13.71 In addition, the Parties' internal documents show that O&M contracts are individually negotiated and that the tender process involves open discussions between customers and the supplier. For example, Veolia states in relation to the [REDACTED].¹³⁶² Similarly, Veolia had two discussions with [REDACTED] in relation to the tender.¹³⁶³

13.72 In relation to self-supply, some of the Parties' documents assess whether self-supply is an option for the customer for specific tenders. In particular, as discussed in paragraph 13.99 below, [REDACTED]¹³⁶⁴ and [REDACTED].¹³⁶⁵

Conclusion on the nature of competition

13.73 The evidence set out above suggests that the market is differentiated. The differences between customer requirements and the resultant differences in which suppliers can meet those requirements, suggests that the effect of the Merger may vary between some customers. While Veolia gave some examples of smaller competitors supplying large contracts, the size of the contract does not appear to be the only factor affecting the set of credible suppliers. In any case, individual observations of suppliers winning contracts of a certain size does not imply that they are consistently successful (and therefore a strong constraint).

13.74 We consider that customers are also heterogeneous in the extent to which they are willing and/or able to self-supply. Veolia submitted that it is unable to identify which customers were willing and able to self-supply and which

¹³⁶⁰ Veolia response to the CMA's Working Paper on O&M Water and Wastewater for Industrial Customers, page 29.

¹³⁶¹ Veolia Internal Document VES-000002072 / VECMA00013296. This document discusses [REDACTED]. These appear to [REDACTED]. For example:

- [REDACTED].
- [REDACTED].

¹³⁶² Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.10.

¹³⁶³ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.31.

¹³⁶⁴ Veolia's Internal Document, VECMA00001907, page 1.

¹³⁶⁵ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.31.

were not. If this were true, self-supply would be a relevant constraint for all contracts because all customers could credibly threaten to self-supply, and therefore be 'protected' when suppliers set their prices. However, we do not consider this to be the case. In particular, we consider that, given their technical knowledge and expertise, the Parties are typically able to identify other potential constraints in respect of specific tenders, including in respect of self-supply. We understand that the tender process generally involves open discussions between customers and the supplier. As such, we consider that there is significant scope for informed suppliers to judge the likely internal capabilities of customers relative to the nature of their requirements and therefore could typically recognise the customers that are more or less likely to be willing and able to self-supply. For example, in its internal documents, Veolia accurately identified that self-supply was unlikely in relation to its [X] and [X] tenders.¹³⁶⁶ In addition, as discussed in paragraphs 13.68 to 13.72, a subset of customers identified substantial concerns with the Merger, and none of these appeared to believe that the threat of self-supply would ameliorate their concerns. Overall, while it is possible that some customers could conceivably benefit from some constraint from the threat of self-supply (even where they are not willing or able to self-supply themselves), we do not consider that the evidence for this is strong enough to conclude that self-supply would be a sufficiently strong constraint for all industrial customers.

- 13.75 Notwithstanding the existence of this heterogeneity, we note that customers have identified risk factors, such as the risk of service interruption, the need to access more sophisticated technical support and/or the opportunity cost and risk involved in diverting their own resources into non-core activities, that form the basis of common concerns among the Parties' customers, however disparate they may be as a group. These factors may also from time to time influence decisions of industrial customers to change their existing preferences and outsource their O&M requirements.
- 13.76 In this context, we have looked in more detail at qualitative evidence from customers that describe their own requirements as complex, risky or demanding, such that they are more likely to rely on specialist external service providers and we consider the impact of the Merger on this group.

¹³⁶⁶ Veolia's Internal Document, VECMA00011879, page 6; Veolia's Internal Document, VECMA00001907, page 1.

Market shares

13.77 In assessing the effect of the Merger, we sought to estimate market shares to help understand the relative strengths of O&M suppliers. We recognise that there is limited data on market size and the relative size of suppliers. We received materially different market share estimates from the Parties, third parties and an industry report, and were unable to verify the accuracy of any of these estimates. Given the issues around reliability of the estimates, we have placed limited weight on market shares.

Parties' view

13.78 Veolia submitted that the market shares provided by third parties that suggested that the Parties were the two largest players in the market was not supported by evidence and no weight should be placed on 'unsubstantiated evidence' from a single competitor.¹³⁶⁷

Overview of market share submissions

13.79 We provide a brief overview of the market share estimates:

- (a) **Parties' submissions.** Veolia submitted that the Merged Entity would have a share of supply of no more than [20-30%].¹³⁶⁸ Veolia stated that it had [X] but named [X] other competitors that could have been included in a [X].¹³⁶⁹ Veolia estimated its own and Suez's market shares on the basis of (i) number of contracts and (ii) revenues. Because the number of contracts did not take the size of contract into account, these shares would likely overstate the significance of competitors that win a larger number of relatively smaller contracts, and understate the significance of competitors that win a smaller number of very large contracts.¹³⁷⁰ With respect to market shares by revenue, Veolia applied high-level assumptions and approximations to data from GWI (see below). We have not been able to verify the appropriateness of those assumptions. Further, Veolia submitted that it cannot verify the

¹³⁶⁷ Veolia's [response to the Provisional Findings](#), paragraph 303

¹³⁶⁸ Veolia's response [X]. Veolia calculated market size by adjusting data from GWI using assumptions based on its market knowledge. Veolia used its and Suez's revenues to estimate their market shares.

¹³⁶⁹ Veolia's response to CMA phase 2 s.109 notice, 16 February 2022

¹³⁷⁰ Veolia estimated its share of contracts based on the European Commission's 2010 estimate of market share in Veolia/United and estimated that Suez has a similar share. Case [COMP/M.5934](#), Veolia Water UK and Veolia Voda/Subsidiaries of United Utilities Group, 28 October 2010, paragraphs 56 and 59-60.

accuracy of GWI's data, though stated that the resulting calculated shares [REDACTED].¹³⁷¹

- (b) **Industry report.** An industry report (GWI) sets out that the Parties had a combined share of supply of 50-60% in the combined UK market for O&M and design-build-operate (DBO) in 2015.¹³⁷² We received this report as part of Suez's internal document submission. GWI submitted that it had not produced updated estimates of market shares in this market since the report.¹³⁷³ Veolia submitted that it has not been able to verify the accuracy of this industry report, but noted that the report stated that [REDACTED] was a prominent player.¹³⁷⁴ GWI submitted that Severn Trent was understood to have a lower market share than both Veolia and Suez at the time of publication in 2015.¹³⁷⁵ We note that this estimate of market share is for both O&M and DBO, and therefore is wider than the market we are considering. However, Veolia submitted it has limited presence in the D&C of water and wastewater facilities and Suez was, at the relevant time, not active at all.^{1376,1377} Therefore, if anything, GWI's market share estimate may have understated the Parties' combined market share in O&M only.
- (c) **Third parties.** Three third party competitors submitted that Veolia and Suez had very strong positions in the O&M of water and wastewater treatment facilities.¹³⁷⁸ One competitor estimated that the Parties had a combined share of supply of over 50% in the O&M market and were especially strong in high-risk industries.¹³⁷⁹ Another competitor submitted that, while it is difficult to ascertain the exact combined market share of the Parties, the Merged Entity would likely have more than 60 or 70 percent of the market.¹³⁸⁰

¹³⁷¹ Parties' response to Phase 1 RFI4, paragraph 4.4.

¹³⁷² Suez's Internal Document, Document 018, page 102. GWI confirmed that this includes any contract with an O&M component, regardless of whether design and build is included within the scope.

¹³⁷³ Response to the CMA's Phase 2 questionnaire from GWI, dated 28 February 2022.

¹³⁷⁴ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.3.

¹³⁷⁵ Response to CMA Phase 2 RFI GWI's response to the CMA's RFI.

¹³⁷⁶ FMN, WMT Chapter, paragraph 15.1.

¹³⁷⁷ We note that Suez recently won contracts with [REDACTED], both of which include a D&C element.

¹³⁷⁸ Note of call with [REDACTED], response to the CMA's questionnaire from [REDACTED] and note of call with [REDACTED]. In particular:

- [REDACTED] submitted that the Parties had combined share of supply of over 50% in the O&M market and were especially strong in high-risk industries.
- [REDACTED] submitted that there was a limited number of companies that bid for the provision of O&M services to large customers: Veolia, Suez and Alpeus.
- [REDACTED] submitted that is that Veolia and Suez are the two strongest competitors in the O&M of water and wastewater facilities for industrial customers in the UK.

¹³⁷⁹ Response to CMA Phase 1 questionnaire from [REDACTED] and note of call with [REDACTED].

¹³⁸⁰ Note of call with [REDACTED].

- (d) **Internal documents.** A Veolia internal document states [REDACTED], but did not quantify specific market shares.¹³⁸¹

Conclusion on market shares

- 13.80 The above representations indicate that the Parties' combined share of the O&M and water and wastewater treatment facilities might be somewhere between [20-30%] and 60%. These estimates give very different pictures of the Parties' position in the marketplace. The lack of transparency and reliable data make estimating shares difficult, and we have not received sufficient competitor data to reliably reconstruct market shares. As such, we have placed limited evidential weight on the market share estimates. Notwithstanding this, we note that in its internal document Veolia [REDACTED] and several third-party competitors and an industry report all estimated that Veolia and Suez would, together, be the largest supplier in the market.
- 13.81 In a case where reliable estimates of shares of supply are not readily available, or where there is a high degree of differentiation, we may rely to a greater extent on other sources of evidence on closeness of competition.¹³⁸² As such, we have focused our investigation on evidence from third parties, tender data and internal documents in examining the closeness of the Parties and the constraints from other competitors. We set out this evidence below.

Customer views on the Merger

- 13.82 During our investigation, we held hearings with some of the Parties' industrial customers of O&M services for water and wastewater treatment facilities.¹³⁸³ These customers operated in a range of sectors (food and beverage, manufacturing, and infrastructure).
- 13.83 Four of these customers raised significant concerns with the Merger and identified that Veolia and Suez were two of a very limited competitor set with the technical expertise necessary to serve their contracts. These four customers had particularly large contracts and are among the largest contracts the Parties hold (by annual contract value). They account for

¹³⁸¹ Veolia's Internal Document, VES-000001052.

¹³⁸² CMA129, paragraph 4.15.

¹³⁸³ We chose these customers as they had relatively large contracts with the Parties for industrial O&M.

approximately £[REDACTED] in aggregate annual contract value, or around 30% of the Parties' total contract value.

13.84 We consider the concerns about the Merger raised by these customers below:

- (a) The Parties were the only two bidders for [REDACTED] O&M contracts and [REDACTED] submitted that it was 'completely reliant on [Suez's] technical expertise'.¹³⁸⁴ [REDACTED] further highlighted the considerable back-office, wider support network and experience that Suez could lean on to bring the knowledge to the site. For instance, [REDACTED] referred to an example of a call that it held with six technical experts from Suez to resolve an issue with their wastewater facility. It explained that the O&M services provided were critical and that any issues with its wastewater facility could cause the plant to shut down for months. [REDACTED] would not be willing to absorb the risk associated with self-supplying such a critical service.¹³⁸⁵
- (b) Similarly, the Parties were the only two bidders for [REDACTED] O&M contract for its wastewater facility. [REDACTED] submitted that it relied on the technical expertise that comes from Suez's management background staff with technical knowledge and access to lab, not just the on-site operator. It explicitly confirmed that this was part of its O&M contract. [REDACTED] also stated that Suez's broader experience across the water management value chain was important to [REDACTED] and gave the example of an occurrence where Suez was able to flag a critical issue from a different D&C provider's design proposal that would have led to permit breaches. Further, [REDACTED] stated that the structure of its payment contract meant it was limited to large suppliers.¹³⁸⁶ [REDACTED] submitted that it was not willing or able to self-supply because it was unable to provide the 24/7 staff support and the analysis of materials.
- (c) [REDACTED] submitted that its research found that only Veolia and Suez had the experience, capabilities, technical compliance and financial size to deliver [REDACTED] requirements for its design, build, [REDACTED] and operate contract for a new wastewater facility. Further, [REDACTED] stated that it only partnered with a limited number of suppliers because it was very risk averse and there were huge risks associated with the O&M contract, so it would not

¹³⁸⁴ Note of call with [REDACTED].

¹³⁸⁵ Note of call with [REDACTED].

¹³⁸⁶ Note of call with [REDACTED].

choose an unproven supplier. [X] submitted that it deliberately chose to outsource this contract to focus on its core business.¹³⁸⁷

- (d) [X] submitted that the only four main players in the water treatment market were Nalco, Solenis, Suez and Veolia, but [X] would not use Nalco for effluent treatment due to its lack of proven experience in this area. Further, [X] submitted that Suez was Veolia's 'biggest' competitor in relation to the O&M of water and wastewater treatment facilities and that the Merger would remove 'Veolia's only legitimate competition in effluent treatment'. In addition, [X] stated that unlike smaller suppliers, the Parties were able to provide 24/7 services to its sites.¹³⁸⁸

13.85 Three other customers we spoke to did not raise significant concerns with the Merger, though we note that these customers also highlighted the technical expertise of the Parties, due at least in part to the wider support the Parties are able to draw on within their respective businesses. In particular:

- (a) [X] told us that the two final bidders for its contract were Veolia and ACWA and that Veolia was ultimately selected specifically due to its expertise and value add. However, [X] stated that IWJS and Mitie could also provide its O&M services.¹³⁸⁹
- (b) Saica Paper submitted that, while it had internal technical expertise, Veolia had 'very, very wide' experience in wastewater treatment, and it used Veolia as a consultant even while it (previously) self-supplied O&M services. Saica Paper chose Veolia due to its experience with Veolia on Saica Paper's plants in Spain.¹³⁹⁰
- (c) [X] submitted that, while the onsite operators hold extensive site specific skills and knowledge that is crucial for the contract, one of the reasons it chose to outsource was the core skills that the supplier (Veolia) holds. [X] stated these core skills are not necessarily held in-house.¹³⁹¹

13.86 Overall, we consider that the calls with customers described above provide strong evidence that Veolia and Suez are two of a limited competitor set for

¹³⁸⁷ Note of call with [X].

¹³⁸⁸ Response to the CMA's O&M customer questionnaire from [X] and note of call with [X].

¹³⁸⁹ Note of call with [X].

¹³⁹⁰ Note of call with Saica Paper, 8 June 2022, p3-4

¹³⁹¹ Note of call with [X]

at least some customers. In particular, the evidence shows that the Parties are strong in terms of their technical expertise and that customers particularly value Veolia and Suez's ability to draw on wider support from their organisations, beyond the on-site operator. Further, three of the above customers were unable to identify any other competitors that they considered credible for their contracts and one customer only identified one other credible supplier. Self-supply was not considered as a viable alternative for at least three of the four customers that expressed serious concerns about the impact of the Merger. We consider that the Parties are generally able to identify the ability and willingness of customers to self-supply. These customers, and customers with similar characteristics and/or requirements, are likely to be harmed directly by the Merger.

Tender analysis

13.87 Veolia provided data on tenders it competed for in the period 2016 to 2020;¹³⁹² and Suez for the period 2015 to 2021.¹³⁹³ As part of this data, the Parties submitted information on the incumbent, the value of the contract, which competitors they believed also bid for each contract and the ultimate winner. The Parties submitted the data for tenders that had an estimated value greater than £[REDACTED]. This materiality threshold was chosen to reduce the administrative burden on the Parties. Some contracts also included a design and build element. We consider this evidence below.

Parties' views

13.88 Veolia submitted that the Parties did not compete closely in the supply of O&M services for water and wastewater treatment facilities to industrial customers.¹³⁹⁴

13.89 In relation to its tender data, Veolia submitted that:

- (a) Self-supply was the primary competitive constraint faced by Veolia; Veolia faced competition from self-supply [REDACTED] and customers shifting to self-supply was [REDACTED]. Veolia stated that the value of tenders lost to self-

¹³⁹² FMN, WMS Chapter, paragraph 16.2. [REDACTED]

¹³⁹³ FMN, WMS Chapter, paragraph 16.2. [REDACTED] of Suez's tenders were for wastewater; [REDACTED] were for water, process water or demineralised water.

¹³⁹⁴ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.10.

supply range from £[REDACTED] to £[REDACTED], which shows that self-supply is an alternative for both large and small customers;¹³⁹⁵

- (b) Veolia has bid against Suez in more tenders than any other competitor (after self-supply) and Suez has been a more prominent winner against Veolia in this sample of tenders;¹³⁹⁶ and
- (c) There were a significant number of alternative competitors capable of bidding for and winning contracts.¹³⁹⁷

13.90 Suez submitted that it extracted information from its internal system. It stated that this system is not a sales management system and, while some information about competitors is present in the system, such information is not likely to represent a reliable and comprehensive view of the competitive situation in respect of each tender.¹³⁹⁸

13.91 In relation to Suez's tender data, Veolia submitted that [REDACTED].¹³⁹⁹ In particular, Veolia said that [REDACTED].¹⁴⁰⁰ In Veolia's view, 'little weight' should be placed on Suez's data, including 'its analysis on participation and loss analysis of such data'.¹⁴⁰¹

Our assessment

13.92 There are differences between the tender datasets provided by each of the Parties, both in respect to completeness and approach:

- (a) With respect to completeness of the dataset, we note that Veolia was able to identify the winner in [REDACTED] contracts; and other bidders in [REDACTED]. Suez was able to identify the winning bidder in [REDACTED] tenders it had identified; and other bidders in [REDACTED] of these tenders.
- (b) With respect to approach, Veolia's dataset identifies self-supply as a 'competitor', whereas Suez submitted that [REDACTED].¹⁴⁰²

¹³⁹⁵ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.35.

¹³⁹⁶ FMN, Annex NHW, paragraphs 29-30.

¹³⁹⁷ FMN, Annex NHW, paragraphs 29-30.

¹³⁹⁸ Suez's response to Phase 1 3rd S109, 26 April 2021, paragraph 16.3.

¹³⁹⁹ Veolia's [response to the Provisional Findings](#), paragraph 310

¹⁴⁰⁰ Veolia's supplemental response on 7 March 2022, paragraph 90.

¹⁴⁰¹ Veolia's [response to the Provisional Findings](#), paragraph 310

¹⁴⁰² Subsequently, Suez submitted some examples of customers who switched to self-supply over the past five years, but these examples have not been taken into account in the tender analysis, as it was unclear whether switching occurred following a tender process.

- 13.93 We consider that Veolia's tender data overstates the strength of constraint that self-supply poses for certain customers. In particular, the tender data includes two categories of customers: those that are satisfiable by self-supply and those that were not willing and/or able to self-supply. Therefore, even if Veolia competes with self-supply for the former group (and as a result self-supply appears frequently in the tender data), it does not follow that self-supply poses the same level or type of constraint as another competitor for the latter group. It is for these customers that one would expect Suez to be a particularly important constraint on Veolia. Looking at all tenders in aggregate obfuscates this point. We have taken this limitation of the tender data into account when making inferences about the data.
- 13.94 In the following sub-sections, we set out our tender analysis based on the Parties' tender data.

Veolia's tender data

- 13.95 We conducted both a participation and a loss analysis on Veolia's tender data.¹⁴⁰³ We present our analysis in Table 13.1 below:

¹⁴⁰³ Participation and loss analysis are explained in Chapter 7.

Table 13.16: Participation and loss analysis of Veolia's tenders (2016-2020)

Supplier	Participation analysis		Loss analysis	
	Number of tenders participated in	Percentage	Number of tenders won	Percentage
Suez	[X]	[20-30%]	[X]	[30-40%]
Self-supply	[X]	[50-60%]	[X]	[20-30%]
Alpheus	[X]	[10-20%]	[X]	[5-10%]
CG Godfrey Limited	[X]	[0-5%]	[X]	[5-10%]
CCEP	[X]	[0-5%]	[X]	[5-10%]
Atana	[X]	[0-5%]	[X]	[5-10%]
John F Hunt Regeneration	[X]	[0-5%]	[X]	[5-10%]
Nijhuis	[X]	[5-10%]	[X]	[5-10%]
Qualitech Environmental Services/Plater	[X]	[0-5%]	[X]	[5-10%]
Severn Trent Services	[X]	[0-5%]	[X]	[0-5%]
ACWA	[X]	[0-5%]	[X]	[0-5%]
Aquabio	[X]	[0-5%]	[X]	[0-5%]
Ecolutia	[X]	[0-5%]	[X]	[0-5%]
Ovivo	[X]	[0-5%]	[X]	[0-5%]
NMCN	[X]	[0-5%]	[X]	[0-5%]
IWS	[X]	[0-5%]	[X]	[0-5%]
Hargreaves	[X]	[0-5%]	[X]	[0-5%]
Siltbuster	[X]	[0-5%]	[X]	[0-5%]
Synergie Environ	[X]	[0-5%]	[X]	[0-5%]
Total	[X]	100%	[X]	100%

Source: CMA analysis of Veolia's tender data.

Note: one tender was won jointly by [X] and self-supply but the split is unclear so it is counted as a win for both. [X] won the D&B only of the tender it bid for, so it is not recorded as an O&M win.

13.96 As explained in paragraph 13.79, we consider that the tender data overstates the strength of constraint from self-supply and the results must therefore be interpreted with caution. Nevertheless, we note Table 13.1 shows that:

- (a) Suez was Veolia's most-faced competitor [20-30% of tenders] ([X]), with only self-supply featuring more frequently [50-60% of tenders] ([X]). Only [X] other competitors faced Veolia in two or more tenders ([X]), with a long tail of other suppliers competing in one tender each; and
- (b) On the occasions where Veolia was unsuccessful, Veolia lost most frequently to Suez. In particular, Suez won [30-40% of tenders] [X] Veolia bid for and did not win. In addition, no other competitor (other than self-supply) won more than [X] tender.

13.97 As such, the proportion of contracts that Veolia lost to Suez is [30-40%], which is in itself high and likely to be problematic. However, as identified in paragraph 13.79 above, the tender data includes both customers that may self-supply and customers that will not. Among the customers we are particularly concerned about (ie those that will not self-supply), the proportion of contracts that Veolia would lose to Suez is likely to be higher than [30-40%]. Overall, Veolia's bid data indicates that Suez is Veolia's closest competitor and will likely exert a strong constraint on Veolia for the contracts that they compete for. In paragraphs 13.84 and 13.85, we also consider the extent of the constraint Veolia faces from self-supply and other competitors.

13.98 For the tenders in which Veolia identified self-supply as a potential competitor, the proportion of contracts that Veolia bid for but self-supply 'won' is [20-30%] [X]. However, in our view, the loss analysis may overstate the strength of constraint that Veolia faced from self-supply. In particular, Veolia cited [X] ([20-30%]) self-supply wins, with a contract value range of £[X] to £[X]. However, [X] of these 'wins' were part-awarded to third party suppliers. One of these was the contract worth £[X], which was for both D&C and O&M; [X] won the D&C and the customer chose to self-supply the O&M. While the value split between D&C and O&M is unclear, £[X] overstates the value 'won' by self-supply. In addition, one of the self-supply 'wins' identified by Veolia was an informal negotiation where the customer already self-supplied. We consider that a customer that had already demonstrated its willingness and ability to self-supply conducting a market check is likely to be materially different from the relevant group of customers we are concerned about. As such, we consider that the tender data overstates the strength of the constraint the Parties face from self-supply for certain customers.

13.99 With respect to the constraint from the other O&M operators, we note that there is a tail of suppliers that competed three or fewer times and seven other suppliers that each won one contract that Veolia did not win. This is

consistent with the view that the market is fragmented and heterogenous. As discussed in ‘Credible suppliers’ section, third parties identified that not all suppliers are able to compete for all types of contract. As such, these suppliers may not pose a material constraint on certain contracts. We consider this further in paragraph 13.119.

13.100 On the basis of the above evidence, we consider that Veolia’s tender data shows Suez was Veolia’s closest competitor: Suez bid most frequently against Veolia and won the most contracts that Veolia did not win. While self-supply may have constrained Veolia on some contracts, we consider that this constraint is overstated in the bidding data and that self-supply is not a relevant constraint for all contracts, for the reasons set out in market definition.

Suez’s tender data

13.101 We note Veolia’s submissions about the reliability of Suez’s bidding data. As part of our inquiry, we also asked the Parties’ customers for a list of their O&M contracts, including information on the value of the contract, the bidders for the contract and the ultimate winner. This allowed us to confirm Suez’s data in relation to [REDACTED] and [REDACTED]. We considered that Suez’s accuracy in relation to these contracts indicated we could attach some weight to this evidence, though because we were unable to further verify the remainder of the data we have placed more evidentiary weight on Veolia’s bidding data.

13.102 We present our participation and loss analysis in Table 13.2 below:

Table 13.17: Participation and loss analysis of Suez’s tenders (2015-2021)

<i>Supplier</i>	<i>Participation analysis</i>		<i>Loss analysis</i>	
	<i>Number of tenders participated in</i>	<i>Percentage</i>	<i>Number of tenders won</i>	<i>Percentage</i>
Veolia	[REDACTED]	[80-90%]	[REDACTED]	[20-30%]
Nalco	[REDACTED]	[10-20%]	[REDACTED]	[20-30%]
Aqua	[REDACTED]	[5-10%]	[REDACTED]	[20-30%]
Mourik	[REDACTED]	[5-10%]	[REDACTED]	[20-30%]
INEOS	[REDACTED]	[5-10%]	[REDACTED]	[0-5%]
Anglian Water	[REDACTED]	[5-10%]	[REDACTED]	[0-5%]
Aquabio	[REDACTED]	[5-10%]	[REDACTED]	[0-5%]
Total	[REDACTED]	100%	[REDACTED]	100%

13.103 Our analysis showed that:

- (a) Veolia competed most frequently against Suez, participating in [REDACTED] tenders ([80-90%]). In comparison, the next most frequent bidder ([REDACTED]), competed in only two tenders ([10-20%]). Five other suppliers competed in one tender each; and
- (b) Each of the [REDACTED] tenders that Suez did not win were won by different suppliers: [REDACTED].

13.104 We note that the Parties regularly face competition from each other, and significantly more than from any of the other O&M operators. However, as Suez won most of the contracts that it participated in, the loss analysis is restricted to only [REDACTED] observations. While we note that Veolia was one of [REDACTED] different winners, we exercise some caution in interpreting this bidding data to draw conclusions on the strength of the constraint that Veolia places on Suez, given the small dataset.

Conclusion on the Parties' tender data

13.105 The Parties' tender data shows that Veolia and Suez frequently bid against each other and won contracts that the other Party lost more frequently, or at least as frequently as other competitors. We believe that this shows that the Parties are close competitors for certain contracts. Veolia's bidding data also showed that self-supply frequently 'won' contracts Veolia did not win. However, tender data does not differentiate by type of customer and there are inherent limitations in making inferences about a heterogeneous population based on aggregated analysis. As such, we consider that the tender data may overstate the strength of self-supply and, in any case, we consider that not all industrial customers would be willing and/or able to self-supply O&M services for water and wastewater treatment facilities, as set out in paragraph 13.25 above.

13.106 Overall, this evidence corroborates the evidence from customers (paragraph 13.72) that the Parties are two of a limited competitor set and post-Merger, the Parties will not face significant constraints from other O&M operators for at least some customers. Further, the tender analysis indicates that the harm caused by the Merger may affect more than just the customers identified in paragraph 13.70 above as the Parties compete for a significant portion of each other's tenders.

Internal documents

13.107 We examined a number of the Parties' internal documents, which, in our view, provide evidence on how the Parties viewed the market and their competitors in the ordinary course of their business prior to the Merger.

13.108 Owing to the volume of internal documents received from the Parties, we focused our analysis on specific competitors that had been identified by the Parties and/or by third parties as potentially strong competitors. The competitors were Nijhuis, Alpheus, Severn Trent, Solenis, Aquabio and ACWA. Therefore, the evidence from our internal document review is probative of the competition between Veolia, Suez and these competitors, and less relevant for other competitors that compete for O&M contracts. We present the evidence below.

Parties' views

13.109 Veolia submitted that the CMA had 'artificially limited the scope of the internal documents' and that by focusing its analysis on specific competitors, the evidence that the CMA is relying on presents a partial view of the market.¹⁴⁰⁴

13.110 Veolia submitted that out of the five Veolia internal documents analysed, two were 'not relevant to the market'.¹⁴⁰⁵ We discuss the Parties' submissions in relation to the relevant internal documents below.

Our assessment

13.111 We have analysed a number of the Parties' internal documents, which, in our view, are informative evidence on how the Parties viewed the market and their competitors in the ordinary course of their business prior to the Merger.

13.112 We disagree with Veolia's submission that our analysis was artificially limited and presented a partial view of the market. In particular:

- (a) Our review of internal documents did not identify a significant number of internal documents where the Parties track or identify competitors for O&M contracts. We would expect that if other competitors were credible constraints and the Parties had considered them in their

¹⁴⁰⁴ Veolia's [response to the Provisional Findings](#), paragraph 3.17

¹⁴⁰⁵ Veolia's [response to the Provisional Findings](#), paragraph 3.19

internal documents as strong competitors, it is likely that these competitors would have been mentioned alongside the competitors we explicitly searched for (that the Parties also named as strong competitors).

- (b) Veolia's list of 22 competitors was not confirmed by other competitors in the market and as such we consider the list to be an unreliable reflection of the constraints the Parties face. Only nine of these competitors appear in the tender data¹⁴⁰⁶ and only six were identified by customers or competitors as credible suppliers.¹⁴⁰⁷
- (c) As discussed below, when searching for competitors across the Parties' internal documents, we found only a limited number of documents that identify or assess such competitors. This suggests that the Parties are limited in the extent to which they track competitors.
- (d) Veolia has not provided any internal documents that identify or assess the competitors that Veolia claims have been excluded from the search. Veolia could have provided such evidence if it considered that our assessment presented only a partial view of the market.

13.113 We consider that Veolia's internal documents indicate that Veolia most frequently identifies Suez as a competitor, appears to be able to identify the competitors for in upcoming tenders and often engages in bespoke negotiations with customers. For example:

- (a) A Veolia Investment Committee memo from December 2019 identifies [REDACTED].¹⁴⁰⁸ [REDACTED]. With regards to self delivery, Veolia states that [REDACTED]. Veolia submitted that [REDACTED]. The document also notes that Veolia had two discussions with [REDACTED] in relation to the tender;¹⁴⁰⁹
- (b) Another Veolia Investment Committee memo from May 2020 records [REDACTED].¹⁴¹⁰ Veolia submitted that [REDACTED].¹⁴¹¹

¹⁴⁰⁶ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

¹⁴⁰⁷ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

¹⁴⁰⁸ Veolia's Internal Document, VECMA00011879, page 6.

¹⁴⁰⁹ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.31.

¹⁴¹⁰ Veolia's Internal Document, VECMA00001896, page 3.

¹⁴¹¹ Veolia's response to the CMA's working paper on O&M Water and Wastewater for Industrial Customers, page 26.

- (c) One Veolia Investment Committee memo from September 2020 identifies [REDACTED].¹⁴¹² Veolia submitted that this contract [REDACTED]. Further, Veolia submitted that [REDACTED]. This document also states that [REDACTED].¹⁴¹³

13.114 We found very few Suez documents that discussed its competitors, either in relation to specific tenders or more widely in the O&M market. Those that did identified Veolia as a competitor. Other competitors were rarely mentioned:

- (a) One Suez internal document from September 2020 notes that [REDACTED]. No other competitors were identified.¹⁴¹⁴
- (b) Another Suez internal document from 2019 [REDACTED]. This document [REDACTED]. Further, [REDACTED].¹⁴¹⁵

Conclusion

13.115 Most of the internal documents relate to individual tenders. While we note that our review is not an exhaustive list of all internal documents in which the O&M contracts are mentioned, the documents we found suggest the following:

- (a) Customer requirements vary by each customer and contracts are individually negotiated – the market is differentiated. In particular, the contracts considered in the internal documents listed above had different requirements from each other and indicated that there were discussions between the potential suppliers and customers before the tender process;
- (b) The Parties appear to have a sense of who the likely competitors will be in upcoming tenders. We were able to verify that Veolia correctly identified other bidders for the [REDACTED] tender and that self-supply was a limited constraint; and
- (c) Consistent with the tender analysis, in the internal documents we reviewed, Veolia and Suez discuss each other more frequently than they discuss competition with rivals. In the contracts where Veolia and Suez competed, typically only one other, or no other, O&M provider is

¹⁴¹² Veolia's Internal Document, VECMA00001907, page 1.

¹⁴¹³ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.10.

¹⁴¹⁴ Suez's Internal Document, Document 515, page 2.

¹⁴¹⁵ Suez's Internal Document, Document 017, page 5.

identified. These customers will face a reduction of choice following the Merger.

13.116 We consider that the internal documents corroborate the evidence from customers in paragraph 13.70 above as well as the evidence from the tender data in paragraphs 13.82 and 13.89.

Credible suppliers

13.117 In this section, we consider the closeness of competition between the Parties based on third party ratings and consider the extent to which current O&M operators constrain the Parties.

Parties' submissions

13.118 Veolia submitted that it competed with Suez only on a subset of Veolia's industrial water O&M business. In particular, Veolia submitted that its contracts [REDACTED] Suez serves only contracts for O&M of water and wastewater treatment facilities for industrial customers.¹⁴¹⁶ For these, the Merged Entity will continue to face strong competition from self-supply and external consultants who help customers to self-deliver services.¹⁴¹⁷ Further, for the contracts that are outsourced, the Merged Entity will face a significant number of rivals with demonstrated experience for projects of all sizes, volumes and complexities.¹⁴¹⁸

13.119 Veolia further submitted that D&C experience provides no advantage for O&M suppliers. In this context, Veolia submitted that [REDACTED].¹⁴¹⁹ In addition, Veolia submitted [REDACTED].¹⁴²⁰

13.120 Veolia submitted that [REDACTED].¹⁴²¹ [REDACTED].¹⁴²²

¹⁴¹⁶ [REDACTED] Veolia's supplemental response on Operation & Maintenance of Water and Wastewater Treatment Facilities for Industrial Customers, page 1).

¹⁴¹⁷ Veolia response to CMA Issues Paper, 17 November 2021, paragraph 8.9; FMN, WMS Chapter, paragraph 15.29.

¹⁴¹⁸ Veolia Supplemental Response on Operation & Maintenance of Water and Wastewater Treatment Facilities for Industrial Customers, page 1; FMN, WMS Chapter, paragraph 15.11.

¹⁴¹⁹ Veolia's [response to the Provisional Findings](#), paragraph 293.

¹⁴²⁰ Veolia's response to the CMA's working paper on O&M of water and wastewater facilities for industrial customers, page 14.

¹⁴²¹ Veolia's response to the CMA's working paper on O&M of water and wastewater facilities for industrial customers, page 14

¹⁴²² Veolia's response to the CMA's working paper on O&M of water and wastewater facilities for industrial customers page 15.

- 13.121 In addition, Veolia submitted that the services it provides to its industrial customers [REDACTED]. Veolia further stated that much of the equipment it operates [REDACTED].¹⁴²³ Veolia submitted that [REDACTED].¹⁴²⁴ In this regard, Veolia identified that the consultants included [REDACTED].¹⁴²⁵ Veolia noted that [REDACTED].¹⁴²⁶ Suez submitted that laboratory services are “just a commodity you can go and buy”.¹⁴²⁷
- 13.122 Veolia submitted that the CMA’s third-party evidence set out in the Provisional Findings had ‘serious limitations’.¹⁴²⁸ In particular, Veolia submitted that:
- (a) The CMA received few responses to its questionnaires. Veolia submitted that we acknowledged that there were few competitor responses and stated that we place limited weight on competitor responses, but it is not apparent that we have done so.¹⁴²⁹ Further, Veolia stated that we cannot place any significant weight on a quantitative or qualitative analysis of only five customer responses.¹⁴³⁰
 - (b) Customer concerns were not directed at the industrial water O&M market. In particular, Veolia stated that the competitors identified by customers did not seem to be involved in the supply of O&M to industrial customers.¹⁴³¹ Veolia submitted that, as such, it appears that customers have not properly understood the market and therefore customer evidence may not be relevant to the industrial water O&M market.¹⁴³² Veolia further submitted that the CMA relied upon evidence from customers that are not part of the overlap it identified (set out in paragraph xx above) and that evidence from these customers cannot be used as the basis for finding an SLC in Industrial Water O&M.¹⁴³³

¹⁴²³ Veolia’s response to the CMA’s working paper on O&M of water and wastewater facilities for industrial customers, page 11.

¹⁴²⁴ Veolia’s [response to the Provisional Findings](#), paragraph 294.

¹⁴²⁵ FMN, WMS Chapter, paragraph 15.29.

¹⁴²⁶ Veolia’s response to the CMA’s working paper on O&M of water and wastewater facilities for industrial customers, page 11.

¹⁴²⁷ Suez Main Party Hearing transcript, page 105.

¹⁴²⁸ Veolia’s [response to the Provisional Findings](#), paragraph 311.

¹⁴²⁹ Veolia’s [response to the Provisional Findings](#), paragraph 312.

¹⁴³⁰ Veolia’s [response to the Provisional Findings](#), paragraph 313.

¹⁴³¹ Veolia’s [response to the Provisional Findings](#), paragraph 285.

¹⁴³² Veolia’s [response to the Provisional Findings](#), paragraph 301.

¹⁴³³ Veolia’s response to the confidential Provisional Findings, paragraph 25-26. In particular, Veolia submitted that the CMA referred to evidence from [REDACTED].

Our assessment

13.123 In order to understand how closely the Parties compete with each other and other rivals, we considered the extent to which the market players are credible suppliers. In particular, we first considered the suppliers that the Parties' customers view as credible, as these are the suppliers that the Parties' customers will choose between when issuing a new contract, and thus the potential constraints on the Parties. We then analysed the suppliers that the Parties' rivals view as strong competitors.

Evidence from customers

13.124 We asked customers to list the suppliers that they would consider credible if they were to retender their existing O&M contracts and indicate their strength on a scale from 1-5 (where 1 is not very strong and 5 is very strong). We received responses from four customers about five O&M contracts. Table 13.3 summarises the results.

Table 13.18: Summary of customer scoring of the strength of suppliers

Competitor	Average rating unadjusted for non-mentions		Average rating adjusted for non-mentions as a score of zero	
	No of respondents	Average rating (out of 5)	No of respondents	Average rating (out of 5)
Suez	4	5.0	5	4.0
Veolia	4	4.0	5	3.2
Welsh Water	1	3.0	5	0.6
Evoqua	1	3.0	5	0.6
Quaker Houghton	1	2.0	5	0.4
D2O	1	2.0	5	0.4
Kee Processes	1	1.0	5	0.2
FCC	1	1.0	5	0.2
Environmental	1	1.0	5	0.2
Cory	1	1.0	5	0.2
Environmental	1	1.0	5	0.2

Source: CMA analysis of response to questionnaire by customers

13.125 The results showed that:

- (a) Customers identified Veolia and Suez most frequently (4 times each), and gave them a very high average rating of 4.0 and 5.0, respectively.

Seven other competitors were identified only once, all of which received an average rating of 3.0 or below.

- (b) Treating non-mentions as a score of zero, all competitors other than Veolia or Suez received a rating of less than 1.¹⁴³⁴

13.126 The results indicate that the Parties were among the strongest suppliers with a long tail of other competitors. This is consistent with the CMA's Phase 1 customer responses.¹⁴³⁵ Customers also explained the strengths/weaknesses of the suppliers they considered credible. Below, we consider the qualitative customer submissions from the CMA's Phase 1 investigation and our inquiry:

- (a) Three customers referred to their previous experience with Suez; one of these noted Suez had 'excellent performance' and another also highlighted their positive experience.¹⁴³⁶ A further customer stated Suez offered the most innovation and investment.¹⁴³⁷
- (b) Six customers referred to their previous experience with Veolia. One customer referred to Veolia's D&C experience,¹⁴³⁸ another stated Veolia was able to service a range of requirements,¹⁴³⁹ and another noted Veolia has 'outstanding service across key sectors delivering on quality with the capabilities to match'.¹⁴⁴⁰ However, two customers stated that Veolia was more expensive,¹⁴⁴¹ another stated that Veolia's

¹⁴³⁴ Non-mentions of a supplier can be interpreted as meaning either (i) that the supplier is "non-credible", or (ii) that the customer is only familiar with certain bigger names. In the first scenario, this would warrant a low score (essentially a zero, because "non-credible" is weaker than "credible but relatively weak"). In the latter scenario, you would discount the non-mention. We present both ways of scoring. We should put more weight on the scores that treat non-mentions as a zero if we consider that the average customer knows most or all relevant suppliers. As this market is differentiated and customers do not necessarily contract through formal tender processes, it is less clear to us that customers will have a good understanding of all the suppliers in the market because they will only consider the suppliers that are credible for their types of contracts. Therefore, we are inclined to put less weight on the scoring that treats non-mentions as zero. In any case, the Parties score highly on both measures and are frequently described as market leaders.

¹⁴³⁵ Responses to the CMA's phase 1 questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. In particular, at phase 1 we asked customers to list the companies which they considered to be the strongest suppliers of O&M in the UK (in terms of their ability to meet the customer's needs if they were issuing a tender for O&M in the UK today). Five customers responded to this question. All of these customers were different than those in the phase 2 analysis above. Four customers identified Veolia, giving it an average rating of 4.0; two customers identified Suez, giving it an average rating of 5.0 and five suppliers were identified once. Two of these received a score of 4 and the remaining three received a score of 3. Note: during the Phase 1 investigation the CMA contacted all of the Parties' O&M customers, including RWCs. The answers from RWCs have been excluded from the analysis (throughout the Provisional Findings).

¹⁴³⁶ Responses to the CMA's questionnaire from [REDACTED], [REDACTED] and [REDACTED].

¹⁴³⁷ Response to the CMA's questionnaire from [REDACTED].

¹⁴³⁸ Response to the CMA's questionnaire from [REDACTED].

¹⁴³⁹ Response to the CMA's questionnaire from [REDACTED].

¹⁴⁴⁰ Response to the CMA's questionnaire from [REDACTED].

¹⁴⁴¹ Responses to the CMA's questionnaire from [REDACTED] and [REDACTED].

O&M performance was 'not brilliant',¹⁴⁴² and another identified it scored lower than the other bidder for its contract.¹⁴⁴³

- (c) Other suppliers were also assessed with reference to the customers' relationships with those suppliers and the supplier's experience.

13.127 Overall, the results show that the Parties are identified as strong and credible suppliers, with a long tail of other suppliers. We do not agree with Veolia's submission that we cannot place significant weight on this analysis because 'only' five customers responded. We note that the results are consistent with the CMA's analysis of customer responses at Phase 1, which were from another five customers. Therefore, we have evidence from ten of the Parties' 31 customers, a relatively high response rate and a reliable basis from which to make inferences. Further, customers provided qualitative explanations of their ratings, which indicates customers did understand the context of the relevant market and carefully considered their answers. The consistency of the customers' answers, evidence from customer calls (detailed in paragraph 13.70 above), and the tender data, supports the view that the analysis is reliable.

13.128 With regard to D&C experience, we note that one customer identified D&C experience as a strength of Veolia, and another customer required a supplier with experience and capabilities in D&C (see paragraph 13.70 above). However, other customers did not consider experience in D&C to be important¹⁴⁴⁴ and some other O&M suppliers also offer D&C (such as Alpheus)¹⁴⁴⁵. Further, we acknowledge Veolia's submissions that it did not have significant experience in D&C and that Suez WTS was evidence of O&M suppliers competing without a significant D&C offering. As such, we do not consider that the Parties' D&C experience is likely to provide a significant competitive advantage for most customers.

13.129 We acknowledge Veolia's submissions that some customer responses identified as credible suppliers companies that may not in fact provide O&M services to industrial customers. We consider that such customer responses provide an indication how customers currently perceive their options in the event they re-tender their services. It is not surprising that some customers identified potential suppliers that further analysis reveals are not viable suppliers for their specific requirements (and so these customers had less

¹⁴⁴² Response to the CMA's questionnaire from [REDACTED].

¹⁴⁴³ Response to the CMA's questionnaire from [REDACTED].

¹⁴⁴⁴ Response to CMA's Phase 2 questionnaire from [REDACTED] and [REDACTED]

¹⁴⁴⁵ Note of call with Alpheus.

choice of supplier than they had thought). With regard to whether we can have confidence in the customer views more broadly, we asked the Parties' industrial customers various questions regarding their own experience and perception of obtaining services for the O&M of water and wastewater treatment facilities, including specific questions about their existing O&M contracts. All customers that responded provided details in respect to an industrial O&M contract in their response. Further, we held calls with two of the respondents to our Phase 2 questionnaire ([REDACTED] and [REDACTED]), who elaborated on their views and explicitly identified that they had significant concerns in relation to the industrial O&M market in particular. We are therefore confident that customer views are relevant to the provision of services to industrial customers.

- 13.130 We note Veolia's submissions that its O&M services are [REDACTED] and [REDACTED] the onsite personnel, which TUPE to the new operator. However, we consider that qualitative evidence shows that customers value Veolia and Suez's ability to draw on wider support from their organisations. In particular, as discussed in paragraph 13.72 above, customers submitted that they relied on Veolia or Suez due to their back-office staff with technical knowledge, especially in the case of any issues. The back-office technical staff can bring knowledge and learnings from experience with other contracts (in the UK and globally). We understand that the back-office technical staff may not TUPE across to the new operator. As such, we are of the view that customers consider Veolia and Suez are strong suppliers at least in part due to their organisational support and technical expertise, rather than the relatively simple onsite operations.

Evidence from competitors

- 13.131 Similarly, competitors were asked to list the suppliers they would consider as their strongest competitors in O&M in the UK and indicate the strength of each supplier on a scale from 1-5 (where 1 is not very strong and 5 is very strong).¹⁴⁴⁶ In summary, we found that:
- (a) Competitors considered Veolia and Suez as the strongest suppliers and gave them the highest average ratings (5.0 and 4.5, respectively), and identified three and two times, respectively. Alpheus was also identified twice, receiving an average score of 2.5.

¹⁴⁴⁶ Phase 1 and phase 2 results have been combined.

- (b) All other competitors were identified only once and received an average rating of below 3.
- (c) In their free text explanations, competitors submitted that both Veolia and Suez had a strong D&C and process track record. Other competitors were assessed with regards to their current presence in the UK.

13.132 Overall, the results from competitors are consistent with customer results, showing that these competitors considered the Parties to be strong suppliers in the market. However, we have placed limited weight on quantitative results from the competitor questionnaire, given that there were three respondents.

13.133 Nonetheless, we note that these results are broadly consistent with qualitative evidence from competitors (two of which had also completed the questionnaire referred to above). In particular, competitors indicated that the Parties were two of a limited competitor set with the technical expertise necessary to provide O&M services to certain customers:

- (a) [X] submitted that only Veolia, Suez and Alpheus had the technical knowledge, expertise, certifications, quality systems and insurances required by large customers. [X] stated that [X] of winning a contract previously serviced by Veolia or Suez, [X].¹⁴⁴⁷ [X] also stated that that both the on-site operator and the contract manager were key to customers. It submitted that the contract manager was responsible for identifying and coordinating the necessary support from the wider organisation and providing a 'seamless service' to the customer.¹⁴⁴⁸
- (b) [X] submitted that Veolia and Suez were two of a limited field of competitors that were able to compete for large contracts with higher risks, and that it was difficult for O&M suppliers currently supplying lower risk contracts to win high risk contracts due to their lack of expertise and experience.¹⁴⁴⁹ [X] submitted that Veolia and Suez's closest competitors in O&M were Nijhuis, Alpheus, Envirochemie and Aquabio.¹⁴⁵⁰

¹⁴⁴⁷ Note of call with [X].

¹⁴⁴⁸ Note of call with [X].

¹⁴⁴⁹ Note of call with [X] and response to the CMA's RFI from [X].

¹⁴⁵⁰ Note of call with [X].

- (c) [X] further submitted that ‘the combined engineering and innovation capabilities of Veolia and Suez will create a very significant distance between the merged entity and its most immediate competitors, whereas before the proposed transaction, Veolia and Suez could be considered as very close competitors, in direct competition for the same projects for the same customers’. ¹⁴⁵¹
- (d) [X] submitted that it considered Veolia and Suez were the strongest competitors in the O&M market. ¹⁴⁵²
- (e) [X] submitted that it considered Veolia and Suez were seen as the leading companies in O&M. ¹⁴⁵³

Conclusion on credible suppliers

13.134 We note that the evidence from third parties identified Veolia and Suez as two of the strongest three or four players in the market. However, the other player(s) identified as strong varied by third party. We also recognise that third parties identified a long tail of suppliers as potential rivals for O&M contracts for water and wastewater facilities. We believe this is consistent with the view that the market is differentiated and fragmented. Given this, it is likely that not all of the Parties’ customers will consider all of the Parties’ competitors as credible suppliers. Therefore, customers may only mention (and rate) a subset of competitors.

13.135 We do not consider that there is strong enough evidence to suggest that external consultants were a feasible alternative or a strong constraint on the Parties. No third party mentioned any of the consultants identified by Veolia. Further, we consider that the importance of expertise and the varying strength of suppliers in this regard (as identified by third parties) makes it unlikely that customers who outsource their requirements will be willing to rely solely on external consultants.

13.136 In addition, there is some evidence to suggest that customers did not perceive access to laboratories to be as simple as submitted by the Parties. In particular, [X] submitted that access to labs was a key difficulty in self-supply and it was unlikely to choose a company without a technical lab background (and management).

¹⁴⁵¹ Response to [X].

¹⁴⁵² Response to the CMA’s questionnaire from [X].

¹⁴⁵³ Note of call with [X].

13.137 We consider the quantitative ratings discussed above are consistent with qualitative evidence that for, for some of the Parties' customers, Veolia and Suez are two of a very limited set of credible suppliers. Overall, we consider the evidence consistent with the concerns raised in paragraph 13.70 above.

Assessment

13.138 We have reviewed a range of evidence on the nature of competition, including third party views, shares of supply, the Parties' bid data and internal documents, in assessing competition and the strength of competitive constraints.

13.139 Customers told us that quality of service and technical expertise / know-how in O&M of water and wastewater facilities were important factors to consider when selecting a supplier. Other factors included reliability of service, financial standing, track record and a supplier's regulatory certifications. The Parties rank highly on the criteria that customers identified as important.

13.140 The lack of transparency in this market makes estimating shares difficult. Representations by the Parties and some third parties revealed very different market share estimates for the Parties. We have therefore placed limited weight on market shares. However, we note that several third-party competitors and an industry report all estimated that Veolia and Suez would, together, be the largest supplier in the market.

13.141 Some customers raised strong concerns about the Merger. Three large customers told us that Veolia and Suez were the only two suppliers who bid for their contracts and that they did not see any other credible suppliers for their requirements ([REDACTED], [REDACTED] and [REDACTED]). [REDACTED] said that only Veolia and Suez had the experience, capabilities, technical compliance and financial size to meet its requirements. The two other customers ([REDACTED] and [REDACTED]) told us that they needed the Parties' technical expertise and it would be too risky to self-supply. A fourth large customer ([REDACTED]) told us that it views its credible suppliers as being Veolia, Suez and Solenis and that Suez was Veolia's strongest competitor.

13.142 Veolia's tender data shows Suez was Veolia's closest competitor. It bid most frequently against Veolia and won the most contracts that Veolia lost. While Veolia's bidding data showed that it also frequently loses to self-supply, we note that this may overstate the strength of self-supply and, in any case, we consider that not all customers would be willing and able to self-supply O&M of water and wastewater treatment facilities. Suez's data show that Veolia participated by far the most frequently in Suez's tenders. This indicates that

that it is a close competitor to Suez although the data also show that Veolia only won one of these contracts.

- 13.143 When we asked customers and competitors about who they considered credible suppliers to be, customers identified Veolia and Suez most frequently. Five customers responded and four identified Veolia and Suez as the most credible suppliers. Although collectively customers were able to name a range of other suppliers, each of these suppliers were mentioned once only. This is consistent with the heterogeneous nature of the market. Competitors told us that Veolia and Suez together with Alpheus were the strongest competitors.
- 13.144 We consider that Veolia's internal documents indicate that Veolia most frequently identifies Suez as a competitor, appears to be able to identify the competitive set in upcoming tenders and often engages in bespoke negotiations with customers. Suez's relevant internal documents were more limited but identify Veolia as a competitor with other competitors rarely mentioned.
- 13.145 We are particularly concerned about the impact of the Merger on a subset of customers who currently have limited options, and whose options would be further reduced as a result of the Merger. As explained above, customers in this market are heterogeneous and we have not identified clear segmentation within this market. However, we observe that the customers we spoke to that raised concerns about the Merger had particular concerns about the risk of service interruption, the need to access more sophisticated technical support and/or the opportunity cost and risk involved in diverting their own resources from non-core activities.
- 13.146 Having considered all of the evidence available to us, we find that:
- (a) Veolia and Suez are close competitors. A range of evidence shows that the Parties' competitive strength comes from their experience, capabilities, technical compliance and financial size;
 - (b) Large customers similarly indicate that Veolia and Suez are either the two only bidders for contracts or two of a small set. This is consistent with the Parties' own bidding data, which indicate that they are close competitors;
 - (c) Customers and competitors consistently indicated that Veolia and Suez are the only two suppliers with such a strong market presence, and that the tail of other suppliers, whether individually and collectively, impart only a weak constraint on the Parties. Similarly, the out-of-market

constraint posed by self-supply is limited and unlikely to protect certain customers from concerns arising from the Merger.

13.147 Based on our assessment, we have found that the Merger will result in the removal of a direct and significant constraint on each of the Parties and may be expected to result in an SLC. We consider that overall, the remaining constraints post-Merger will not be sufficient to prevent an SLC. Factors that have contributed to our assessment that the lessening of competition is substantial include the nature and quality of Veolia and Suez as leading suppliers in this market; the differences between Veolia and Suez and the tail of other suppliers; the limited constraint imposed by self-supply; and the significance of the customers who identified particular concerns about the merger reducing their options (in some cases from two to one).

13.148 We consider that the possible adverse effects arising from the Merger include increased prices and a poorer quality of service relative to the situation without the Merger.

Entry and expansion

13.149 We have considered whether entry or expansion, as a direct response to the Merger, would prevent the SLC.¹⁴⁵⁴ The entry or expansion must be: (a) timely; (b) likely; and (c) sufficient to prevent an SLC.¹⁴⁵⁵ These conditions are cumulative and must be satisfied simultaneously.¹⁴⁵⁶ This involves a consideration of any barriers to entry which may give incumbent firms advantages over potential competitors.

Parties' views

13.150 Veolia submitted that barriers to entry are low because there are no legal barriers and low capital requirements.¹⁴⁵⁷ Further, the operating personnel at that site will transfer automatically to the new provider under TUPE.¹⁴⁵⁸

13.151 Veolia submitted that Regulated Water Companies ('RWCs'), D&C suppliers and non-UK suppliers could easily expand into the UK market. In particular:

¹⁴⁵⁴ CMA129, paragraph 8.28

¹⁴⁵⁵ CMA129, paragraph 8.31

¹⁴⁵⁶ CMA129, paragraph 8.32

¹⁴⁵⁷ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.60-61.

¹⁴⁵⁸ FMN, WMS Chapter, paragraph 15.22.

- (a) Several RWCs, such as [REDACTED], already provide O&M services to third parties including through commercial services subsidiaries.¹⁴⁵⁹ Other RWCs can easily expand purely in-house O&M services as the expertise necessary is readily transferable. Veolia submitted that it had not seen a shift of RWCs moving back to focusing on their core services.¹⁴⁶⁰
- (b) D&C companies such as [REDACTED] could easily expand into the O&M market given their pre-existing expertise. They already possess the skills and expertise needed to do so, and are particularly well-placed to offer O&M services on the facilities they have constructed. This is evidenced by the fact that D&C providers often provide post-installation support services to their customers.¹⁴⁶¹
- (c) Non-UK competitors can enter the UK market, including initially by establishing a joint venture.¹⁴⁶² For example, the Qualitech/Plater JV is carrying out O&M work for Johnson Matthey. This tender was worth £[REDACTED], which is significantly larger than the average tender value of £[REDACTED] in Veolia's tender dataset.¹⁴⁶³

13.152 Suez submitted that, in respect of the O&M market, [REDACTED].¹⁴⁶⁴

13.153 [REDACTED].¹⁴⁶⁵

Our assessment

13.154 The available evidence on barriers to entry is mixed. However, third party evidence indicates that most customers would not switch to a new entrant. In particular, most customers rated their likelihood of switching to a new entrant as very low, explaining that they required proven experience of reliable service.¹⁴⁶⁶ Some competitors noted that it would take a significant period of time (in excess of five years) for a new entrant to become competitive, especially in high-risk industries such as power generation.¹⁴⁶⁷

¹⁴⁵⁹ For example, Anglian Water provides industrial services through Alpheus, its commercial services subsidiary.

¹⁴⁶⁰ Veolia's [response to the Provisional Findings](#), paragraph 300.

¹⁴⁶¹ FMN, WMS Chapter, paragraph 15.21.

¹⁴⁶² Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.12.

¹⁴⁶³ Veolia's response to CMA Issues Paper, 17 November 2021, paragraph 8.48.

¹⁴⁶⁴ Veolia's response to CMA Issues Paper, 17 November 2021, Suez Confidential Annex, paragraph 8.8.

¹⁴⁶⁵ Suez's response to the first notice to Suez, paragraph 20.5.

¹⁴⁶⁶ Responses to the CMA's questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹⁴⁶⁷ Response to the CMA's RFI from [REDACTED] and responses to the CMA's questionnaire from [REDACTED] and [REDACTED].

13.155 Further, evidence from third parties shows that none of the potential entrants presented by Veolia will sufficiently constrain the Merged Entity. We consider the three potential types of entrant below.

13.156 First, entry by RWCs through commercial services subsidiaries is unlikely to constrain the Parties.¹⁴⁶⁸ In particular:

- (a) Three RWCs that responded to our questionnaire that currently do not provide O&M services to industrial customers indicated they do not currently have a strategic plan to enter the market,¹⁴⁶⁹ though one noted it may explore the possibility in the future.¹⁴⁷⁰
- (b) Severn Trent Water considers RWCs cannot offer O&M to industrial customers because it is not a regulated activity in their licences. RWCs can enter the market through a commercial subsidiary and some have done in the past. Severn Trent Water understands that RWCs have moved back to focusing on their core services in recent years.¹⁴⁷¹
- (c) Four out of eight responding customers submitted that they would not consider using an RWC for their O&M needs. These customers noted their lack of industry specific know-how.

13.157 Second, evidence from third parties indicates that D&C suppliers are unlikely to constrain the Parties in O&M contracts:

- (a) [REDACTED] (a D&C supplier) submitted that it is interested in participating in the O&M market, but finds it challenging due to barriers to entry.¹⁴⁷²
- (b) Six out of seven responding customers submitted that they would not consider a D&C supplier with no experience in O&M.¹⁴⁷³ These customers noted the need for a track record and operational know-how.
- (c) [REDACTED] (a D&C supplier) submitted that it is interested in participating in the O&M market, but finds it challenging due to barriers to entry.¹⁴⁷⁴

¹⁴⁶⁸ The constraint imposed by the commercial subsidiaries of RWCs that are already in the market have already taken into account in the competitive assessment.

¹⁴⁶⁹ Responses to the CMA's questionnaire from [REDACTED], [REDACTED], [REDACTED].

¹⁴⁷⁰ Responses to the CMA's questionnaire from [REDACTED].

¹⁴⁷¹ Note of call with [REDACTED].

¹⁴⁷² Note of call with [REDACTED].

¹⁴⁷³ Responses to the CMA's questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED]. [REDACTED] and [REDACTED].

¹⁴⁷⁴ Note of call with [REDACTED].

13.158 Third, non-UK suppliers are not strong competitors in the UK market (paragraph 13.42). Further, there is limited evidence of suppliers competing through using joint ventures, and, in any case, customers have not considered the possibility of using joint ventures. In particular:

- (a) Most customers that responded indicated that they have not considered using a joint venture for their O&M needs.¹⁴⁷⁵ Two customers submitted that they may consider using a joint venture depending on the performance guarantees, costs, contract size and control of the Parties.¹⁴⁷⁶
- (b) While Severn Trent Services submitted it has considered and been involved in forming a JV to service O&M contracts, it noted that forming a JV can be time consuming and costly. This cost is ultimately borne by the customer.¹⁴⁷⁷

13.159 [REDACTED]. However, we note that even with ten times the revenue from industrial customers that it currently has, Severn Trent Services' industrial O&M services would still lag significantly behind the Merged Entity ([REDACTED]).¹⁴⁷⁸ Further, Severn Trent Services identified that winning industrial contracts is helped through professional relationships arising from provision of other services, which can act as a barrier to expansion.¹⁴⁷⁹

13.160 On the basis of the above information, we conclude that entry and/or expansion would not be timely, likely and sufficient to prevent an SLC from arising.

Conclusion

13.161 We find that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of O&M services for water and wastewater facilities to industrial customers.

¹⁴⁷⁵ Responses to the CMA's questionnaire from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹⁴⁷⁶ Responses to the CMA's questionnaire from [REDACTED] and [REDACTED].

¹⁴⁷⁷ Responses to the CMA's questionnaire from [REDACTED].

¹⁴⁷⁸ We note Veolia's submission that, in its view, Severn Trent Services' expansion would result in Severn Trent Services having a similar portfolio of contracts as Veolia has. However, we consider that, even if Severn Trent Services' expansion plans were to eventuate, it would not pose a sufficient constraint on the Merged Entity.

¹⁴⁷⁹ Note of call with [REDACTED].

14. MOBILE WATER SERVICES

14.15 In this chapter we assess the effect of the Merger on the supply of Mobile Water Services. In our assessment, we have considered how closely the Parties compete with one another and whether the removal of the constraint the Parties place on each other is likely to lead to an SLC in the supply of MWS. As part of this assessment, we have also considered the competitive constraints placed on the Parties by other suppliers of MWS.

14.16 The chapter is structured as follows:

- (a) Description of services
- (b) Market definition
- (c) Indicators of competition
- (d) Our assessment
- (e) Entry and expansion
- (f) European Commission Commitments
- (g) Conclusion.

14.17 In making our assessment we have drawn extensively on evidence gathered during the CMA's Phase 1 investigation whilst also seeking further evidence from third parties during the course of our Phase 2 inquiry. We consider that the evidence base is sufficient in order for the inquiry group to reach a properly informed decision on the phase 2 statutory questions to the balance of probabilities standard.¹⁴⁸⁰ We note that neither Veolia nor Suez provided to us any comments on MWS in response to the MWS working paper that we shared with them, and MWS was not included in Veolia's Overview Submission to us (other than to note that Veolia has committed to divest its MWS business as a part of its commitments given to the European Commission).¹⁴⁸¹ Veolia did however, make submissions on MWS in its

¹⁴⁸⁰ CMA guidance states that in its phase 2 investigations the CMA will use evidence and information gathered in phase 1. It also notes that the CMA's 'starting point' will be the evidence base obtained at phase 1 and, in some cases, it may not be necessary to significantly expand this evidence base in order to reach a properly informed decision on the phase 2 statutory competition questions. [CMA2 revised](#), paragraphs 11.2 and 11.6.

¹⁴⁸¹ Veolia [Overview Submission](#).

response to the Provisional Findings and we have addressed these as part of our assessment in this chapter.

Description of services

14.18 MWS (sometimes referred to as process water) involves the provision of moveable water treatment units that are trailer-mounted so that they can be sent to customers in response to emergency shutdowns or planned outages of a customer's water or wastewater treatment facility.¹⁴⁸² MWS allows some customers to meet their short- and medium-term needs by providing a stop-gap solution if, for example, they do not have a water treatment facility or their facility is not yet ready. MWS can be used for industrial water treatment, municipal water treatment or wastewater treatment.

Market definition

Product market

Parties' submissions

14.19 Veolia submitted that the relevant product market is the supply of MWS.

14.20 Mobile water units can employ two different technologies in order to carry out water treatment: membrane-based technology or resin-based technology. The Parties disagreed on this question. Veolia said that it was not relevant to distinguish between the technology used as all existing technologies can generally deal with all customer needs.¹⁴⁸³ Suez submitted that it considers that (i) membrane-based MWS; and (ii) resin-based MWS are distinct product markets.¹⁴⁸⁴

Our assessment

14.21 We have considered segmenting the product market by technology (ie whether membrane-based MWS is distinct from resin-based MWS). In its assessment of *Veolia/Suez*, the European Commission considered the product market to be the supply of MWS.¹⁴⁸⁵

¹⁴⁸² FMN, WMT Chapter, paragraph 12.1.

¹⁴⁸³ FMN, WMT Chapter, paragraph 13.41.

¹⁴⁸⁴ Suez response to CMA Phase 1 s109, 19 Feb 2021, paragraph 1.23.

¹⁴⁸⁵ European Commission, [Veolia/Suez](#)

- 14.22 Veolia submitted that the decision on which technology to use depends on [REDACTED]. Veolia submitted that [REDACTED].¹⁴⁸⁶ Suez submitted that Suez WTS divides its fleet on the basis of [REDACTED].¹⁴⁸⁷
- 14.23 One competitor confirmed that the membrane-based and resin-based technologies are not always substitutable from the demand-side but on the supply-side a supplier must have the capability to offer both types of solutions.¹⁴⁸⁸ Evidence from customers indicates that most significant suppliers can provide both resin-based and membrane-based technologies, and that competitive conditions do not vary significantly based on technology.¹⁴⁸⁹

Conclusion on product market

- 14.24 Evidence from customers and competitors indicates that from the supply-side perspective, suppliers can generally supply both membrane-based MWS and resin-based MWS. We consider that, if necessary, any differences on the basis of these technologies can be taken into account in our competitive assessment. We have found that the relevant product market is the supply of MWS.

Geographic market

Parties' submissions

- 14.25 Veolia submitted that suppliers [REDACTED] ship mobile water units throughout the EEA as [REDACTED]. Further, Veolia submitted that [REDACTED] MWS suppliers offer [REDACTED] services, and that the [REDACTED] allowed for very dynamic competition throughout the EEA and the UK.¹⁴⁹⁰ Suez submitted that the geographic market is at least UK-wide, and likely EEA and UK-wide.¹⁴⁹¹

¹⁴⁸⁶ FMN, WMT Chapter, paragraph 12.1.

¹⁴⁸⁷ Suez response to CMA Phase 1 s109, 14 May 2021, paragraph 48.1.

¹⁴⁸⁸ Response to the CMA's phase 1 questionnaire from [REDACTED].

¹⁴⁸⁹ Responses to the CMA's phase 1 questionnaire from [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹⁴⁹⁰ FMN, WMT Chapter, paragraph 13.43-13.44.

¹⁴⁹¹ Suez response to CMA Phase 1 s109 notice, 19 Feb 2021, paragraph 1.24.

Our assessment

- 14.26 In its assessment of *Veolia/Suez*, the European Commission considered MWS on an EEA-wide basis.¹⁴⁹²
- 14.27 In its Phase 1 investigation the CMA received evidence that most customers stated that they would be unlikely to select a MWS supplier that does not have a UK presence because customers value a quick response time.¹⁴⁹³ Most competitors also submitted that local representation is important in supplying MWS, particularly in emergency situations.¹⁴⁹⁴ One competitor also referred to the importance of having UK operations post-EU exit.¹⁴⁹⁵
- 14.28 The Parties' internal documents also suggest that the appropriate geographic market is narrower than EEA-wide:
- (a) A Suez internal document shows that the footprint of Suez's [REDACTED];¹⁴⁹⁶
 - (b) A Veolia internal document lists [REDACTED] as the first [REDACTED] in relation to MWS;¹⁴⁹⁷
 - (c) A Veolia internal document suggests that [REDACTED];¹⁴⁹⁸ and
 - (d) A Veolia internal document states that [REDACTED].¹⁴⁹⁹

Conclusion on geographic scope

- 14.29 We have found that customers prefer a quick response time, particularly in emergency situations. The Parties' internal documents corroborate this. Therefore, we have concluded that the geographic market is national.

¹⁴⁹² European Commission, [Veolia/Suez](#)

¹⁴⁹³ Responses to the CMA's phase 1 questionnaire from [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Note of call with [REDACTED].

¹⁴⁹⁴ Responses to the CMA's phase 1 questionnaire from [REDACTED] and [REDACTED].

¹⁴⁹⁵ Response to the CMA's phase 1 questionnaire from [REDACTED].

¹⁴⁹⁶ Suez's Internal Document, Document 027, pages 4, 9 and 16. In particular, the document notes the new facility will increase the customer base by 135% in the target regions of South East France, North East Spain and North Italy.

¹⁴⁹⁷ Veolia's Internal Document, Annexe RFI 60 Q3 (4.a.), page 9.

¹⁴⁹⁸ Veolia's Internal Document, Annexe RFI 60 Q3 (4.a.), page 10.

¹⁴⁹⁹ Veolia's Internal Document, VECMA00021209, slide 3.

Indicators of competition

14.30 In this section we consider the evidence on competition between the Parties and the competitive constraints offered by their rivals and ‘out of market’ options involving alternative technologies. We assess:

- (a) Estimated market shares
- (b) The Parties’ submissions
- (c) Customer views
- (d) Competitor views
- (e) Evidence from the Parties’ internal documents
- (f) Evidence on alternative technologies.

Estimated market shares

14.31 Veolia estimated that the Merged Entity’s market share would be ~~[[X]]~~% for MWS in the UK in 2020.¹⁵⁰⁰ Veolia’s estimate is based on a report by a consulting firm (Frost and Sullivan).¹⁵⁰¹

14.32 In response to the Provisional Findings, Veolia submitted that we did not provide a clear explanation for the significant discrepancy between our estimate of market shares and that provided by the Parties.¹⁵⁰² We have not placed weight on Veolia’s estimate for the following reasons in particular:

- (a) The Frost and Sullivan report examined the ‘mobile water and wastewater treatment systems market’. We have not been supplied with information to verify that this is the same market as MWS;
- (b) The Frost and Sullivan report is dated August 2016 and uses data from 2015. This data is therefore historical and Veolia did not provide any evidence to suggest that data from seven years ago is reflective of today’s market nor did it provide updated data. Veolia submitted that customers change suppliers easily and often and also that suggests that the data may well be out of date;¹⁵⁰³

¹⁵⁰⁰ FMN, WMT Chapter, paragraph 15.43.

¹⁵⁰¹ Frost and Sullivan, ‘Global mobile water and wastewater treatment systems market’, August 2016

¹⁵⁰² Veolia’s [response to the Provisional Findings](#), paragraph 328

¹⁵⁰³ Veolia’s [response to the Provisional Findings](#), paragraph 336

- (c) The Frost and Sullivan report does not contain an estimate of market shares for MWS in the UK. Veolia adapted information in the report in preparing its estimate on the size of the Merged Entity's market share for MWS in the UK. In doing so, Veolia has (i) taken the overall estimated size of 'mobile water and wastewater treatment systems' in Europe contained in the Frost and Sullivan report, (ii) applied an assumption about the relative size of the total UK MWS market based on its unverified 'market knowledge'; and (iii) calculated its own share based on that estimated total. Veolia did not submit how it extrapolated 2015 data to 2020.
- (d) Veolia did not submit estimated market shares for any other party or indeed name any third party in its share estimates.

14.33 By contrast, Suez initially submitted that the Parties would have a combined share of [50-60%] in relation to process water MWS supplied to industrial customers in the UK.¹⁵⁰⁴

14.34 We have calculated market shares on the basis of revenue provided by Veolia, Suez and other market participants (listed in Table 14.1.). Although this approach may omit some smaller suppliers, we consider that there is little evidence of such smaller suppliers exercising a meaningful constraint (see the competitive constraints section below).

Table 14.19 – Shares of supply for MWS in 2020, based on revenues

	%
<i>Entity</i>	<i>Share of supply</i>
Veolia	[50-60]
Suez	[30-40]
<i>Merged Entity</i>	<i>[80-90]</i>
Ecolutia	[10-20]
Pall	[0-5]
Nijhuis	[0-5]
Nalco	[0-5]
Total	100

¹⁵⁰⁴ Suez response to the CMA Phase 1 s109 notice, 23 Apr 2021, annex 17.2.

- 14.35 We have estimated that the Parties have a combined share of [80-90%], with an increment as a result of the Merger of [30-40%]. We have found that Ecolutia is the only rival with a share of any significance ([10-20%]).
- 14.36 The figures in Table 14.1 above indicate that the Merger brings together the two leading suppliers of MWS in the UK who are each far and away larger than any other supplier. There are therefore strong structural presumptions that the Merger will lead to an SLC.¹⁵⁰⁵
- 14.37 In addition to the above, we note that in its decision on this merger, the European Commission said that whilst estimating market shares for MWS is difficult given the lack of transparency,¹⁵⁰⁶ it considered that Veolia had significantly underestimated the Parties' true competitive position in the market.
- 14.38 Another means of considering the Parties' position in the market is to look at their mobile unit fleet sizes relative to the Parties' rivals. The Parties' post-Merger combined fleet size (of around [REDACTED] mobile units)¹⁵⁰⁷ will vastly outnumber that of any of its rivals. Indeed, the Parties' combined fleet size easily outnumbers the aggregate fleet size of its rivals. Ecolutia has [REDACTED]; [REDACTED] has a fleet size of [REDACTED] mobile units with plans to grow this to [REDACTED]; Nalco told us that it has no in-house fleet and [REDACTED] told us that it has 14 mobile units across Europe but none of these is permanently allocated to the UK (and therefore none can be available for emergency situations).¹⁵⁰⁸
- 14.39 Veolia submitted that fleet size is not a good indicator of competitive strength.¹⁵⁰⁹ We disagree. Fleet size is a relevant indicator of market power in this market because it is a measure of capacity. Competitor views, discussed below, indicate that fleet size is an indicator of competitive strength. [REDACTED] and Nalco submitted that it is a weak competitor in MWS because it does not have an in-house fleet (paragraph 14.24). Some

¹⁵⁰⁵ See [CMA129](#), paragraphs 4.12 and 4.14

¹⁵⁰⁶ European Commission, [Veolia/Suez](#), paragraph 345

¹⁵⁰⁷ Suez response to CMA Phase 1 s109 notice, 14 May 2021, paragraph 51.1; Veolia's response to CMA Phase 1 s109 notice, 15 Jun 2021, paragraph 42.1.

¹⁵⁰⁸ Responses to the CMA's phase 1 questionnaire from [REDACTED], [REDACTED], [REDACTED]. Response to CMA Phase 2 MWS competitors questionnaire [REDACTED]

¹⁵⁰⁹ Veolia's [response to the Provisional Findings](#), paragraph 329

customers submitted that fleet size is an important consideration when deciding on a MWS supplier.¹⁵¹⁰

- 14.40 The evidence from our market share estimates and comparative fleet sizes indicates that the Parties are clearly the two largest MWS suppliers in the UK. On the basis of our market share estimates, the Parties are over six times larger than the next largest supplier, and by fleet size they are over 10 times larger than the next largest supplier (and would remain so [X]).

Parties' submissions on competition in MWS

- 14.41 Veolia submitted that the Parties are [X] and that their activities are [X]. In particular, Veolia noted that [X]% of its activities in MWS relates to emergency situations and its planned activities tend to be short-term (ranging from a day to a year), with [X]% of its activities being multi-year.¹⁵¹¹ In comparison, Suez is more active in [X].¹⁵¹² Veolia noted that this difference in focus was purely a matter of strategic choice by Suez.¹⁵¹³ Further, Suez offered [X], whereas Veolia offered only rental services.¹⁵¹⁴
- 14.42 Veolia submitted that it faces strong competition from MWS suppliers with offices and facilities in the UK, including from [X]. In addition, Veolia stated that it competes with European suppliers such as [X], which can easily compete in the UK as customers contact suppliers regardless of their location in the EEA, and that this was acknowledged by the EC in Suez / GE Water.¹⁵¹⁵
- 14.43 Suez submitted that [X] are its primary MWS competitors in the UK. Further, Suez stated that it competes with [X].¹⁵¹⁶
- 14.44 Veolia submitted that its competitors include new entrants that are innovating by using alternative technologies such as activated carbon treatment, giving [X] as examples.¹⁵¹⁷ These technologies are challenging mature mobile water technologies such as membrane and resin.¹⁵¹⁸

¹⁵¹⁰ Responses to the CMA's phase 1 questionnaire from [X], [X], [X], [X].

¹⁵¹¹ Veolia's Initial Phase 1 Submission, 17 Nov 2021, paragraph 9.2.

¹⁵¹² FMN, WMT Chapter, paragraph 15.51.

¹⁵¹³ Parties' joint submission in response to the EC RFI34, paragraph 21.

¹⁵¹⁴ FMN, WMT Chapter, paragraph 15.51.

¹⁵¹⁵ FMN, WMT Chapter, paragraph 15.45 and 15.46; EC's decision of 19 July 2017 in case [COMP/M.8452](#), *Suez / GE Water and Process Technologies*.

¹⁵¹⁶ Suez response to CMA Phase 1 s109 notice, 14 May 2021, paragraph 50.3.

¹⁵¹⁷ Veolia's response to CMA Issues paper, 17 November 2021, paragraph 9.5.

¹⁵¹⁸ Veolia's response to CMA's issues paper, 17 November 2021, Annex 2, slide 109.

- 14.45 Veolia further submitted it faces regular competition from alternatives to MWS including water tankering services. This is a method of providing treated water to sites and/or of removing wastewater for controlled disposal or treatment elsewhere. Veolia submitted that customers purchase tankering services for either emergency or short-term supply or disposal, although longer term agreements may exist for wastewater solutions. Suppliers include Tardis Environmental and Universal Tankers.¹⁵¹⁹
- 14.46 Finally, Veolia submitted that customers are [REDACTED] and change suppliers [REDACTED].¹⁵²⁰ In particular, customers are [REDACTED].¹⁵²¹ Veolia stated that the cost to customers of switching is [REDACTED].¹⁵²²

Customer views

- 14.47 Customer views are summarised below.
- (a) One large customer (whose contract is worth £[REDACTED] million in total) said to us during our Phase 2 inquiry that Veolia and Suez are, as far as it is aware, the only two suppliers it can use. Both have quick response times and the scale in terms of number of mobile units that it needs.¹⁵²³ Indeed, it told us that it could not identify any other options to the Parties and it has not considered any supplier other than Veolia and Suez in the past.¹⁵²⁴ It told us that switching to another supplier would involve a relatively long (6 to 9 months) and costly process of supplier testing and certification before it could award a contract. This large customer told us that it is concerned that following the Merger prices will go up.
 - (b) One customer noted in the CMA's Phase 1 investigation that Veolia and Suez were the two companies that usually participated in its tenders and that there were not many local companies that could offer the services it requires.¹⁵²⁵ This customer also submitted that it prefers

¹⁵¹⁹ FMN, WMT Chapter, paragraph 15.47.

¹⁵²⁰ Veolia's response to CMA Issues paper, 17 November 2021, paragraph 9.11 and 9.13.

¹⁵²¹ Veolia's response to CMA Issues paper, 17 November 2021, paragraph 9.13.

¹⁵²² Veolia's response to CMA Issues paper, 17 November 2021, paragraph 9.14.

¹⁵²³ This is consistent with some customer views given to the CMA's Phase 1 investigation – some customers responded that they prefer or require large suppliers. Source: responses to the CMA's phase 1 questionnaire from [REDACTED] and [REDACTED]. Note of call with [REDACTED].

¹⁵²⁴ Note of call with [REDACTED] and questionnaire response from [REDACTED].

¹⁵²⁵ The customer also identified Ecolochem, but the CMA understands Ecolochem was acquired by Suez. Note of call with [REDACTED].

to use large suppliers because these have the equipment available in different local areas.

- (c) Most third parties responding to the CMA's Phase 1 investigation raised concerns about the Merger: explanations included the reduction in choice, deterioration of the competitive landscape, stifling of innovation in the market and impact on overall costs/prices.¹⁵²⁶ While one customer submitted that it does not have concerns about the Merger because it believes Suez is more focused on long term solutions/contracts whereas Veolia focuses on emergency solutions, and that these are different markets that do not conflict with each other, Veolia and Suez both bid for – and were the only two bidders for – this customer's recent tenders for MWS.¹⁵²⁷

- 14.48 Some customers also submitted to the CMA's Phase 1 investigation that they would find it difficult to switch suppliers.¹⁵²⁸ These customers explained that the need to build a relationship with the supplier, the lack of suitable alternatives and the need for the supplier to have experience and resources can make switching difficult. Most customers submitted that they would be unlikely to select a supplier that does not have a physical UK presence for their MWS needs.¹⁵²⁹ One customer told us in our Phase 2 inquiry that both Veolia and Suez can have MWS trailers on its site in under 12 hours and as far as it is aware no other provider is able to match that.¹⁵³⁰
- 14.49 One customer did submit that in an emergency situation it will easily be able to switch in order to use whichever supplier is able to deliver the services at that time.¹⁵³¹ However, we note that the nature of emergency supply means that any such supplier must have the available capacity, in terms of trailers, to do so.

Competitor views

- 14.50 One competitor submitted that it considered Veolia and Suez to be close competitors with a fierce rivalry that offered 'almost a mirror' of each other's products and services, though noting that they have different levels of presence in some industries.¹⁵³² Other competitors also submitted that they

¹⁵²⁶ Responses to the CMA's phase 1 questionnaire from [X], [X], [X], [X], [X] and [X]. Note of call with [X].

¹⁵²⁷ Response to the CMA's phase 1 questionnaire from [X].

¹⁵²⁸ Responses to the CMA's phase 1 questionnaire from [X], [X] and [X].

¹⁵²⁹ Responses to the CMA's phase 1 questionnaire from [X], [X], [X] and [X]. Note of call with [X].

¹⁵³⁰ Note of call with [X] and questionnaire response [X].

¹⁵³¹ Response to the CMA's phase 1 questionnaire from [X].

¹⁵³² Response to the CMA's phase 1 questionnaire from [X].

considered Veolia and Suez to be market leaders and very close competitors in the UK.¹⁵³³ Further, all competitors that responded to the CMA's Phase 1 investigation noted that other competitors trailed behind Veolia and Suez by some margin.¹⁵³⁴

- 14.51 Competitors submitted to the CMA's Phase 1 investigation that suppliers must have a large fleet size in order to be competitive.¹⁵³⁵ One competitor noted it would have difficulty supplying a new customer because its fleet size could cause an availability issue, and therefore place it in a less favourable position.¹⁵³⁶ Another competitor submitted that substantial investment in a fleet was a risky investment as there was a likelihood that even after such investment, it may not win any contracts.¹⁵³⁷ This competitor noted that to build a reputation with customers, and being able to win material business could take ten years.
- 14.52 Generally, competitors stated that there are very few suppliers of MWS in the UK, with the Parties being the two market leaders.¹⁵³⁸ In regard to their ability to compete effectively against Veolia and Suez, we received the following comments from competitors:
- (a) [REDACTED].¹⁵³⁹ [REDACTED].
 - (b) Nalco submitted to the CMA's Phase 1 investigation that it is a weak competitor in MWS because it does not have an in-house fleet.¹⁵⁴⁰ Nalco stated that it has only provided MWS services approximately one or two times per year for customers within the UK, noting that some of these occurrences may also just be customer enquiries. It also said that MWS is not part of its core business.¹⁵⁴¹ The CMA's Phase 1 decision noted that no third parties identified Nalco as a strong competitor to Veolia and Suez in MWS in the UK.¹⁵⁴²
 - (c) [REDACTED] told the CMA's Phase 1 investigation that Siltbuster was an active competitor.¹⁵⁴³ It said that Siltbuster is a moderate constraint on the

¹⁵³³ Responses to the CMA's phase 1 questionnaire from [REDACTED] and [REDACTED].

¹⁵³⁴ Responses to the CMA's phase 1 questionnaire from [REDACTED], [REDACTED] and [REDACTED].

¹⁵³⁵ Responses to the CMA's phase 1 questionnaire from [REDACTED] and [REDACTED].

¹⁵³⁶ Response to the CMA's phase 1 questionnaire from [REDACTED].

¹⁵³⁷ Response to the CMA's phase 1 questionnaire from [REDACTED]. Note of call with [REDACTED].

¹⁵³⁸ Responses to the CMA's phase 1 questionnaire from [REDACTED], [REDACTED] and [REDACTED].

¹⁵³⁹ Note of call with [REDACTED]

¹⁵⁴⁰ Response to the CMA's phase 1 questionnaire from [REDACTED].

¹⁵⁴¹ Note of call with [REDACTED].

¹⁵⁴² Response to the CMA's phase 1 questionnaire from [REDACTED].

¹⁵⁴³ Response to the CMA's phase 1 questionnaire from [REDACTED].

Parties and noted that Siltbuster focuses on biological treatments for wastewater, in comparison to the Parties' wider offerings which use both membrane and resin technologies and deliver both water and wastewater treatments.

- (d) A company in the industry told us during our Phase 2 inquiry that it has no mobile units permanently allocated to the UK and thus would not typically have units available in the UK for emergency supply.¹⁵⁴⁴ The company said that [REDACTED] for non-emergency situations. Moreover, it supplies only membrane-based water treatments. It also told us that although it is active in the UK to a small extent it does not have a specific focus on the UK market.¹⁵⁴⁵ We have estimated that its UK market share is around [REDACTED] %.

14.53 Further, some competitors noted that MWS suppliers without a UK presence rarely compete for UK customers.¹⁵⁴⁶

Evidence from the Parties' internal documents

14.54 While few internal documents submitted by the Parties discuss competitive conditions in the MWS market, those that do show that the Parties view each other as close competitors in the UK. For example:

- (a) One Veolia internal document that assesses [REDACTED] identifies [REDACTED] as Veolia's only competitor with revenues in the UK. This document recommends that [REDACTED].¹⁵⁴⁷ This document therefore suggests that not only does Suez provide a competitive constraint to Veolia, but Veolia actively reflects this constraint in its pricing approach for MWS in the UK. Veolia submitted that [REDACTED].¹⁵⁴⁸
- (b) Another internal document discussing a particular bid for the provision of MWS [REDACTED] refers to [REDACTED].¹⁵⁴⁹

¹⁵⁴⁴ Response to the CMA's phase 1 questionnaire from [REDACTED].

¹⁵⁴⁵ Response to the CMA's phase 1 questionnaire from [REDACTED].

¹⁵⁴⁶ Responses to the CMA's phase 1 questionnaire from [REDACTED] and [REDACTED].

¹⁵⁴⁷ Veolia's Internal Document, Annexe RFI 60 Q2 (1.a), page 4.

¹⁵⁴⁸ Veolia's Submission, Initial Phase 1 submission, 17 Nov 2021, paragraph 9.4.

¹⁵⁴⁹ Veolia's Internal Document, VECMA00000843, page 3.

(c) One Suez internal document notes Suez should make a [REDACTED] in [REDACTED]MWS in the UK. No other competitors are mentioned. This document also sets out Suez's action plan for MWS is to [REDACTED].¹⁵⁵⁰

(d) Another Suez internal document that [REDACTED].¹⁵⁵¹

14.55 We have few internal documents discussing other competitors in MWS. Those that do suggest that the Parties are not significantly constrained by other competitors in MWS. In particular:

(a) One Veolia internal document notes [REDACTED] is active in the emergency mobile space in the UK.¹⁵⁵² However, the same document states [REDACTED] and another Veolia internal document states that [REDACTED].¹⁵⁵³

(b) One of Veolia's internal documents notes that [REDACTED]. It also notes that [REDACTED].¹⁵⁵⁴

(c) However, another Veolia internal document states that [REDACTED]. The geographic scope of this document is unclear. This document notes key competitors include [REDACTED]. This document further states that [REDACTED].¹⁵⁵⁵ The context of this document is unclear and the CMA notes that this document was prepared in December 2020, post Veolia's decision to acquire Suez.

(d) [REDACTED] is also identified in a Veolia internal document as having 'technician and sales' in the UK.¹⁵⁵⁶

Evidence on alternative technologies

14.56 In light of submissions made by Veolia, we have considered whether customers could use technologies other than membrane-based or resin-based technologies.

Activated carbon

14.57 Most customers submitted that activated carbon, which is used by some competitors, including new entrants, is not an adequate substitute for

¹⁵⁵⁰ Suez's Internal Document, Document 023, page 10 and 22.

¹⁵⁵¹ Suez's Internal Document, Document 027, page 24.

¹⁵⁵² Veolia's Internal Document, VECMA00000843, page 3.

¹⁵⁵³ Veolia's Internal Document, Annexe RFI 60 Q2 (1.a), page 5.

¹⁵⁵⁴ Veolia's Internal Document, Annexe RFI 60 Q3 (2a), page 15.

¹⁵⁵⁵ Veolia's Internal Document, Annexe RFI 60 Q3 (17.a), pages 2 and 3.

¹⁵⁵⁶ Veolia's Internal Document, Annexe RFI 60 Q2 (1.a), page 7.

membrane or resin technologies or that they have not considered using activated carbon.¹⁵⁵⁷ [REDACTED].¹⁵⁵⁸

- 14.58 Likewise, most competitors also submitted that activated carbon is not an adequate replacement for resin and membrane technologies.¹⁵⁵⁹ One competitor said activated carbon is used to remove specific harmful substances.¹⁵⁶⁰ Similarly, another competitor submitted that activated carbon can be used to remove suspended solids or for carbon absorption, which is a very small component of the treatment process.¹⁵⁶¹ This competitor submitted that on its own, activated carbon is ‘woefully unsuitable’ for production of higher quality waters.

Water tankering

- 14.59 Most customers that responded to the CMA’s merger investigation stated that water tankering is an unsuitable substitute to MWS or that they had not considered water tankering.¹⁵⁶² The customers noted that water tankering was not an option because the large volumes of water that needed to be treated meant it was impractical.¹⁵⁶³ One customer noted that while water tankering was an adequate substitute in an emergency, tankering was expensive and it is therefore not a long-term solution.¹⁵⁶⁴
- 14.60 Similarly, one competitor submitted that water tankering was unsuitable for projects requiring larger flow rates, longer-term or permanent projects.¹⁵⁶⁵ This competitor noted that it would require seven tankers every hour to match one of its mobile water units. Further, water tankering was in most cases more expensive for the end user.

Our assessment

- 14.61 The evidence strongly suggests that the Parties are close competitors in the supply of MWS in the UK and that they face few competitive constraints:
- (a) We have estimated that they have a very large combined market share of [80-90%], and an increment arising from the Merger of [30-40%]. We

¹⁵⁵⁷ Responses to the CMA’s phase 1 questionnaire from: [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹⁵⁵⁸ Response to the CMA’s phase 2 questionnaire from [REDACTED].

¹⁵⁵⁹ Responses to the CMA’s phase 1 questionnaire from [REDACTED] and [REDACTED].

¹⁵⁶⁰ Response to the CMA’s phase 1 questionnaire from [REDACTED].

¹⁵⁶¹ Response to the CMA’s phase 1 questionnaire from [REDACTED].

¹⁵⁶² Responses to the CMA’s phase 1 questionnaire from: [REDACTED], [REDACTED] and [REDACTED].

¹⁵⁶³ Responses to the CMA’s phase 1 questionnaire from [REDACTED] and [REDACTED].

¹⁵⁶⁴ Response to the CMA’s phase 1 questionnaire from [REDACTED].

¹⁵⁶⁵ Response to the CMA’s phase 1 questionnaire from [REDACTED].

consider that Veolia and Suez are, by some distance, the two largest suppliers in the UK. By size of fleet of mobile units, a measure of capacity in the market, the Parties together are more than 10 times bigger than the next largest supplier.

- (b) We are mindful that for many customers the use of MWS is an emergency purchase. The Merger all but completely removes competition for these customers.
- (c) Some customers have submitted that Veolia and Suez are the only two suppliers able to meet their requirements. In particular, customers have drawn attention to the Parties' scale (in terms of number of mobile units) and, related to this, their swift response times. Some customers have said that they would find it difficult to switch to another supplier because it would be costly and/or because they do not view other suppliers as having the same capabilities as the Parties. This evidence demonstrates that the Parties compete head-to-head for multi-year contracts and cannot be viewed as being complementary.¹⁵⁶⁶
- (d) Competitors have said that the Parties are close competitors and no competitor considered itself to be a strong competitor to either Veolia or Suez or could identify another competitor who was.
- (e) We have found that Ecolutia is the only competitor with a share of any significance [10-20%] but Ecolutia submitted that [X]. We consider that Ecolutia will continue to provide some competitive constraint against the Parties but would not be able to restore the market to its pre-Merger competitive conditions.
- (f) We have found that other competitors will offer only a weak constraint on the Merged Entity. Apart from Ecolutia, discussed above, no other supplier has a market share greater than [0-5%]. Nalco described itself as a 'weak competitor' (paragraph 14.38). Siltbuster and Pall do not offer the same range as either Veolia or Suez (paragraph 14.38). Pall told us that since it has no mobile units permanently allocated to the UK it cannot compete for emergency supply and it supplies only membrane-based water treatments (not resin treatments) (paragraph 14.38).

¹⁵⁶⁶ Veolia submitted in paragraph 330 of its response to the provisional findings, that the Parties' services are complementary since Suez focuses on multi-year services and Veolia focuses on emergency situations.

- (g) Internal documents indicate that the Parties view each other as competitors for both planned, multi-year contracts and in emergency situations. Generally, the internal documents do not suggest that the Parties are significantly constrained by competitors. [REDACTED]. One Suez internal document states that Suez should make a [REDACTED] in [REDACTED] MWS in the UK.
- 14.62 Veolia submitted that the Parties are not close competitors and that their activities are largely complementary given a greater proportion of Veolia's activities relate to emergency situations than Suez's, and a greater proportion of Suez's activities relate to long-term contracts than Veolia's. We have considered this and are of the view that this does not prevent the Parties from competing closely. The evidence from customers shows that the Parties compete head-to-head for customer contracts and although Veolia told us that only [REDACTED]% of its business is focused on long-term contracts it is nevertheless competing against Suez for at least some of these.
- 14.63 Veolia also submitted that it faces competition from alternative technologies such as activated carbon treatment and water tankering services. We have considered the evidence on this and found that customers and competitors do not consider either activated carbon treatment or water tankering services to be effective substitutes for MWS.
- 14.64 The evidence that we have assessed strongly indicates that, subject to any countervailing measures such as entry and expansion by rivals (which we assess next), the Merger may be expected to result in an SLC in the provision of MWS.
- 14.65 We consider that possible adverse effects will be higher prices for MWS and a worse quality of service compared to the situation without the Merger (eg, slower response times to emergency situations).

Entry and expansion

- 14.66 We have considered whether entry or expansion, as a direct response to the Merger, would prevent the SLC.¹⁵⁶⁷ The entry or expansion must be: (a)

¹⁵⁶⁷ CMA129, paragraph 8.28

timely; (b) likely; and (c) sufficient to prevent an SLC.¹⁵⁶⁸ These conditions are cumulative and must be satisfied simultaneously.¹⁵⁶⁹

14.67 Veolia submitted that barriers to entry and expansion are low.¹⁵⁷⁰ In particular:

- (a) Legal barriers to entry are low because there is [REDACTED].¹⁵⁷¹
- (b) Financial and technical barriers are low because [REDACTED].¹⁵⁷²
- (c) Suppliers already active in water management can easily expand into [REDACTED].¹⁵⁷³
- (d) The tender process (especially for medium and long-term solutions) allows entry and expansion because [REDACTED].¹⁵⁷⁴

14.68 Suez submitted that:

- (a) entry requires significant upfront capital expenditure and that a supplier would require a [REDACTED] to meet different customers' needs and would need [REDACTED] to have the capacity to respond to short notice emergency situations.¹⁵⁷⁵
- (b) the tender process [REDACTED].¹⁵⁷⁶

14.69 Third party evidence also suggests that it is difficult for new suppliers to enter the market. In particular:

- (a) Most customers submitted that they are unlikely or very unlikely to choose a new entrant to serve their MWS needs. Further, most customers noted that references / experience in the same sector are an important factor when deciding which supplier to choose and they would prefer or require a large fleet. One customer told us that a new supplier would need to go through a long testing process (of around 6

¹⁵⁶⁸ CMA129, paragraph 8.31

¹⁵⁶⁹ CMA129, paragraph 8.32

¹⁵⁷⁰ FMN, WMT Chapter, paragraph 15.56.

¹⁵⁷¹ FMN, WMT Chapter, paragraph 15.57.

¹⁵⁷² FMN, WMT Chapter, paragraph 15.58.

¹⁵⁷³ FMN, WMT Chapter, paragraph 15.59.

¹⁵⁷⁴ FMN, WMT Chapter, paragraph 15.60.

¹⁵⁷⁵ Suez response to CMA Phase 1 s109 notice, 19 Feb 2021, paragraph 20.2.

¹⁵⁷⁶ Suez response to CMA Phase 1 s109 notice, 19 Feb 2021, paragraph 20.6.

to 9 months) before it could be approved to supply its MWS requirements.¹⁵⁷⁷

- (b) Some competitors submitted that starting to supply membrane or resin technologies requires a significant investment and the cost of building membrane-based solutions is particularly high.¹⁵⁷⁸ Further, one competitor noted that it is difficult to obtain sufficient expertise to build, operate and maintain membrane-based systems.¹⁵⁷⁹
- (c) A competitor submitted that an entrant may take between three and five years to become competitive because the supplier needs a local presence, know-how, capacity, access to customers and a large number of references for all the membrane and resin technologies in combination with the industry it aims to serve.¹⁵⁸⁰

14.70 We are not aware of any planned entry into MWS in the UK. Although [X] has plans to grow its UK fleet size from [X] to [X],¹⁵⁸¹ this remains very small relative to both Veolia and Suez and would not be sufficient to offset the competition lost as a result of the Merger.

14.71 We have noted that a supplier wishing to provide MWS services in the UK must have a large fleet size to be able to effectively serve customers and that suppliers need to have requisite experience and resources, which can all make entry into this market difficult. Further, most customers submitted that they are unlikely to consider a non-UK based supplier of MWS.

14.72 We consider that entry or expansion would not be timely, likely and sufficient to prevent an SLC.

European Commission Commitments

14.73 In its response to our provisional findings, Veolia submitted that its commitments in relation to the European Commission process will resolve any possible competition concerns as regards MWS. Veolia submitted that there is therefore no basis for the CMA to identify an SLC: the Veolia business will be sold in any event.¹⁵⁸²

¹⁵⁷⁷ Note of call with [X].

¹⁵⁷⁸ Responses to the CMA's phase 1 questionnaire from [X] and [X].

¹⁵⁷⁹ Response to the CMA's phase 1 questionnaire from [X].

¹⁵⁸⁰ Response to the CMA's phase 1 questionnaire from [X].

¹⁵⁸¹ Response to the CMA's phase 1 questionnaire from [X].

¹⁵⁸² Veolia's response to the CMA's provisional findings, paragraphs 325 and 342

- 14.74 We disagree with Veolia's submission. The CMA has a separate and independent process from that of the European Commission. Under the CMA's framework for assessing whether the Merger is likely to give rise to an SLC we consider, amongst others, an assessment of the counterfactual.
- 14.75 For the reasons set out in Chapter 4, we have concluded that that the appropriate counterfactual against which to assess the Merger is that of the pre-Merger conditions of competition. Only events that would have happened in the absence of the merger under review, and not as a consequence of it, should be incorporated into the counterfactual.¹⁵⁸³
- 14.76 Our assessment therefore excludes the commitments offered by Veolia to the European Commission, which occurred as a direct result of the Merger. We discuss the nature and status of the European Commission commitments further in Chapter 15.

Conclusion on unilateral effects in the supply of MWS

- 14.77 For the reasons given in our assessment above, we have found that the Merger is likely to give rise to an SLC as a result of horizontal unilateral effects in the supply of MWS in the UK.

¹⁵⁸³ [CMA129](#), paragraph 3.4

15. REMEDIES

Introduction

- 15.15 This chapter sets out our assessment of, and final decision on, the appropriate remedies to address the SLCs and their resulting adverse effects identified in this report.
- 15.16 In reaching our final decision on the appropriate remedies, we have considered: the written responses to our public consultation on our notice of possible remedies (**Remedies Notice**);^{1584, 1585} the Parties' various submissions and responses to our questions on remedies; the evidence from our response hearings with each of the Parties and third parties;¹⁵⁸⁶ and Veolia's response to our remedies working paper (**RWP**), which set out our provisional decision on the appropriate remedies. As set out in the remainder of this report, all of the provisional SLCs set out in our Provisional Findings have been confirmed in this report.
- 15.17 This chapter is structured under the following section headings:
- (a) the nature of the SLCs and their resulting adverse effects;
 - (b) the CMA's framework for assessing remedies;
 - (c) an overview of the CMA's interim measures;
 - (d) an overview of the remedies required in other jurisdictions;
 - (e) an overview of the possible remedy options we have considered;
 - (f) our assessment of the effectiveness of a divestiture remedy to address the SLCs in a number of waste management services markets in the UK;

¹⁵⁸⁴ In the Remedies Notice, we set out our initial views, and invited comments, on possible remedies to address the SLCs we provisionally identified in our Provisional Findings. Our Remedies Notice can be found [here](#) on the CMA case page.

¹⁵⁸⁵ We received written responses to our Remedies Notice from Veolia on 6 June 2022 and from the following third parties: (a) Greater Manchester Combined Authority (**GMCA**) (27 May 2022); (b) Saur SAS and its wholly-owned subsidiary, Nijhuis Industries Holdings B.V. (31 May 2022); and [X].

¹⁵⁸⁶ We held hearing calls with the following third parties [X].

- (g) our assessment of the effectiveness of a divestiture remedy to address the SLC in the UK market for O&M services for water and wastewater treatment facilities to industrial customers;
- (h) our assessment of the effectiveness of a divestiture remedy to address the SLC in the UK market for MWS;
- (i) our assessment of the overall effectiveness of our preferred package of remedies;
- (j) our conclusions on effective remedies;
- (k) our assessment of relevant customer benefits;
- (l) our assessment of the proportionality of our preferred remedies;
- (m) remedy implementation issues; and
- (n) our final decision on remedies.

Nature of the SLCs and resulting adverse effects

15.18 We have found that the Merger may be expected to result in an SLC in the UK as a result of horizontal unilateral effects in:¹⁵⁸⁷

- (a) the following waste management services markets in the UK (the **Waste SLCs**):
 - (i) non-hazardous municipal waste collection services;
 - (ii) O&M services for MRFs to local authorities;
 - (iii) O&M services for ERFs to local authorities;
 - (iv) the supply of waste disposal services by incineration in the local areas surrounding Suez's Wilton 11 and Teesside ERFs;
 - (v) non-hazardous C&I waste collection services; and
- (b) the following water services markets in the UK:

¹⁵⁸⁷ Summary, paragraph 3.

- (i) O&M services for water and wastewater treatment facilities to industrial customers (the **Water O&M SLC**); and
- (ii) MWS (ie mobile water services) (the **MWS SLC**).

15.19 We found that the Merger would remove an important competitor from several markets, and that this could result in higher prices to customers and/or a poorer quality of service, compared to a situation absent the Merger, and that this could affect potentially millions of UK households and businesses.¹⁵⁸⁸

CMA framework for assessing remedies

15.20 Under the Act, where the CMA finds an SLC in its final report, it must decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effects which may be expected to result from the SLC.¹⁵⁸⁹

15.21 The Act requires that when considering possible remedial actions, the CMA shall ‘in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it’.¹⁵⁹⁰

15.22 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects.¹⁵⁹¹

15.23 In determining an appropriate remedy, the CMA will consider the extent to which different remedy options will be effective in remedying, mitigating or preventing the SLCs and any resulting adverse effects. As set out in the CMA’s published guidance on merger remedies, the effectiveness of a remedy is assessed by reference to its:¹⁵⁹²

- (a) impact on the SLC and its resulting adverse effects;
- (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;

¹⁵⁸⁸ Summary, paragraph 4.

¹⁵⁸⁹ Section 36(2) of the Act.

¹⁵⁹⁰ Section 36(3) of the Act.

¹⁵⁹¹ Mergers Remedies Guidance ([CMA87](#)), 13 December 2018, paragraph 3.4.

¹⁵⁹² [CMA87](#), paragraph 3.5.

- (c) practicality, in terms of its implementation and any subsequent monitoring; and
- (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effects.

15.24 As such, ‘the CMA will seek remedies that have a high degree of certainty of achieving their intended effect. Customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects’.¹⁵⁹³

15.25 In merger inquiries, the CMA will generally prefer structural remedies, such as a divestiture remedy (if the merger is completed) or prohibition (if the merger is anticipated), rather than behavioural remedies designed to regulate the ongoing conduct of the merger parties or control market outcomes (eg prices) following the merger.¹⁵⁹⁴ This is because:¹⁵⁹⁵

- (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring the rivalry that would be lost as a result of the merger;
- (b) behavioural remedies generally give rise to risks around specification, circumvention, market distortion and/or monitoring (see footnote),¹⁵⁹⁶ and may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and
- (c) structural remedies do not normally require ongoing monitoring and enforcement once implemented.

15.26 Once the CMA has identified the remedy options that would be effective in addressing the SLC, the CMA will select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no

¹⁵⁹³ CMA87, paragraph 3.5(d).

¹⁵⁹⁴ CMA87, see section 7 for further guidance on behavioural remedies.

¹⁵⁹⁵ CMA87, paragraph 3.5.

¹⁵⁹⁶ The design of behavioural remedies should seek to avoid four particular forms of risk to enable these measures to be as effective as possible: (a) *Specification risks*: these risks arise if the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance; (b) *Circumvention risk*: as behavioural remedies generally do not deal with the source of an SLC, it is possible that other adverse forms of behaviour may arise if particular forms of behaviour are restricted; (c) *Distortion risks*: these are risks that behavioural remedies may create market distortions that reduce the effectiveness of these measures and/or increase their effective costs; and (d) *Monitoring and enforcement risks*: even clearly specified remedies may be subject to significant risks of ineffective monitoring and enforcement. See also [Merger Remedies](#): CMA87 (13 December 2018), section 7.

effective remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act,¹⁵⁹⁷ to the effect of any remedial action on any relevant customer benefits (as defined in the Act¹⁵⁹⁸) (**RCBs**) arising from the merger.¹⁵⁹⁹

Overview of the CMA's interim measures

15.27 The CMA's interim measures in merger investigations are designed to ensure that the viability and competitive capability of each of the merging parties are not undermined pending the outcome of the CMA's investigation, as this would risk prejudicing the ability of the CMA to achieve an effective remedy if it were to find that the merger gives rise to an SLC.¹⁶⁰⁰

15.28 In this case, in respect of each Party's activities in the relevant UK markets where we have found SLCs:

(a) In relation to Veolia:¹⁶⁰¹

- (i) Veolia's UK activities in waste management services are undertaken by its Veolia UK&I business unit; and
- (ii) Veolia's UK activities in industrial water O&M services are undertaken by Veolia's UK IWE division, which forms part of the Veolia UK&I business unit; and
- (iii) Veolia's UK activities in MWS are undertaken by its VWT business unit, which is separate from the Veolia UK&I business unit.

(b) In relation to Suez:¹⁶⁰²

- (i) Suez's UK activities in waste management services are undertaken by its Suez Recycling and Recovery UK business; and

¹⁵⁹⁷ Section 36(4) of the Act.

¹⁵⁹⁸ Section 30 of the Act.

¹⁵⁹⁹ [CMA87](#), paragraph 3.4.

¹⁶⁰⁰ For further information, see also the CMA's guidance: [Interim measures in merger investigations: CMA108](#) (December 2021).

¹⁶⁰¹ Summary, paragraph 7 and Chapter 2, paragraph 2.7.

¹⁶⁰² Summary, paragraph 7.

- (ii) Suez's UK activities in both industrial water O&M services and MWS are undertaken by its WTS subsidiary.

15.29 In order to prevent pre-emptive action¹⁶⁰³ and, in particular, preserve our remedy options in the event we found SLCs in waste management and/or water services in our final report, the CMA's IEO,¹⁶⁰⁴ has for the entire duration of our investigation, required Suez's UK waste management services business (also referred to in this chapter as Suez's UK waste business)¹⁶⁰⁵ and Suez's global WTS business¹⁶⁰⁶ to be held separate from Veolia and required their competitive capabilities and viability be maintained. Similarly, the CMA's interim measures have required Veolia and Suez to preserve and maintain the competitive capabilities and viability of their relevant businesses.

Overview of the remedies required in other jurisdictions

15.30 As mentioned in paragraph 2.27, the Merger was investigated in a number of other jurisdictions outside the UK. In the particular circumstance of this case, some aspects of Veolia's remedy commitments offered to, and accepted by, the European Commission are relevant to our consideration of possible remedies to address the SLCs we have identified in this case. These considerations are set out below.

15.31 The Merger was cleared subject to commitments by the European Commission on 14 December 2021, and cleared subject to undertakings by the Australian Competition and Consumer Commission (**ACCC**) on 21 December 2021. The Merger was unconditionally cleared in the other jurisdictions.

¹⁶⁰³ See section 72(8) of the Act.

¹⁶⁰⁴ On 1 February 2021, the CMA imposed an IEO for the purpose of preventing pre-emptive action (ie action that could undermine the CMA's investigation or the CMA's ability to impose effective remedies, if required) in accordance with section 72(2) of the Act, which was subsequently varied on 9 December 2021. On 20 December 2021, the CMA revoked that IEO and served a new IEO under section 72(2) of the Act.

¹⁶⁰⁵ On 10 March 2022, the CMA granted a derogation under the IEO permitting Veolia's integration with Suez's businesses outside the UK (except the global Suez WTS business) on the basis that Suez's non-UK businesses which were permitted to integrate with Veolia, had no material connections to the functions of Suez's UK waste business and that the derogation does not undermine the CMA's ability to impose effective remedies. The published version of the 10 March 2022 derogation can be found [here](#).

¹⁶⁰⁶ During our investigation, we had received some evidence that indicated that permitting under the IEO the integration of Suez WTS's non-UK (or non-European) businesses with Veolia might not be feasible and could potentially have a detrimental impact on the Suez WTS business. Therefore, the has held separate the entire global Suez WTS business, and prevented its integration with Veolia. This is in contrast to the evidence which we considered in relation to Suez's UK waste business, which indicated that Suez's UK waste business operates on a largely stand-alone basis, with no material links with the rest of the Suez group businesses.

- 15.32 Given that the undertakings accepted by the ACCC concerned the divestiture of certain of the Parties' Australian assets,¹⁶⁰⁷ we have not identified any implications of the ACCC's remedies for our consideration of possible remedies to address the SLCs we have found. As such, for the purpose of this chapter, we do not consider the ACCC's remedies further.
- 15.33 According to the European Commission's decision to clear the Merger subject to certain commitments, the European Commission accepted commitments from Veolia to divest certain of Veolia's and Suez's businesses (the **EC Remedies**). We provide below a brief description of each commitment under the EC Remedies, together with an update on its current status:^{1608, 1609}
- (a) Veolia committed to divest almost all of Suez's activities in the non-hazardous and regulated waste management markets and the municipal water market in France (the **New Suez Divestment Business**). On 31 January 2022, Veolia completed the sale of the New Suez Divestment Business (which included the 'Suez' brand) to a consortium of investors comprising: (a) Meridiam SAS (**Meridiam**); (b) Global Infrastructure Partners LLC (**GIP**); and (c) Caisse des Dépôts et Consignations¹⁶¹⁰ (**CDC**). Meridiam, GIP and CDC together are referred to as the **New Suez Consortium**.^{1611, 1612} For statements referring to the future, the New Suez Divestment Business acquired by the New Suez Consortium is referred to as **New Suez**.
 - (b) Veolia committed to divest almost all of Veolia's activities in the MWS market in the European Economic Area (**EEA**) which included Veolia's UK MWS business (the **Veolia EEA MWS Divestment Business**). On 6 May 2022, Veolia entered into a put-option agreement with Saur SAS (**Saur**) for Saur to acquire the Veolia EEA MWS Divestment Business. Saur announced that it expected the transaction to close before year-

¹⁶⁰⁷ The ACCC's 21 December 2021 decision on remedies can be found [here](#).

¹⁶⁰⁸ The European Commission's 14 December 2021 decision can be found [here \(in French\)](#).

¹⁶⁰⁹ The European Commission's case page is [here](#).

¹⁶¹⁰ The stake in New Suez we refer to in this chapter as belonging to CDC in fact is split between CDC and its subsidiary, CNP Assurances. However, CDC told us that as regards its and CNP Assurances' shareholdings in New Suez, they acted collectively. As such, throughout this chapter we refer simply to CDC's stake in New Suez. Source: Response to CMA phase 2 RFI from CDC, 4 July 2022, q.1.

¹⁶¹¹ New Suez's announcement of the transaction (1 February 2022) is [here](#).

¹⁶¹² The CMA granted the necessary derogations from the initial IEO to permit the divestiture of certain of Suez's UK and UK-related assets that formed part of the New Suez Divestment Business. These derogations are the [18 October derogation](#) and the [14 December derogation](#).

end 2022, subject to receipt of anti-trust approvals and satisfaction of customary closing conditions.¹⁶¹³

- (c) Veolia committed to divest the vast majority of Veolia's activities in the French segment of the industrial water management market (the **Veolia IWF Divestment Business**). On 22 May 2022, Veolia announced that it had entered into a put-option agreement with Sécché Environnement for Sécché Environnement to acquire the Veolia IWF Divestment Business, and that the transaction was subject to (among others) obtaining the necessary regulatory authorisations.¹⁶¹⁴ Veolia told us that it anticipated signing a binding sale and purchase agreement by [REDACTED], with completion conditional on purchaser approval by the European Commission. Veolia told us that it anticipated closing the transaction by [REDACTED].¹⁶¹⁵
- (d) Veolia committed to divest parts of Veolia's and Suez's hazardous waste landfill activities and all of Suez's activities in the incineration and physico-chemical treatment of hazardous waste in France (the **Veolia HWF Divestment Business**). On 6 May 2022, Veolia announced that it had entered into a put-option agreement with New Suez for New Suez to acquire the Veolia HWF Divestment Business subject to (among others) obtaining the necessary regulatory approvals.¹⁶¹⁶ Veolia told us that it anticipated signing a binding sale and purchase agreement with [REDACTED], and that completion would be conditional on purchaser approval from the European Commission. Veolia told us that it anticipated closing the transaction by the [REDACTED].¹⁶¹⁷

15.34 Based on the above, with the exception of the sale of the New Suez Divestment Business, the other divestiture transactions required under the EC Remedies have yet to complete.

15.35 We have identified the following aspects of the EC Remedies which are relevant to our consideration of remedies to address the SLCs we have found:

- (a) *Suez brand*: following completion of the sale of the New Suez Divestment Business, the Parties no longer own the 'Suez' brand to

¹⁶¹³ Saur's announcement (9 May 2022) can be found [here](#).

¹⁶¹⁴ Veolia's announcement (24 May 2022) can be found [here](#).

¹⁶¹⁵ Veolia response to RFI 4 (response dated 16 June 2022), q.159.

¹⁶¹⁶ Veolia's announcement (6 May 2022) can be found [here](#).

¹⁶¹⁷ Veolia response to RFI 4 (response dated 16 June 2022), q.159.

enable them to transfer the ‘Suez’ brand to a purchaser of any divestiture remedies we may require. Under the terms of the Share and Asset Purchase Agreement governing that transaction (the **New Suez SAPA**),¹⁶¹⁸ Veolia may use the ‘Suez’ brand for the Suez business it retains after the sale of the New Suez Divestment Business for a fixed transitional period following transaction completion.¹⁶¹⁹ Suez’s UK waste business and Suez’s WTS business (globally) will however continue to use the ‘Suez’ brand until such time the CMA grants the necessary derogations.

- (b) *Veolia’s UK MWS business*: the Veolia EEA MWS Divestment Business, which Veolia has committed to divest under the EC Remedies, includes Veolia’s UK MWS business, which is engaged in the supply of MWS in the UK where we have found an SLC. Given this overlap and the CMA’s IEO, the sale of the Veolia EEA MWS Divestment Business cannot proceed without prior CMA approval.
- (c) *New Suez’s right of first refusal to acquire divestment businesses*:¹⁶²⁰ under the terms of the New Suez SAPA,¹⁶²¹ New Suez has a right of first refusal to acquire [X]. Under the terms of the New Suez SAPA, New Suez will have the right of first refusal [X].¹⁶²²

15.36 We consider the implications of the above when we turn to our assessment of the various remedy options to address the SLCs we have found.

Overview of possible remedy options considered

15.37 In this section, we set out an overview of the possible remedies in our Remedies Notice, before setting out an overview of Veolia’s remedy

¹⁶¹⁸ The New Suez SAPA, which facilitated the creation of New Suez, was entered into by the Parties and the New Suez Consortium on 22 October 2021. Source: [Veolia’s response to notice of possible remedies](#), paragraph 43.

¹⁶¹⁹ Paragraphs 3, 4 and 16 of the European Commission’s [decision dated 19 January 2022](#) (in French) to approve the New Suez Consortium as the purchaser of the New Suez Divestment Business.

¹⁶²⁰ New Suez’s right of first refusal was mentioned in various press articles, including (but not limited to): (a) in a 14 December 2021 article (in French) in *Les Echos* ([link here](#)), which mentioned that ‘[...] *New Suez* [...] *will have a right of first refusal for all future anti-trust divestitures*’; (b) in a 15 December 2021 article (in French) in *Les Echos* ([link here](#)), where Veolia’s former CEO Antoine Frérot explained in an interview that ‘*New Suez*’ *will legitimately have a right of first refusal, which means that it will be retained if it proposes a price and social guarantees equivalent to the best bidder*’; (c) in a 17 June 2022 *Financial Times* article ([link here](#)); and (d) in a 17 June 2022 article (in French) in *L’AGEFI Quotidien* ([link here](#)).

¹⁶²¹ Pursuant to Article 2.8 of the New Suez SAPA. Source: [Veolia’s response to notice of possible remedies](#), paragraph 43.

¹⁶²² [Veolia’s response to notice of possible remedies](#), paragraph 43.

proposals. We then set out the remedy options which we will assess for the purpose of our final determination of the appropriate remedies.

Possible remedies set out in our Remedies Notice

15.38 In our Remedies Notice, which set out our initial views on possible remedies to address the SLCs provisionally identified in our Provisional Findings:

- (a) We indicated our preliminary view that a full divestiture of one of the Parties' UK waste businesses appeared likely to be the only effective remedy to address the SLCs we had provisionally found in the various UK waste markets, and that we had not been able to identify a smaller divestiture package that could form the basis of an effective structural remedy.¹⁶²³
- (b) In relation to each of the provisional water SLCs (in industrial water O&M services and MWS), we stated that we had yet to form an initial view on the scope of what would constitute the smallest viable, stand-alone business that could form the basis of an effective divestiture package, but set out the possible divestiture options we would consider and consult on.¹⁶²⁴
- (c) We also indicated our initial view that any behavioural remedy was very unlikely to be effective.¹⁶²⁵
- (d) We invited views and responses to our questions on possible remedies, including whether all, or any combination, of the divestment businesses should be sold to a single purchaser to ensure these remedies would comprehensively address all of the SLCs we had provisionally found.¹⁶²⁶
- (e) We also invited views on whether there were any other practicable remedy options (structural or behavioural) which we should consider that could be effective in addressing the provisional SLCs and/or any resulting adverse effects.¹⁶²⁷

¹⁶²³ Remedies notice, paragraph 35.

¹⁶²⁴ Remedies notice, paragraphs 41 and 42.

¹⁶²⁵ Remedies notice, paragraph 22.

¹⁶²⁶ Remedies notice, paragraphs 54 to 62.

¹⁶²⁷ Remedies notice, paragraph 46.

Veolia's remedy proposals

15.39 In its response to our Remedies Notice, and without prejudice to its views that it disagreed with our Provisional Findings and therefore the need for remedies, Veolia submitted its own proposals for a package of divestiture remedies comprising three separate divestment businesses (together, **Veolia's Remedy Proposals**) should our final report confirm our provisional SLC findings:¹⁶²⁸

- (a) a divestiture of all of Suez's UK waste business to address the Waste SLCs (**Veolia's Waste Remedy Proposal**);
- (b) to address the Water O&M SLC, a divestiture of [X]: (i) Veolia's UK industrial water O&M services business; [X]¹⁶²⁹ ([X] **Veolia's Water O&M Remedy Proposal**); and
- (c) a divestiture of the Veolia EEA MWS Divestment Business (which includes Veolia's UK MWS business) in accordance with the EC Remedies, to address the MWS SLC (**Veolia's MWS Remedy Proposal**).

Remedy options considered in this chapter

15.40 None of the Parties or third parties who engaged with us on possible remedies told us that we should consider behavioural remedies as a primary remedy or as an adjunct to a possible structural remedy.¹⁶³⁰ In our view, we consider that designing effective behavioural remedies to address all aspects of the SLCs we have found, would be impractical and subject to very substantial design risks (eg specification, circumvention, market distortion and/or monitoring risks). We therefore do not consider behavioural remedies further in this chapter.

15.41 Other than the divestiture remedy options outlined above and in our Remedies Notice, none of the third parties we spoke to or who responded to our Remedies Notice suggested that we should pursue a materially different divestiture remedy option.

¹⁶²⁸ [Veolia's response to notice of possible remedies](#), paragraph 3.

¹⁶²⁹ [Veolia's response to notice of possible remedies](#), paragraph 18.

¹⁶³⁰ For example, the use of behavioural remedies in a supporting role to safeguard the effectiveness of any structural remedies.

- 15.42 Therefore, on the basis outlined above, we assess the effectiveness of each of the following divestiture remedy options:
- (a) a divestiture remedy to address the Waste SLCs (as part of which we consider Veolia's Waste Remedy Proposal) (the **Waste Divestiture Remedy**);
 - (b) a divestiture remedy to address the MWS SLC (as part of which we consider Veolia's MWS Remedy Proposal) (the **MWS Divestiture Remedy**); and
 - (c) a divestiture remedy to address the Water O&M SLC (as part of which we consider Veolia's Water O&M Remedy Proposal) (the **Water O&M Divestiture Remedy**).
- 15.43 Bearing in mind the CMA's statutory duty to comprehensively address all of the SLCs it finds, we have approached our assessment of remedy effectiveness by first considering the effectiveness of each of the Waste Divestiture Remedy, Water O&M Divestiture Remedy and the MWS Divestiture Remedy separately and on a 'stand-alone basis', before considering the overall effectiveness of these three divestiture remedies taken together as a package of remedy measures in addressing all of the SLCs we have found. We do this by considering whether bringing these elements together would mutually reinforce each of them and address any individual element's deficiencies.

Assessment of the effectiveness of a divestiture remedy to address the Waste SLCs

- 15.44 In this section, we consider the effectiveness of a divestiture remedy to address the Waste SLCs, ie a Waste Divestiture Remedy.

Waste Divestiture Remedy – our assessment of effectiveness

- 15.45 In our Remedies Notice, we set out our initial view that a full divestiture of the entire UK waste business of either Veolia or Suez to a purchaser approved by the CMA would represent the only effective remedy to the Provisional Waste SLCs and their resulting adverse effects, and that the

risks in terms of its effectiveness (in relation to composition, purchaser and asset risks – see also paragraph 15.35 below) were very low.¹⁶³¹

- 15.46 In our RWP, we set out our provisional view that a Waste Divestiture Remedy requiring the full divestiture of a UK waste business of one of the Parties, if designed to address the practical risks normally associated with any divestiture remedy (see paragraph 15.35 below), would re-establish the pre-Merger competitive structure of the market and thereby restore the dynamic process of competition that existed between the Parties prior to the Merger. In the RWP we provisionally found that such a remedy would address all of our concerns at source and would therefore represent a comprehensive solution to all aspects of our Waste SLCs.¹⁶³²
- 15.47 In its response to our RWP, Veolia told us that it agreed that a full divestiture of Suez's UK waste business to a suitable purchaser would be an effective remedy to all of the provisional SLCs that we identified in relation to waste markets. Veolia also told us it agreed that:
- (a) [X] from the date of Final Undertakings being accepted was an appropriate period for the divestment to take place;
 - (b) There was no reason to rule out any category of purchaser;
 - (c) It would not be necessary for the waste and water divestment businesses to be sold to a single purchaser; and
 - (d) There was no need to appoint either a Hold Separate Manager or Divestiture Trustee.¹⁶³³
- 15.48 The remainder of this section focuses largely on the design of a Waste Divestiture Remedy, which is integral to our assessment of its effectiveness. We end this section with our conclusion on the effectiveness of a Waste Divestiture Remedy.

Waste Divestiture Remedy – design considerations

- 15.49 There are three categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, purchaser risk and asset risk.¹⁶³⁴

¹⁶³¹ Remedies notice, paragraphs 17 and 19.

¹⁶³² Remedies Working Paper, paragraphs 1.199 and 1.200.

¹⁶³³ Veolia response to the RWP, paragraph 5.

¹⁶³⁴ CMA87, paragraph 5.3.

- (a) composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
- (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available; and
- (c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture.

15.50 An effective divestiture remedy should give us confidence that these practical risks can be properly addressed in its design. We therefore consider the following:

- (a) the appropriate scope of the divestiture package;
- (b) the identification and availability of suitable purchasers; and
- (c) ensuring an effective divestiture process.

15.51 Our assessment is set out below.

(a) Waste Divestiture Remedy – scope of the divestiture package

15.52 In our Remedies Notice, we invited views on whether a smaller or differently configured divestiture package could form the basis of an effective divestiture remedy to address the Waste SLCs.¹⁶³⁵

15.53 Before setting out our own assessment of the appropriate scope of the divestiture package, we first set out the evidence we received from third parties¹⁶³⁶ in relation to the appropriate scope of the divestiture package and an overview of Veolia's Waste Remedy, as well as the views of the Parties on the appropriate divestiture package scope.

¹⁶³⁵ Remedies notice, paragraph 54.

¹⁶³⁶ We note that we have been cognisant that third parties may have commercial incentives to raise concerns in relation to the Merger. We have therefore scrutinised views submitted by third parties carefully and considered the available evidence to support these views. [Mergers: Guidance on the CMA's jurisdiction and procedure](#), CMA2 (January 2022), paragraph 9.13.

Scope of the divestiture package – third parties' views

- 15.54 Most of the third parties who engaged with us on remedies told us that a full divestiture of a UK waste business of one of the Parties would be an effective remedy to the Waste SLCs:
- (a) FCC told us that a full divestiture would 'seem' to be effective. It told us that the competitive advantage from operating across the entire waste management supply chain was more relevant for the C&I side of the business, where a provider would benefit from operating across the waste management value chain when dealing with C&I customers. For example, FCC told us that if a provider could offer collection, recycling and disposal of the residual waste, it could do so in a 'more integrated way'. FCC told us that it considered the competitive advantage from operating across the entire waste management value chain was more limited for municipal contracts compared to 15 to 20 years ago, when there were lots of integrated contracts. It told us that for municipal contracts, a provider would not be materially compromised by not operating across the value chain, as each stage of that chain was 'competitive' and the provider could 'go to the market' for the disposal element, for example.¹⁶³⁷
 - (b) GMCA told us that it considered that a full divestiture of the UK waste business of either Veolia or Suez, in its 'full UK service delivery form', would represent the 'most effective remedy' for the SLCs in the waste sector, because 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.¹⁶³⁸
 - (c) New Suez told us that only a full divestiture of Suez's UK waste business would be effective, and that it considered Suez's waste activities in the UK to be a 'consistent' and 'integrated' business' in that there were interdependencies between the various 'blocks' within Suez's UK waste business, which would make a partial or carve-out divestiture complex. It also told us that it was important for a waste business to be on the entire 'waste value chain' from collections to treatments, eg in relation to 'complex contracts', it was important to be 'on the entire chain of value' and not have to subcontract to other

¹⁶³⁷ Transcript of hearing call with FCC, 27 May 2022, pp.8 and 12.

¹⁶³⁸ [GMCA's response to the provisional findings](#).

players. It explained that this had also been Suez's UK waste strategy before the Merger.¹⁶³⁹ New Suez also told us that Suez's UK waste business should be sold within a single legal entity 'to avoid any loss of value and burdensome carve-out'.¹⁶⁴⁰

- (d) [X] told us that it considered that a full divestment of either Veolia's or Suez's UK waste business would represent an effective remedy to the Waste SLCs and any resulting adverse effects, and that Veolia should be given the choice of which to divest. [X] also told us that it would not be necessary to divest a broader divestiture package beyond the UK waste business to address the Waste SLCs.¹⁶⁴¹
- (e) Viridor told us that:¹⁶⁴²
 - (i) the only solution to the Waste SLCs was to either divest Veolia's or Suez's UK waste business. It explained that Veolia and Suez were individually 'very significant players' across many of the UK waste markets and that if the Merger went ahead without mitigation, the adverse impact on pricing for customers would 'absolutely be realised'. It told us that the Merger would not only give rise to competition concerns in the individual markets where the Parties operated, but it would also give rise to the Merged Entity becoming 'significant local monopolies' which could control pricing;
 - (ii) there was an 'interplay' between MRFs, ERFs and collections across multiple customers, and that by operating across these areas, this gave the Merged Entity the ability to 'manage margins', 'cross-subsidise' and engage in 'aggressive' pricing until a monopoly situation arose, at which point, the Merged Entity would price 'at will';
 - (iii) there was also a benefit of operating across the waste management supply chain in terms of enhancing efficiencies (eg in terms of managing waste materials throughput and asset capacity utilisation at certain stages of the supply chain);

¹⁶³⁹ Transcript of New Suez hearing, 13 June 2022, pp.21-22.

¹⁶⁴⁰ Letter from New Suez, 21 June 2022.

¹⁶⁴¹ [X] Company X's [response to the notice of possible remedies](#)

¹⁶⁴² Transcript of hearing call with Viridor, 30 May 2022, pp.5 to 6.

- (iv) there was a strong interrelationship between the collections and EfW businesses, and that the ownership of landfills would provide the waste business with an 'ultimate disposal venue' for residual waste where necessary (eg during plant outages) – therefore, Viridor told us that landfills should form part of any perimeter of the UK waste business being divested; and
- (v) while Viridor was open to whether the divestiture should be from Veolia or Suez, Viridor considered that the only way of mitigating the risk to consumers was through a 'comprehensive' disposal of one of their UK waste businesses. It considered that to the extent that one of the Parties' UK waste businesses was divested, that would effectively prevent the 'individual monopolies' being formed across the country, by business type, eg collections, MRFs and ERFs. Viridor told us that a divestment of a whole waste business would effectively mitigate against these risks to customers.

15.55 [X] told us that while a full divestiture of a UK waste business of one of the Parties would be an effective remedy if our provisional SLCs were correct, [X] disagreed with certain aspects of our provisional SLC findings in the UK waste markets, and therefore, disagreed also with the need for a full divestiture of a UK waste business.¹⁶⁴³

15.56 A number of third parties highlighted the risks of a smaller or partial divestiture of a UK waste business of one of the Parties:

- (a) In relation to whether certain assets could be excluded or a smaller divestiture package could form the basis of an effective divestiture remedy, GMCA told us that if the objective to avoid an SLC was to be met, then the UK waste business had to be divested as a 'single entire package' and required to continue to operate as such. GMCA told us that divesting a smaller divestiture package could also give rise to the risk of failing to effectively maintain current levels of competition. GMCA told us that if Suez was broken up into smaller packages, it considered that while this could perhaps increase the scale of smaller companies who acquired them, it was far from likely that these 'new expanded companies' could provide adequate competition to Biffa, FCC etc, 'let alone Veolia'.¹⁶⁴⁴

¹⁶⁴³ Transcript of hearing call with [X].

¹⁶⁴⁴ GMCA's response to the provisional findings.

- (b) [X] told us that while it was possible that a smaller divestiture package could potentially be an effective remedy (eg where a very limited number of Suez assets were retained by Veolia), any assets retained by Veolia would need to be limited in scope for the following reasons:¹⁶⁴⁵
- (i) management expertise was particularly important to be able to manage large and complex waste management contracts, and therefore, all such management should be part of the divestiture package. It added that this was particularly important in relation to the Suez business which had a ‘top-down’ approach to management and as a result relatively little expertise existed at the individual site-level. It told us that if the UK waste business of either Party was split up and sold to separate purchasers, it was 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;
 - (ii) as identified in the Provisional Findings, customers assessed bidders for waste contracts across a range of factors including innovation. [X] told us that to the extent that significant Suez assets were retained by Veolia or the assets were split up, there was a ‘significant risk’ that the purchaser(s) would have less ability and incentive to innovate compared with a purchaser of the whole UK business; and
 - (iii) given the scale and scope of the competition concerns we identified, [X] considered that there would be significant implementation and carve out risks if either Party's UK waste business was split into multiple divestiture packages.
- (c) Viridor told us that it would be ‘incredibly difficult’ to unpick the different combinations of risk that would arise unless a ‘whole business’ divestiture was made from one of the Parties. Viridor told us that going for smaller divestments would also result in a ‘drawn-out’ sale process. It also told us that a divestiture of a UK waste business on a piecemeal basis would give rise to issues around the governance of how that would work in practice in each of the territories. It explained that there

¹⁶⁴⁵ [X] Company X's [response to the notice of possible remedies](#)

would be ‘significant and complex undertakings’ in relation to governance to mitigate all of those risks, and that this would not make a sale on a piecemeal basis a simple, effective and practical remedy. It added that it would also make the sale process difficult and protracted. Viridor also told us that any ‘mix-and-match’ approach or attempting to break up the business would be detrimental and should not be pursued, and added that a ‘mix-and-match’ would bring together staff working in separate businesses, and that this could have the effect of ‘stopping’ or ‘slowing down’ competition in the markets.¹⁶⁴⁶

Scope of the divestiture package – Veolia’s Waste Remedy Proposal

- 15.57 Under Veolia’s Waste Remedy Proposal, Veolia has proposed a full divestiture of Suez’s waste management services business in the UK (the **Proposed Suez UK Waste Business**) to remedy the Waste SLCs.¹⁶⁴⁷ Veolia has proposed that the sale of the Proposed Suez UK Waste Business would be achieved by way of a sale of 100% of Veolia’s shares in a Suez UK waste holding company, which contains the entirety of Suez’s UK waste business.¹⁶⁴⁸
- 15.58 Under Veolia’s Waste Remedy Proposal, the Proposed Suez UK Waste Business would comprise (see Appendix C for further details):¹⁶⁴⁹
- (a) all of Suez’s UK municipal collections business and all of Suez’s C&I collections business (including all national accounts contracts);
 - (b) all of Suez’s PPP and PFI contracts, which: (i) cover a range of waste management activities (including incineration, recycling, collections, etc); and (ii) have a broad footprint across the country;
 - (c) Suez’s complete portfolio of waste-management infrastructure including ERFs, MRFs, waste transfer stations, composting facilities, HWRCs, an anaerobic digestion plant, a mechanical biological treatment plant, landfill sites, and all other waste management sites, such as RDF, SRF and wood processing plants;

¹⁶⁴⁶ Transcript of hearing call with Viridor, 30 May 2022, pp.9 to 11.

¹⁶⁴⁷ [Veolia’s response to notice of possible remedies](#), paragraph 3.

¹⁶⁴⁸ [Veolia’s response to notice of possible remedies](#), paragraphs 30 to 36.

¹⁶⁴⁹ [Veolia’s response to notice of possible remedies](#), paragraphs 7 and 28.

- (d) Suez's UK waste infrastructure development projects, R&D and intellectual property rights (**IPRs**), and licences, permits and authorisations; and
- (e) all management, staff and support functions required for the divested business to operate in the UK waste markets, as well as the head office.

Scope of the divestiture package – Parties' views

15.59 Veolia told us that a full divestiture of the Suez UK waste business, consistent with our initial views in the Remedies Notice and Veolia's Waste Remedy Proposal, would fully eliminate the overlap between Veolia and Suez in all of the UK waste markets, and allow for the creation, or strengthening, of a significant competitor in the UK waste management sector, and reconstitute the competitive constraint which we had described would be lost as a result of the Merger.¹⁶⁵⁰ It added that Veolia's Waste Remedy Proposal would:¹⁶⁵¹

- (a) fully address the Waste SLCs;
- (b) recreate the third largest waste management supplier in the UK, with revenues in the region of £1 billion and a wide range of activities across the country;
- (c) ensure that the competitive constraint exerted by Suez across all markets in which an SLC has been identified, would continue;
- (d) be viable as a stand-alone business, led by Suez's experienced management team;
- (e) allow any purchaser to be an effective and credible competitor in the UK waste services markets, providing them with Suez's complete portfolio of customer contracts, waste management infrastructure, dedicated management, operational staff and support functions;
- (f) be attractive to buyers; and

¹⁶⁵⁰ Remedies Working Paper, paragraph 1.47.

¹⁶⁵¹ [Veolia's response to notice of possible remedies](#), paragraphs 4, 6 and 37.

- (g) be straight-forward to implement by divesting a single holding company which comprised the entirety of the Proposed Suez UK Waste Business.

- 15.60 Veolia told us that while the ‘Suez’ brand would not form part of the Proposed Suez UK Waste Business, this would not impact the ability of the Proposed Suez UK Waste Business to compete effectively in the UK waste markets.¹⁶⁵² We consider the absence of the ‘Suez’ brand further in our assessment below (in paragraphs 15.62 to 15.76).
- 15.61 Suez told us that the Proposed Suez UK Waste Business was a viable and stand-alone business, and would be successful whether sold to an industry buyer or a financial buyer.¹⁶⁵³
- 15.62 We also considered the evidence from Suez we received during our investigation, where Suez told us that its ability to operate across the ‘full value chain’ in UK waste management was ‘very important’ to its business and was a key element of its value proposition. It told us that having a ‘full suite of facilities’ enabled it to have the ‘strength to provide good solutions’ to its customers in ‘lots of different ways’, and together with its ability to [REDACTED], these factors benefited both its municipal and commercial customers. Suez considered that without this full suite of offering, [REDACTED], with many changes in the market being brought about by changes in legislation, and with residual waste levels decreasing and recycling levels increasing, these changes would be ‘easier to manage’ if Suez owned facilities across recycling and disposal.¹⁶⁵⁴
- 15.63 In relation to whether landfill sites (an area where we did not find any SLCs) should be excluded from the divestiture package, eg given their associated long-term liabilities which could discourage potential purchasers, Suez told us that [REDACTED] – in this regard, it told us that:¹⁶⁵⁵
- (a) [REDACTED]; and
 - (b) in the future, as the UK waste market developed, [REDACTED]. For example, Suez told us that in response to future changes in legislation, where it might be necessary to build new facilities, [REDACTED]. In relation to the potential long-term liabilities associated with landfill sites, Suez told us

¹⁶⁵² [Veolia's response to notice of possible remedies](#), paragraph 38.

¹⁶⁵³ Transcript of response hearing with Suez, 7 June 2022, pp.8 to 10.

¹⁶⁵⁴ Transcript of main party hearing with Suez, 13 April 2022, pp.8 to 11, 20 to 22, 24 to 25, 82 to 83 and 88.

¹⁶⁵⁵ Transcript of response hearing with Suez, 7 June 2022, pp.22 to 25.

that its UK waste business had a good track record in understanding these liabilities, eg it had a robust financial provision model to manage and understand what those liabilities would be.

Scope of the divestiture package – our assessment

- 15.64 In considering the appropriate scope for a divestiture package, we aim to ensure that it:
- (a) addresses the SLC and its resulting adverse effects; and
 - (b) is appropriately configured and not too constrained to attract a suitable purchaser;¹⁶⁵⁶ and
 - (c) enables the eventual purchaser to operate the divested business as an effective competitor.¹⁶⁵⁷
- 15.65 We noted the broad consensus from third parties that under a divestiture remedy, a UK waste business of one of the Parties should be divested in its entirety in preference to a smaller or differently configured divestiture package, with some third parties citing the risk that a partial divestiture could undermine the competitive capability of the UK waste business being divested and consequently, the remedy's effectiveness.
- 15.66 During our investigation, we have received evidence from the Monitoring Trustee that corroborates the Parties' views that the Suez UK waste business is a stand-alone business with very few links with the wider Suez group.
- 15.67 In relation to a possible divestiture of Veolia's UK waste business (instead of Suez's), we noted the views of third parties, which considered that either a divestiture of Veolia's or Suez's UK waste business would represent an effective remedy. Veolia however told us that it would be unnecessary, disproportionate and impractical to require a divestiture of Veolia's UK waste business given that:¹⁶⁵⁸
- (a) Veolia UK&I was active in a range of different activities in the UK that had no connection with the Merger (eg energy);

¹⁶⁵⁶ CMA87, paragraph 5.3

¹⁶⁵⁷ CMA87, paragraph 5.3

¹⁶⁵⁸ Veolia's response to notice of possible remedies, paragraphs 50 and 51.

- (b) Veolia UK&I was a much larger business than Suez UK (Veolia's 2020 UK revenues were £[REDACTED] whereas Suez's revenues were around £[REDACTED]), which would create additional challenges – Veolia added that [REDACTED];
- (c) Veolia UK&I would have to be carved out of the global Veolia group legally and financially, which would be a difficult and complex exercise and would have a hugely disruptive effect on employees and customers; and
- (d) the CMA's guidance on remedies provided that in identifying a divestiture package, the CMA would take, as its starting point, divestiture of all or part of the acquired business (ie the target business), and that the CMA would consider a divestment of the acquiring business if this was not subject to greater risk in addressing the SLC.¹⁶⁵⁹ Veolia told us that it was clear that this was not the case in respect of Veolia's UK waste business.

15.68 We consider that it would be a relatively quick and simple exercise to specify the scope of the divestiture package under a remedy requiring a full divestiture of Suez's UK waste business, by requiring Veolia to sell all its shares in the UK holding entity holding Suez's UK waste business to a suitable purchaser. Based on our review of Suez's UK group legal structure (see Figure 1 of Appendix C), we consider that the relevant UK holding company where Suez's UK waste business sits is [REDACTED]. A share sale of that UK holding entity would ensure that this remedy comprehensively mitigates the risk of omitting (or Veolia retaining) any key assets from the divestiture package, and not give rise to the carve-out risks and proportionality issues raised by Veolia in relation to a divestiture of Veolia's UK waste business.

15.69 We consider that only a full (rather than partial) divestiture of Suez's UK waste business could fully restore the loss in the competitive constraint resulting from the Merger and represent a comprehensive solution to all aspects of the Waste SLCs and their resulting adverse effects. Given the extensive scope of the SLCs which we have found in multiple markets across the waste management supply chain and the need for the remedy to restore competitive conditions in the bidding for integrated contracts and other large contracts to those that would have prevailed absent the Merger, we consider that a partial divestiture package was unlikely to be effective.

¹⁶⁵⁹ CMA87, paragraph 5.6. Source: [Veolia's response to notice of possible remedies](#), paragraph 51.

- 15.70 In our view, a partial divestiture would carry a substantial risk that a divestiture remedy would not be an effective solution to our Waste SLCs and we would not expect a partial divestiture to restore the competitive constraint between the Parties we have found will be lost due to the Merger. There are a number of reasons for this:
- (a) A partial divestiture remedy would be likely to: (i) result in a significantly weakened and diminished Suez UK waste business such that the dynamic process of competition that existed between the Parties prior to the Merger would not be restored; and (ii) increase the risk of undermining Suez's future competitive capabilities and weakening its core competences, by destroying synergies between the different operations of an integrated company.
 - (b) We consider that the likely effects of a partial divestiture of Suez's UK waste business would be to: (i) strengthen Veolia's market position in the markets where it retains Suez's assets; and (ii) weaken Suez's competitive constraint and its ability to expand (eg see paragraph 15.49(b) above) and invest in its business, such that a partial divestiture would not fully restore the loss in the competitive constraint resulting from the Merger.
 - (c) We also consider that a partial divestiture remedy could ultimately result in a more complex and drawn-out and protracted divestiture process, creating further uncertainty in the market and for Suez's customers and staff, and taking longer to establish a new or enhanced competitive entity.
 - (d) We also consider that a partial divestiture option permitting Veolia to retain what might appear to be 'less critical' elements of Suez could nonetheless have unintended consequences which undermine Suez's current and future competitive capabilities. For example, as noted above in paragraph 15.49 in relation to Suez's views on the strategic importance of [X].
- 15.71 Further, we note that we did not receive any evidence from third parties that a partial divestment would represent an effective remedy. Rather, evidence from third parties indicated that a full divestiture represented an effective remedy, with some highlighting the risks of a smaller or partial divestiture
- 15.72 Given the above, we consider the risk profile of a partial divestiture to be unacceptably high.
- 15.73 We therefore consider that a Waste Divestiture Remedy should require the full divestiture of Suez's UK waste business (this is also consistent with the

scope of Veolia's Proposed Suez UK Waste Business under Veolia's Waste Remedy Proposal).

15.74 In relation to a possible divestiture of Suez's UK waste business, and based on our assessment of the evidence above and the details of the scope of the divestiture package set out in Appendix C, we have identified the following potential areas of composition risks and separation issues:

- (a) absence of the 'Suez' brand;
- (b) transfer of customer contracts to a purchaser;
- (c) stand-alone R&D capability and management;
- (d) separation issues; and
- (e) Suez's hazardous waste business.

15.75 We consider each of these in turn below.

Absence of the 'Suez' brand

15.76 As mentioned above in paragraph 15.21(a), under the terms of the New Suez SAPA, the 'Suez' brand is owned by New Suez, and Suez is currently permitted to use the 'Suez' brand for a fixed transition period.

15.77 In this regard, Suez told us that the 'long-stop date' by which it could use the 'Suez' brand was [REDACTED], but that it might be able to rebrand before the end of that long-stop date.¹⁶⁶⁰

15.78 However, we note that the terms of the New Suez SAPA [REDACTED] provide that if we were to require the divestment of any Suez business in the UK, for that business in the UK, the time periods for the phasing out of the 'Suez' brand (ie [REDACTED] for corporate and trading names, [REDACTED] for digital assets; and [REDACTED] for all other assets excluding waste containers and other similar widely spread objects) should apply 'from the date agreed between the third party acquirer and Veolia, which should be at most [REDACTED] after the closing of the transfer of the relevant portion of the Business in the United Kingdom to a third party acquirer (unless a longer period is requested by the CMA)'.¹⁶⁶¹ This may indicate that under the terms of New Suez SAPA, a purchaser of a Suez

¹⁶⁶⁰ Transcript of response hearing with Suez, 7 June 2022, p.31.

¹⁶⁶¹ Suez response to RFI 4, q.142.

divestment business, which is required by the CMA, may have [X] from closing of the sale to transition away from the 'Suez' brand (the **Rebranding Long-Stop Date**).

- 15.79 In our Provisional Findings and in the various responses to our public consultation on the Provisional Findings and Remedies Notice, we did not receive evidence which would indicate that the 'Suez' brand would be an essential component of any divestiture package.
- 15.80 Most of the third parties who engaged with us on possible remedies, confirmed that the absence of the 'Suez' brand would not undermine the Suez UK waste business's ability to compete effectively:
- (a) FCC told us that a change in brand would not be a significant issue, and noted that once a provider qualified for a tender process, the customer would look at the provider's financials and track record (eg 'history and experience'). It added that credentials came before brand in terms of importance, in particular in the municipal market. FCC told us that while some (eg small businesses) might not recognise the provider if it did not have a well-known brand, for many 'commercial, industrial trade waste customers' and shops, these customers would normally focus on the price.¹⁶⁶²
 - (b) [X] told us that in order to compete effectively in the UK waste market, a track record and 'balance sheet' (particularly for municipal customers and less so for C&I customers) were more relevant factors than the brand.¹⁶⁶³
 - (c) [X] told us that it did not consider that the absence of the 'Suez' brand would have a material impact on the ability of the divested UK waste business to compete effectively provided that it was acquired by a purchaser with an established reputation and expertise in the sector. It added that expertise, R&D capability, together with an experienced management team, were more important to the ability to compete effectively in the relevant UK waste markets, and that it was in this context, that any new brand for the business should signify known expertise, reliability and commitment to the sector, as well as innovation.¹⁶⁶⁴

¹⁶⁶² Transcript of hearing call with FCC, 27 May 2022, pp.17 to 18.

¹⁶⁶³ Transcript of hearing call with [X].

¹⁶⁶⁴ [X] Company X's [response to the notice of possible remedies](#)

- (d) GMCA told us that it did not see the loss of the ‘Suez’ brand as a ‘barrier’ to the future competitiveness of Suez’s UK waste business. It told us that the divested business’s ‘presence’ would be adequately addressed through comprehensive marketing campaigns and the continuation of its ‘current high profile external activities’ although under a different name. It told us that the loss of the ‘Suez’ brand would not impact upon the continued delivery of existing contracts and in any procurement process the new entity would be well able to demonstrate its track record in the market even if operating under a different name.¹⁶⁶⁵

15.81 New Suez however told us that ‘Suez international’, which belonged to New Suez, owned the ‘Suez’ brand, and that if New Suez was approved by the CMA as a purchaser of Suez’s UK waste business, the Suez UK waste business would continue to use the ‘Suez’ brand and New Suez could leverage the track record associated with the ‘Suez’ brand to maintain the same level of competitive pressure as before the Merger.¹⁶⁶⁶

15.82 Veolia told us that while the ‘Suez’ brand would not form part of the Proposed Suez UK Waste Business, this would not impact the ability of the Proposed Suez UK Waste Business to compete effectively in the UK waste markets, given that:¹⁶⁶⁷

- (a) branding was not important in the waste management services market, noting that the Suez business had only switched from the ‘SITA’ brand to the ‘Suez’ brand in 2015, with no adverse impact on its ability to compete effectively in the UK waste markets;
- (b) customers were commercial or industrial entities, or local authorities whose primary objective was to obtain a reliable and high quality service at the best possible price, and that customers were sophisticated and aware of market developments, and would know the strong track record in the UK of the Proposed Suez UK Waste Business; and
- (c) moreover, the ability to attract customers was mainly based on the level of experience of the sales and technical teams.

¹⁶⁶⁵ [GMCA’s response to the provisional findings](#).

¹⁶⁶⁶ Letter from New Suez, 21 June 2022.

¹⁶⁶⁷ [Veolia’s response to notice of possible remedies](#)), paragraph 38.

- 15.83 Veolia told us however that if we did find that branding was an important element of any waste remedy, then this could be addressed in two main ways, by:¹⁶⁶⁸
- (a) divesting the Proposed Suez UK Waste Business to an existing operator (in the UK or elsewhere) with an established brand in waste management, [X]; and/or
 - (b) Veolia offering the purchaser of the Proposed Suez UK Waste Business, the option to acquire a legacy Veolia UK brand, eg Veolia's 'Onyx' brand in the UK, which was Veolia's principal brand used by Veolia's waste management activities between 1989 and 2005.
- 15.84 Suez told us that the absence of the 'Suez' brand would not be an issue, having rebranded from SITA to Suez Environment and then to Suez. [X] to the purchaser of Suez's UK waste business, Suez told us that this would confuse its customers who might still think of Veolia as 'Onyx' and told us that a 'cleaner break' would be preferable.¹⁶⁶⁹
- 15.85 Related to the risk of rebranding, [X] told us that any perceived short-term branding risk could be adequately dealt with by a transitional service agreement (**TSA**) for a three- to six-month period to facilitate the rebranding of assets such as vehicles and facilities.¹⁶⁷⁰
- 15.86 In response to our RWP[X].¹⁶⁷¹
- 15.87 We have not found that a competitor's brand was a key parameter of competition in any of the markets where we have found SLCs. Rather, we found that in the various markets where we found the Waste SLCs, a competitor's track record, experience and reliability were considered to be important parameters.¹⁶⁷²
- 15.88 We considered the evidence above, including Veolia's response to our RWP, and noted that while the Parties and most third parties considered the Proposed Suez UK Waste Business's ability to compete effectively would not be undermined or impaired by not having the 'Suez' brand, one third party (New Suez) considered the 'Suez' brand (which it owns) would assist with

¹⁶⁶⁸ [Veolia's response to notice of possible remedies](#), paragraph 38.

¹⁶⁶⁹ Transcript of response hearing with Suez, 7 June 2022, pp.30 to 32.

¹⁶⁷⁰ [X] Company X's [response to the notice of possible remedies](#)

¹⁶⁷¹ Veolia response to RWP, paragraph 10.

¹⁶⁷² Sources: various, see for example, amongst others, paragraph 7.142 in relation to complex waste management contracts procured by local authorities, and paragraph 8.189 in relation to the supply of non-hazardous municipal waste collection services).

maintaining the pre-Merger competitive situation (see paragraph 15.67 above).

- 15.89 On balance, and taking the evidence above in the round, we consider that the absence of the ‘Suez’ brand will not undermine the Proposed Suez UK Waste Business’s ability to compete effectively, taking into account the evidence we have received and our view that customers placed more importance on the capabilities and track record of the Proposed Suez UK Waste Business, which a full divestiture of Suez’s UK waste business would comprise.
- 15.90 However, we consider that in order to ensure an orderly and smooth transition to a new brand (to be determined by the eventual purchaser) and minimise any disruption to the purchaser and customers, Veolia should take steps to ensure that the purchaser of Suez’s UK waste business is given the option to continue to use the ‘Suez’ brand for the UK waste business until the Rebranding Long-Stop Date provided under the New Suez SAPA (see paragraph 15.64 above) or a shorter period as requested or required by the eventual purchaser. For the avoidance of doubt, if the purchaser wishes for a period shorter than the period of time until the Rebranding Long-Stop Date Veolia may agree such shorter period with the eventual purchaser.

Transfer of customer contracts to a purchaser

- 15.91 Veolia told us that the contracts forming part of the Proposed Suez UK Waste Business would pass to the purchaser automatically with the entities being divested (subject to a small number of ‘change of control’ clauses), and added that [REDACTED].¹⁶⁷³
- 15.92 Suez told us that these ‘change of control’ clauses would apply to some municipal contracts,¹⁶⁷⁴ as well as a small number of C&I contracts.¹⁶⁷⁵ It told us that in connection with the potential sale of Suez’s UK waste business, it had instigated a review of its UK waste business’s contracts (with a value of at least [REDACTED] in annual revenues) and identified to date: (a) [REDACTED] out of [REDACTED] contracts (reviewed to date), which contained a change of control clause at the UK holding company level,¹⁶⁷⁶ which would either: (i) give the counterparty an automatic right of termination; or (ii) require

¹⁶⁷³ Veolia’s response to notice of possible remedies, paragraph 47.

¹⁶⁷⁴ Transcript of response hearing with Suez, 7 June 2022, p.19.

¹⁶⁷⁵ Suez’s response to phase 2 RFI, 30 June 2022, question 184.

¹⁶⁷⁶ Suez told us that for the purpose of its review, it assumed that any ‘change of control’ of the group would occur at the level of either [REDACTED]. Source: Suez’s response to phase 2 RFI, 30 June 2022, question 184.

counterparty consent; and (b) [X] C&I contracts with a change of control clause at the UK holding company level.¹⁶⁷⁷

- 15.93 [X] told us that in its experience, a significant proportion of municipal and special purpose vehicle (**SPV**) contracts had change of control provisions that would be activated by a divestment and that the existence of change of control provisions in municipal contracts potentially had timing implications for the divestment process, eg municipal customers could be ‘very slow to grant consents’ as they needed to go through a formal approval process. It told us that it was ‘vital’ that municipal customers and SPV equity partners be willing to consent to a change of control in a timely manner because if these contracts were not migrated to the purchaser(s), this could undermine the divested business’s competitiveness in the market. [X] therefore told us that it was essential that any purchaser clearly exhibited expertise, reliability, commitment to the sector and innovation, so as to maximise the chance of consents being granted.¹⁶⁷⁸
- 15.94 In relation to municipal customers, under section 72 of the Regulations, where a new contractor replaces the one to which the contracting authority had initially awarded the contract (eg following corporate restructuring, including takeover, merger, acquisition or insolvency) and the replacement contractor fulfils the criteria for qualitative selection initially established (with no other substantial modifications to the original contract), the contract may be modified without a new procurement procedure. Given this, we consider that the risk of municipal customers either deciding to terminate their contracts or not consenting to a transfer to the purchaser of Suez’s UK waste business in light of the Regulations would be increased if the business being divested was materially different from the Suez UK waste business which won the original contract.
- 15.95 In light of the above, we consider that the divestiture of Suez’s entire UK waste business would provide greater comfort and reassurance to both municipal and C&I customers that their contracting counterparty would remain essentially unchanged. Given this, we consider the risk of municipal and C&I customers either deciding to terminate their contracts or not consenting to a transfer to the purchaser of Suez’s UK waste business to be low.

¹⁶⁷⁷ Suez’s response to phase 2 RFI, 30 June 2022, question 184.

¹⁶⁷⁸ [X] Company X’s [response to the notice of possible remedies](#)

Stand-alone R&D capability and management

- 15.96 Finally, we consider any potential linkages between Suez's UK waste business and its wider group, in relation to its R&D capability and management.
- 15.97 In relation to the Parties' views on R&D capability and IPRs:
- (a) [REDACTED].¹⁶⁷⁹
 - (b) Suez told us that the innovation activities of the Suez UK waste business were led by the UK business itself, with limited financial and technical support, [REDACTED], from the wider Suez group. It told us that even if expertise from the wider Suez group was relevant to a particular innovation project, this could be obtained from elsewhere from consultants or by hiring for these roles at the same or similar cost. Suez added that the Suez UK waste business had a number of new innovation opportunities in the pipeline that it was currently exploring and seeking to conclude contracts for, and that these opportunities had been identified, and would be funded, by the Suez UK waste business without the involvement of Suez group.¹⁶⁸⁰ Suez also told us that innovation in its UK waste business was [REDACTED], but more about being agile and open to being approached by third parties and investing the time to investigate and follow up opportunities, which took place at the UK-level.¹⁶⁸¹
- 15.98 One third party (New Suez) told us that Suez's UK waste business was historically built on its wider group's know-how, experience and research centres, and therefore it considered that an acquisition of Suez's UK waste business by New Suez would ensure that the Suez UK waste business could continue to maintain and develop its position in the environmental services sector and be supported in its growth and development objectives.¹⁶⁸²
- 15.99 In relation to the management team of the Suez UK waste business, Veolia told us that the Proposed Suez UK Waste Business would function either as a coherent stand-alone business (as it did currently) or as a strong complement to an existing waste management (or adjacent) business. It told

¹⁶⁷⁹ [Veolia's response to notice of possible remedies](#), paragraph 38, and email from Veolia's legal counsel to CMA, dated 14 July 2022.

¹⁶⁸⁰ Email from Suez responding to the CMA's questions (via the Monitoring Trustee), 9 June 2022.

¹⁶⁸¹ Transcript of response hearing with Suez, 7 June 2022, pp.28 to 30.

¹⁶⁸² Letter from New Suez, 21 June 2022.

us that Suez's UK waste business was a stand-alone business with its own management team [REDACTED]¹⁶⁸³), [REDACTED]. It added that Suez's UK waste business was organisationally and operationally independent from, and had no links or dependencies with, any other Suez entity, including the Suez WTS business.¹⁶⁸⁴

15.100 Suez told us that [REDACTED] if it was required to be divested, provided it was sold to a suitable purchaser that understood the business and was aligned with its values.¹⁶⁸⁵

15.101 One third party ([REDACTED]) told us that 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. It told us that this would limit the divested business's 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.¹⁶⁸⁶

15.102 Throughout our investigation, we have also received various pieces of evidence from the Monitoring Trustee (as part of its engagement to support the CMA in its consideration of the Parties' various requests for a derogation from the IEO), based on its conversations with the Parties and their advisers, which indicated that Suez's UK waste business:¹⁶⁸⁷

- (a) was stand-alone;
- (b) did not depend on the wider group to continue to innovate and pursue new innovation opportunities although it did benefit from access to the Suez innovation platform; and
- (c) took strategic decisions at the UK management team level.

15.103 We therefore consider that the Suez UK waste business would have its own management team and would be able to innovate independently by

¹⁶⁸³ [REDACTED]. Source: [Veolia's response to notice of possible remedies](#), paragraph 38.

¹⁶⁸⁴ [Veolia's response to notice of possible remedies](#), paragraph 38.

¹⁶⁸⁵ Transcript of response hearing with Suez, 7 June 2022, p.8.

¹⁶⁸⁶ [REDACTED] Company X's [response to the notice of possible remedies](#)

¹⁶⁸⁷ For example, the report from the Monitoring Trustee to the CMA in relation to the derogation granted by the CMA on 10 March 2022, which permitted Veolia's integration with Suez's businesses outside the UK (except the global Suez WTS business) on the basis that these non-UK businesses had no material connections to the functions of Suez's UK waste business. Source: Monitoring Trustee Report on Integration derogation request for certain non-UK Suez businesses, 16 February 2022.

obtaining innovation support (which it historically received from the wider Suez business) externally within the UK. We have not identified material linkages between Suez's UK waste business and the wider Suez group as regards R&D or management.

Separation issues

15.104 We note the following separation issues:

- (a) Suez told us that it currently receives a number of services from New Suez under TSAs, for which it had been developing 'exit plans'. It told us that subject to these 'exit plans', it would expect a purchaser could [REDACTED].¹⁶⁸⁸
- (b) Suez also told us that it received insurance cover from Veolia's group insurance policies under a TSA (as permitted by the CMA under a derogation from the IEO). However, Suez told us that it was currently looking into 'stand-alone' insurance policies in the event of a possible divestiture of the Suez UK waste business, [REDACTED].¹⁶⁸⁹
- (c) Suez told us that [REDACTED], the Suez UK waste business started to provide some back office support to Suez's 'water business'.¹⁶⁹⁰
- (d) Suez told us that the links to the wider Suez group were 'quite minimal', eg limited to: (i) [REDACTED] existing parent company guarantees from [REDACTED]; (ii) group treasury functions; and (iii) bond facilities (subject to a 'change of control').¹⁶⁹¹

15.105 We consider these separation issues to be narrow in scope and therefore have a limited impact on the effectiveness of the remedy, such that they would not materially increase the implementation risks of this remedy. We would expect these issues to be discussed as part of any sale process, and where necessary, with the eventual purchaser.

Suez's hazardous waste entity

15.106 Suez told us that its 'hazardous waste entity' was Suez RR IWS Remediation Limited [REDACTED], which was currently a wholly-owned subsidiary of

¹⁶⁸⁸ Transcript of response hearing with Suez, 7 June 2022, p.32.

¹⁶⁸⁹ Transcript of response hearing with Suez, 7 June 2022, pp.20 and 32.

¹⁶⁹⁰ Transcript of response hearing with Suez, 7 June 2022, p.12.

¹⁶⁹¹ Transcript of response hearing with Suez, 7 June 2022, p.19.

Suez Recycling and Recovery UK Group Holdings Limited (whose parent company was the top UK entity, SUEZ UK Group Holdings Limited).¹⁶⁹²

15.107 Suez told us that its UK waste business (ie the Suez Recycling and Recovery UK business) operated a [X] hazardous waste business in the UK as part of its normal operations (ie separate from the business of Suez RR IWS Remediation Limited). Suez told us that the Suez RR IWS Remediation Limited entity was unrelated to the Suez UK waste business; had no activities in the UK; and only sat within its group structure for administrative convenience.¹⁶⁹³ In this regard, Suez confirmed that Suez RR IWS Remediation Limited did not contain any assets (and therefore, it shared no common assets with Suez's UK waste business) and generated no revenues in the last financial year.¹⁶⁹⁴

15.108 Therefore, Suez told us that the entity SUEZ RR IWS Remediation Limited should be removed from the corporate group of the Suez UK waste business being divested on the basis that it was not part of the Suez UK waste business nor relevant to the SLCs we identified.¹⁶⁹⁵

15.109 On the basis of the evidence set out above, in particular Suez's submission that SUEZ RR IWS Remediation Limited does not operate in the UK and has no links to Suez's UK waste business, we consider that the entity SUEZ RR IWS Remediation Limited could be removed from the corporate group of the Proposed Suez UK Waste Business being divested, and that this would not undermine the ability of the divested Suez UK waste business to compete effectively in the markets where we found the Waste SLCs.

Scope of the divestiture package – our conclusions

15.110 Based on the above, we conclude that a divestiture package should comprise the whole of the Suez UK business (in line with the scope of the Proposed Suez UK Waste Business detailed in Appendix C) and that anything less than full divestiture would substantially increase the risk of a divestiture remedy being ineffective.

15.111 Based on our review of Suez's UK group legal structure (see Figure 1 of Appendix C),¹⁶⁹⁶ we consider that the relevant UK holding company where

¹⁶⁹² Suez's response to CMA phase 2 s.109 notice, 14 June 2022, q.142.

¹⁶⁹³ Suez's response to CMA phase 2 s.109 notice, 14 June 2022, q.142.

¹⁶⁹⁴ Suez's response to CMA phase 2 RFI, 30 June 2022, q.184.

¹⁶⁹⁵ Suez's response to CMA phase 2 s.109 notice, 14 June 2022 and Suez response to RFI 4, q.142.

¹⁶⁹⁶ Suez's response to CMA phase 2 s.109 notice, 14 June 2022, Annex 142.1.

Suez's UK waste business sits is [X]. We conclude that a divestiture should be implemented by way of a sale to a suitable purchaser, of 100% of the shares in this UK holding entity. We also conclude that the Suez RR IWS Remediation Limited entity would not need to form part of this divestiture package (see paragraph 15.95 above).

- 15.112 We further conclude that Veolia should take steps to ensure that the purchaser of Suez's UK waste business can be given the option to continue to use the 'Suez' brand for the UK waste business until the Rebranding Long-Stop Date provided under the New Suez SAPA (or a shorter period as requested or required by the eventual purchaser), to ensure a smooth transition for the purchaser and customers (see paragraph 15.76 above).

Waste Divestiture Remedy – criteria and availability of suitable purchasers

- 15.113 Having concluded that the scope of the divestiture package should be Suez's UK waste business, we now consider the risks that Suez's UK waste business may be sold to a weak or otherwise inappropriate purchaser or that a suitable purchaser may not be available. These risks, if not properly addressed, could undermine the effectiveness of any divestiture remedy.
- 15.114 We would normally mitigate these risks by satisfying ourselves that a potential purchaser meets the CMA's normal purchaser suitability criteria, ie that it:¹⁶⁹⁷
- (a) is independent of Veolia;
 - (b) has the necessary capability to compete;
 - (c) is committed to competing in the relevant markets; and
 - (d) will not create further competition concerns (together, the **Purchaser Suitability Criteria**).
- 15.115 In our Remedies Notice, we invited views on whether there were any specific factors to which we should pay particular regard in assessing purchaser suitability, and whether there were risks that a suitable purchaser was not available.¹⁶⁹⁸

¹⁶⁹⁷ CMA87, paragraph 5.21.

¹⁶⁹⁸ Remedies Notice, paragraph 56.

15.116 We set out the views of the Parties and third parties below, before we set out our assessment.

Criteria and availability of suitable purchasers – Parties’ and third parties’ views

15.117 We set out below the views of the Parties and third parties first on the criteria for a suitable purchaser, and then on the availability of a suitable purchaser.

Criteria for a suitable purchaser

15.118 Suez told us that in relation to a suitable purchaser of the Suez UK waste business, it considered that:¹⁶⁹⁹

- (a) its financial capability to invest in the longer term would be the most important consideration;
- (b) the purchaser should not have a track record of focusing on one area of the ‘waste management value chain’ and selling off all of the other aspects, [REDACTED]; and
- (c) the purchaser should have the commitment and financial standing to develop the business, and share the management team’s goal to drive the business forward.

15.119 Suez told us that it expected major changes in the UK waste markets with £10 billion expected to be invested in the UK waste management sector by the private sector over the next 10 years (based on an Environmental Services Association publication).¹⁷⁰⁰ Suez told us that the ‘right purchaser’ for Suez’s UK waste business would be a buyer who would make the necessary investment into the business and allow it to develop and grow.¹⁷⁰¹

15.120 Suez also told us that a suitable purchaser did not necessarily have to be an industry player, provided that the purchaser had the ‘correct’ business plan and the appetite to continue to invest in the business’s longer term future direction and values. Suez considered that this would be a more important consideration than the type of purchaser. It added that it would not be

¹⁶⁹⁹ Transcript of response hearing with Suez, 7 June 2022, pp.33 to 34.

¹⁷⁰⁰ Suez’s response to CMA phase 2 s.109 notice, 14 June 2022, q.144.

¹⁷⁰¹ Transcript of response hearing with Suez, 7 June 2022, pp.17 to 18.

concerned by a financial buyer given that all of the Suez UK waste business's skills and capabilities would be divested with the business.¹⁷⁰²

15.121 In relation to the need for parent company guarantees in future municipal bids, Suez told us that this would depend on the contract, noting that when it secured the [REDACTED] contract [REDACTED] years ago, which it understood was the [REDACTED]. It also told us that the size of the guarantee was driven by the size of the construction project, and that the customer would usually only require the guarantee for the duration of the construction period before the guarantee would fall away.¹⁷⁰³

15.122 [REDACTED].¹⁷⁰⁴

15.123 In relation to Veolia's views on the suitability criteria for a purchaser of Suez's UK waste business:

- (a) Veolia told us that it recognised the importance of a purchaser who would continue to invest in the business, and suggested that, when considering whether to approve a purchaser for the UK waste business, we should consider [REDACTED]. Veolia told us that it [REDACTED]. Therefore, [REDACTED].¹⁷⁰⁵
- (b) Veolia told us that if Suez's entire UK waste business was being divested, and given that this was a fully self-standing business, it would not rule out any purchaser, provided that the purchaser had the commitment to invest.¹⁷⁰⁶
- (c) Veolia told us that in its view, all parent company guarantees could still be issued out of Suez's UK holding company structure and that the support of a 'big group' would not be necessary for the purpose of issuing parent company guarantees. In this regard, it told us that in Veolia's experience, the [REDACTED].¹⁷⁰⁷

15.124 In relation to the views of third parties on purchaser suitability criteria:

- (a) [REDACTED] told us that it did not consider that there were any other criteria that we should have particular regard to in addition to the CMA's usual purchaser suitability criteria. [REDACTED] added however that it would be

¹⁷⁰² Transcript of response hearing with Suez, 7 June 2022, pp.17 to 18.

¹⁷⁰³ Transcript of response hearing with Suez, 7 June 2022, pp.27 to 28.

¹⁷⁰⁴ Transcript of response hearing with Suez, 7 June 2022, p.26.

¹⁷⁰⁵ Transcript of response hearing with Veolia, 9 June 2022, pp.29 to 33.

¹⁷⁰⁶ Transcript of response hearing with Veolia, 9 June 2022, pp.37 to 38.

¹⁷⁰⁷ Transcript of response hearing with Veolia, 9 June 2022, pp.33 to 34.

important for any purchaser of Suez's UK waste business to have the financial capacity to be able to provide parent company guarantees in relation to municipal tenders, given the long-term nature of contracts and the need to have a 'sufficient balance sheet' to provide guarantees, bonding lines and 'financial security' around landfill sites.¹⁷⁰⁸

- (b) FCC told us that it could not identify any other criteria beyond the CMA's normal purchaser suitability criteria. It noted however that some financial buyers might acquire the business but then decide quickly to sell off the businesses they did not wish to keep, eg landfills because of the profile of their long-term liabilities.¹⁷⁰⁹ FCC also told us that a purchaser should have the resources to be able to issue parent company guarantees in order to compete in the municipal sector, to enable the competitor to provide a form of guarantee to local authorities in relation to the quality of service and performance. In this regard, it told us that financial buyers may not be suitable if these parent company guarantees lasted beyond their investment time horizons.¹⁷¹⁰
- (c) GMCA told us that a purchaser should have a long-term commitment to maintain the business structure as it was at the point of purchase, and noted that this might already be implicitly covered by the CMA's normal purchaser suitability criteria. GMCA also told us that we should require the purchaser to be obligated to maintain Suez as an entity that was capable of competing in the waste market with Veolia. It added that a purchaser that then selectively sold off elements of the Suez business would have the effect of reducing competition. In this regard, it told us that we should avoid purchasers with that intent. GMCA also told us that a divestiture of the waste business to any 'other equally strong competitor in the waste sector' might result in similar competition concerns as the Merger.¹⁷¹¹
- (d) [X] told us that a private equity investor was unlikely to be a suitable purchaser for the divestment businesses, as it was unlikely to have the management experience, reputation, innovation capabilities, and long-term commitment that an existing waste management business would be able to offer. It added that as the 'Suez' brand would not transfer, it was even more important that the purchaser had experience and an

¹⁷⁰⁸ Transcript of hearing call with [X]

¹⁷⁰⁹ Transcript of hearing call with FCC, 27 May 2022, pp.15 to 16 and 19.

¹⁷¹⁰ Transcript of hearing call with FCC, 27 May 2022, pp.19 to 20.

¹⁷¹¹ [GMCA's response to the provisional findings](#).

existing waste management brand and track record (which a private equity purchaser would be unable to offer).¹⁷¹²

- (e) Viridor told us that a financial institution (eg private equity backed or an infrastructure fund, like that of KKR) which looked to ‘come in and drive performance and competitiveness within that business’, would be an ideal purchaser of Suez’s UK waste business. It added that such a buyer would be ‘good for the industry’ and customers, and considered that financial buyers would be ‘most competitively positioned’ to acquire Suez’s UK waste business.¹⁷¹³

Availability of a suitable purchaser

- 15.125 In relation to the likely availability of a suitable purchaser, Suez told us that [X]. Therefore, Suez considered that there was ‘real interest’ in the UK waste sector from potential purchasers because investors could see the opportunities to invest for growth over the next ten years or more.¹⁷¹⁴
- 15.126 Veolia told us that the divestment of the Proposed Suez UK Waste Business would be attractive to purchasers, and that it was confident that it would be possible to identify a strategic player or a committed financial investor that would be able to develop the business.¹⁷¹⁵
- 15.127 Veolia told us that its financial advisors had already identified potential purchasers of the Proposed Suez UK Waste Business, on the basis of their ability and incentive to proceed with a transaction, taking into account, for example, the strategic fit of the Proposed Suez UK Waste Business within their existing businesses, or their ambition in the UK waste market.¹⁷¹⁶ Subsequent to that submission, [X].¹⁷¹⁷
- 15.128 In relation to the views of third parties on the availability of potential purchasers:
- (a) [X] told us that suitable purchasers would be available, and recognised that we would be ‘vigilant’ during its purchaser approval process to ensure that the divestment business was not divested to a weak or otherwise inappropriate purchaser. [X] told us that at this

¹⁷¹² [X] [Company X’s response to the notice of possible remedies](#), 1 June 2022.

¹⁷¹³ Transcript of hearing call with Viridor, 30 May 2022, pp.13 to 14.

¹⁷¹⁴ Transcript of response hearing with Suez, 7 June 2022, pp.8 and 38 to 39.

¹⁷¹⁵ [Veolia’s response to notice of possible remedies](#), paragraph 39.

¹⁷¹⁶ [Veolia’s response to notice of possible remedies](#), paragraph 39.

¹⁷¹⁷ Veolia’s response to CMA phase 2 s.109 notice, 14 June 2022, q.160.

stage, it did not consider there to be any need for an upfront buyer requirement. However, [X] told us that it was important that the divestment processes (to the extent there were multiple divestiture packages, including as between the waste and water businesses) ran to the same timescales in order to allow potential purchasers to assess any synergies that existed or could be generated between the businesses.¹⁷¹⁸

- (b) FCC told us that it would be ‘very difficult’ to gauge the level of interest from potential purchasers to acquire Suez’s UK waste business, but expected there to be a lot of interest. It added that ordinarily, FCC would have been interested, but it noted that it and other potential purchasers who were already operating in the same space as Suez’s UK waste business (including Viridor and Biffa) would likely trigger a further CMA review on the basis that any such purchase would likely create further competition concerns. In this regard, it told us that a full divestiture of Suez’s UK waste business would limit the number of potential purchasers who might be suitable.¹⁷¹⁹
- (c) [X] told us that it would be difficult to say what the level of interest would be from potential purchasers to acquire the UK waste business. It queried how many of the ‘existing waste players’ could ‘actually’ acquire Suez’s UK waste business, and whether financial buyers would be interested in making acquisitions in the ‘UK waste space’.¹⁷²⁰
- (d) Viridor told us that when KKR acquired Viridor, it suspected that there were three other ‘underbidders’, whom Viridor suspected were financial buyers as opposed to strategic buyers. Viridor told us that it considered these ‘underbidders’ to be ‘near ready-made buyers’. It believed that there would be buyers who could make the divestiture of a UK waste business, in this case ‘swift’ but added that it considered it unlikely that these buyers would be strategic buyers. In this regard, Viridor told us that it considered that financial buyers (eg a financial institution or an infrastructure fund) would be ‘most competitively positioned’ to acquire Suez’s UK waste business.¹⁷²¹
- (e) GMCA told us that it believed that the risk that a suitable purchaser was not available was low. It told us that the UK waste sector was going

¹⁷¹⁸ [X] [Company X’s response to the notice of possible remedies](#), 1 June 2022.

¹⁷¹⁹ Transcript of hearing call with FCC, 27 May 2022, pp.21 to 23.

¹⁷²⁰ Transcript of hearing call with [X], p.20.

¹⁷²¹ Transcript of hearing call with Viridor, 30 May 2022, pp.12 to 14.

through a period of policy change which would create opportunities for businesses to grow and invest. It told us that the acquisition of Suez's UK waste business, a leading waste management company with annual revenues of around £900 million with scope for growth, would be an attractive proposition.¹⁷²²

Criteria and availability of suitable purchasers – our assessment

15.129 We set out below:

- (a) our assessment of the criteria for a suitable purchaser; and
- (b) our assessment of the availability of a suitable purchaser.

Criteria for a suitable purchaser

15.130 Based on our assessment of the evidence above, we consider that the application of our usual criteria for purchaser suitability (ie the Purchaser Suitability Criteria, see paragraph 15.100 above) within the specific context of this Merger would enable us to address all aspects of the key concerns raised by the Parties and third parties.

15.131 We note the views in relation to the importance of ensuring that the purchaser was committed to keeping the Suez UK waste business intact, rather than seek to dispose of assets which it considered 'non-core', as well as the importance of a commitment to investing into the future of the business. We consider that these areas are covered by our Purchaser Suitability Criteria, which assesses (among others) the purchaser's commitment to the relevant markets and its financial capabilities.

15.132 In relation to the suitability of an existing competitor as a potential purchaser, our Purchaser Suitability Criteria states that a purchaser should not raise further competition concerns. The CMA's guidance on remedies states that we must be confident that the potential purchaser does not itself create a realistic prospect of an SLC within any market or markets in the UK.¹⁷²³ We would therefore not approve a purchaser who raises prima facie competition concerns.

¹⁷²² [GMCA's response to the provisional findings](#)

¹⁷²³ [CMA87](#), paragraph 5.21 and 5.27.

15.133 We note that the evidence on the suitability of different types of potential purchasers was mixed. We consider that a potential purchaser's suitability to acquire Suez's UK waste business would depend on its particular circumstances and plans for Suez's UK waste business. Therefore, we did not consider it necessary to rule out any specific type of purchaser and consider that we will assess the suitability of any other potential purchaser on its own merits on a case-by-case basis in light of the Purchaser Suitability Criteria.

Availability of a suitable purchaser

15.134 In relation to the likely availability of a suitable purchaser, we note that there is a broad consensus that a suitable purchaser would be available. We also note that Suez's UK waste business is a profitable stand-alone business capable of operating autonomously, with a strong track record in its markets. We consider that these factors would be attractive to potential purchasers.

15.135 The attractiveness of Suez's UK waste business as a potential acquisition package appears to be corroborated by the interest from potential purchasers that Veolia has received to date, as well as New Suez recently confirming to us its 'strong interest' in acquiring Suez's UK waste business.¹⁷²⁴ We also note Veolia's view that it expects there to be considerable interest from potential purchasers.

15.136 Taking the evidence above in the round, we consider that the risk of no suitable purchaser coming forward for a full divestiture of Suez's UK waste business was low, given the nature of the divestiture package, the views of the Parties and third parties on the potential level of interest from potential purchasers, and the level of interest which Veolia has already received in relation to Suez's UK waste business.

Criteria and availability of suitable purchasers – our conclusions

15.137 In order to ensure that a full divestiture remedy achieves its intended effects, we conclude that we would wish to satisfy ourselves that a potential purchaser meets the CMA's Purchaser Suitability Criteria (as set out in paragraph 15.100 above). We will assess the suitability of any potential purchaser on its individual merits, and against our Purchaser Suitability

¹⁷²⁴ Letter from New Suez, 21 June 2022.

Criteria. Under the Waste Divestiture Remedy, the eventual purchaser and final transaction documents would be subject to CMA approval.

- 15.138 We also conclude that it is not necessary at this stage to rule out any potential purchaser, or any other specific type of purchaser, including for the avoidance of doubt, a financial buyer.

Waste Divestiture Remedy – ensuring an effective divestiture process

- 15.139 When considering asset risk, the CMA will seek to ensure an effective divestiture process that will protect the competitive potential of any divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale. The process should also allow prospective purchasers to make an appropriately informed acquisition decision.¹⁷²⁵ As such, we will consider what, if any, procedural safeguards may be required to minimise the risks associated with divestiture, including the timeframe within which to complete the divestiture and the need to expand the scope of the role of the Monitoring Trustee.
- 15.140 The circumstances of this case raise the following issues for consideration in relation to the divestiture process:
- (a) the need for additional interim measures during the divestiture process;
 - (b) the appropriate timescale for divestiture to take place;
 - (c) New Suez's right of first refusal to acquire the Suez UK waste business; and
 - (d) whether, and under what circumstances, there is a need to appoint an external and independent trustee to complete a divestiture (**Divestiture Trustee**) to mitigate the risk that the divestiture does not complete within the agreed timescales.

Need for additional interim measures

- 15.141 In our Remedies Notice, we invited views on the risks that the competitive capability of a divestiture package would deteriorate before completion of divestiture, and whether the functions of the Monitoring Trustee should be expanded to oversee the divestiture process and to ensure that the

¹⁷²⁵ CMA87, paragraph 5.33.

operations and assets to be divested are maintained and properly supported during the course of the process.¹⁷²⁶

15.142 We set out below the view of the Parties and third parties before we set out our assessment and conclusions.

Need for additional interim measures – views of Parties and third parties

15.143 Veolia told us that the waste and water divestment businesses were already subject to the CMA's IEO and monitored by the Monitoring Trustee. Veolia told us that while it did not believe that a Monitoring Trustee would be needed to ensure that the operations and assets of the waste or water divestment business were maintained and properly supported during the course of the process, it had no objections to the Monitoring Trustee already appointed remaining in place.¹⁷²⁷

15.144 [REDACTED]. Suez told us that it would be useful for the Monitoring Trustee to oversee the divestment process.¹⁷²⁸

15.145 We set out below the views of third parties on the risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture.

15.146 GMCA told us that a concern was that Suez would lose key staff during the divestiture and as a result services and operations would suffer through a loss of competence and experience. It told us that staff retention oversight could be a role for the Monitoring Trustee. It also told us that equally, Veolia should not be allowed to seek to recruit key staff from Suez during the divestiture period.¹⁷²⁹

15.147 FCC told us that it considered that a protracted merger investigation and remedies process, would result in greater uncertainty for the future of the business, including greater uncertainty for customers, for tenders and staff, and considered that this would be more detrimental for the divestment business. Therefore, FCC told us that the sooner the divestment business

¹⁷²⁶ Remedies notice, paragraph 57.

¹⁷²⁷ Veolia's response to notice of possible remedies, paragraph 186.

¹⁷²⁸ Transcript of response hearing with Suez, 7 June 2022, p.74.

¹⁷²⁹ GMCA's response to the provisional findings

was sold (eg by providing sufficient information for potential purchasers to undertake their due diligence), the better.¹⁷³⁰

15.148 [X] told us that, in its view, the past 15 months or so had been ‘damaging’ for the Suez waste business and that any further, prolonged uncertainty for its management could give rise to a risk that the competitive capability of Suez’s UK waste business could deteriorate. [X] considered that Veolia would be incentivised to sell the divestment business as quickly as possible because Veolia would not want to be in a ‘fire sale situation’.¹⁷³¹

15.149 [X] told us that it was important that the key staff of the divestment business were retained and that key staff had the opportunity to raise any concerns they had regarding any decisions that might undermine the divestment business with us (via the Monitoring Trustee). Similarly, it told us that the divestment businesses were likely to have contracts that were due for renewal or new opportunities that became available during the divestment process. It told us that as these markets were 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 therefore told us that it was important that there was independent oversight to ensure that appropriate resources were being deployed to bid for renewals and new opportunities.¹⁷³²

15.150 [X] also told us that the functions of the Monitoring Trustee should be expanded to oversee the divestiture process. It told us that the divestment businesses held a wide range of assets, which would require constant maintenance and upkeep. It added that it was important that these assets were fully maintained during the divestment process to ensure that the divestment package did not deteriorate.¹⁷³³

Need for additional interim measures – our assessment

15.151 As mentioned in paragraphs 15.13 to 15.15 above, we currently have in place interim measures, which have prevented further integration between Veolia and Suez’s UK waste business and Suez’s global WTS business, which undertake its activities in the markets where we have found SLCs, and

¹⁷³⁰ Transcript of hearing call with FCC, 27 May 2022, p.24.

¹⁷³¹ Transcript of hearing call with [X], p.21.

¹⁷³² [X] [Company X’s response to the notice of possible remedies](#), 1 June 2022

¹⁷³³ [X] [Company X’s response to the notice of possible remedies](#), 1 June 2022

required the Parties to maintain their respective business's independent competitive capabilities.

15.152 We consider that under a remedy requiring the full divestiture of Suez's UK waste business, there would be a continuing need to preserve its independence and competitive capability throughout the divestiture process. As the CMA's guidance on remedies recognises, although 'merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves'.¹⁷³⁴

15.153 We therefore considered that at least the asset maintenance provisions of the existing interim measures, which we consider address the asset risks raised by Suez and third parties, should continue to remain in force during the implementation of this remedy until completion of the full divestiture remedy, and that the existing Monitoring Trustee's appointment should continue to monitor the Parties' compliance with them.

15.154 We consider that the Monitoring Trustee should be involved in certain aspects of the divestiture process (as appropriate), consistent with the CMA's guidance on remedies,¹⁷³⁵ in order to monitor the Parties' compliance with any final undertakings or final order in relation to a divestiture remedy and to ensure an efficient divestiture process. The Monitoring Trustee's role would include (but not be limited to):

- (a) monitoring Veolia's progress in relation to the divestiture process;
- (b) monitoring during the divestiture process, the conduct of both Veolia and Suez to ensure timely completion of the divestiture; and
- (c) monitoring Veolia's access to Suez's commercially sensitive information during any due diligence process and its compliance with any appropriate confidentiality safeguards.

15.155 We would adjust the Monitoring Trustee's mandate to reflect these new functions.

¹⁷³⁴ CMA87, paragraph 5.4.

¹⁷³⁵ See also CMA87, paragraphs 4.43 and 5.38.

15.156 Separately, we consider whether there was a need to appoint an independent interim manager with executive powers to manage Suez's UK waste business during the divestiture process (**Hold Separate Manager**).

15.157 On the basis of our current understanding that the existing Suez UK waste management team will remain in place during any divestiture process and intend on continuing to stay with the business following its divestiture (see paragraph 15.86 above), we consider that it would not be necessary at this stage to appoint a Hold Separate Manager. However, the CMA will reserve its rights to appoint a Hold Separate Manager during the divestiture process if the current circumstances were to change materially.

Need for additional interim measures – our conclusions

15.158 Based on the above, we conclude that the Parties' current asset maintenance obligations under the existing interim measures, namely the IEO, should continue to apply until completion of the full divestiture remedy, and that the Monitoring Trustee's appointment should continue in order to monitor the Parties' compliance with these interim measures. We also conclude that the scope of the Monitoring Trustee's engagement should be expanded to include:

- (a) the close monitoring of, and periodical reporting to the CMA on, Veolia's progress in relation to the divestiture process;
- (b) reviewing the divestiture process marketing materials prepared by Veolia (or its external advisors) to ensure their consistency with the requirements of the Waste Divestiture Remedy; and
- (c) assisting the CMA (as appropriate) to ensure an effective divestiture.

15.159 While we do not currently see a need for a Hold Separate Manager, we conclude that the CMA should reserve its rights to appoint a Hold Separate Manager if the Suez UK waste business's current circumstances were materially to change.

Timescales to complete divestiture

15.160 We considered what might be an appropriate timescale in which Veolia should fully implement the Waste Divestiture Remedy (the **Initial Divestiture Period**), which would normally run from the CMA's acceptance of final undertakings or the CMA making a final order (for which to the statute

provides a period of up to 12 weeks after the final report)¹⁷³⁶ until legal completion of an effective divestiture (ie a sale to a purchaser approved by the CMA).

15.161 We set out below the view of the Parties and third parties before we set out our assessment and conclusions.

Timescales to complete divestiture – views of Parties and third parties

15.162 Veolia told us that it anticipated that very little preparation would be required in advance of closing the divestment and that the shares in a holding company of the Proposed Suez UK Waste Business could be sold within a short time after our final report. It added that based on Veolia's experience, completion could be achieved in around [REDACTED].¹⁷³⁷

15.163 Suez told us that given the large size and complexity of Suez's UK waste business, it would expect purchasers would require quite a lot of due diligence, and considered that a divestiture could be completed within [REDACTED] months. Suez told us that [REDACTED].¹⁷³⁸

15.164 [REDACTED].¹⁷³⁹

15.165 In relation to the views of third parties on the appropriate timescales to complete a divestiture of Suez's UK waste business:

- (a) FCC told us that on the basis that a purchaser who was 'new to the market' would require a lot of due diligence, it considered that a sale process could be completed in around six months.¹⁷⁴⁰
- (b) GMCA told us that the timescale had to be long enough to allow the completion of comprehensive due diligence, otherwise it considered that potential purchasers would be deterred from coming forward.¹⁷⁴¹

¹⁷³⁶ This period may be extended once by up to six weeks (Section 41A(2) of the Act) if the CMA considers there are special reasons for doing so, see also [CMA87](#), paragraph 4.68.

¹⁷³⁷ [Veolia's response to notice of possible remedies](#), paragraphs 42 and 47.

¹⁷³⁸ Transcript of response hearing with Suez, 7 June 2022, p.72.

¹⁷³⁹ Transcript of response hearing with Suez, 7 June 2022, p.20.

¹⁷⁴⁰ Transcript of hearing call with FCC, 27 May 2022, pp.23 to 24.

¹⁷⁴¹ [GMCA's response to the provisional findings](#)

- (c) [X] told us that subject to ‘good quality’ due diligence information being available, a six-month period would be sufficient for achieving an agreed share purchase agreement in relation to a divestiture.¹⁷⁴²

Timescales to complete divestiture – our assessment

- 15.166 In considering an appropriate Initial Divestiture Period, the CMA’s guidance on remedies states that the CMA ‘will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence’. The CMA’s guidance on remedies also states that the initial divestiture period will normally not exceed six months.¹⁷⁴³
- 15.167 We noted Suez’s and third parties’ views on the adverse impact of a long, drawn-out divestiture process on Suez’s UK waste business, which would point to the need for a shorter divestiture process.
- 15.168 Given our conclusion that the risk of not finding a suitable purchaser was low [X], we consider it possible that divestiture could take place in a shorter time period than [X] and note the benefits of doing so, eg to minimise the asset risks associated with a protracted sale process and to ensure a more timely implementation of the remedy.
- 15.169 However, on balance, we acknowledge the need for potential purchasers to be given sufficient time to undertake their due diligence, and consider a period of up to [X] to be an appropriate Initial Divestiture Period to complete the divestiture of Suez’s UK waste business provided that the Suez UK waste business was able to continue to operate independently, including in relation to maintaining its ongoing investment, and there was no deterioration in Suez’s business during the divestiture process. If this was the case, we consider that the asset risks associated with allowing up to [X] for the Initial Divestiture Period would be acceptable.

Appropriate timescale for divestiture to take place – our conclusions

- 15.170 Based on the above, we conclude that the Initial Divestiture Period for the Waste Divestiture Remedy should be [X] and that Veolia should be required

¹⁷⁴² [X] [Company X’s response to the notice of possible remedies](#), 1 June 2022

¹⁷⁴³ [CMA87](#), paragraph 5.41.

to submit a draft timetable for the CMA's approval (by no later than five working days after the CMA's acceptance of final undertakings or the making of a final order). The CMA and the Monitoring Trustee will monitor Veolia's progress against an approved timetable.

New Suez's right of first refusal

15.171 We set out below Veolia's submission on the process and timetable for New Suez to exercise its right of first refusal under the New Suez SAPA, as well as its submission on how that process might fit within our own remedies process (if a divestiture was required). This process would apply equally to both a divestiture of Suez's UK waste business and any other possible divestiture to address the Water O&M SLC [REDACTED]. We follow this with our views on the implications of New Suez's right of first refusal on our own remedies process.

New Suez's right of first refusal process

15.172 Veolia told us that under the terms of the New Suez SAPA, New Suez would have the right of first refusal to [REDACTED].¹⁷⁴⁴ Veolia told us that if a divestment was required:¹⁷⁴⁵

(a) [REDACTED];^{1746,1747} and

(b) [REDACTED]:

(i) [REDACTED]

(ii) [REDACTED].

15.173 Veolia told us that [REDACTED]¹⁷⁴⁸

(a) [REDACTED]

(b) [REDACTED]

¹⁷⁴⁴ Veolia's response to notice of possible remedies, paragraph 43.

¹⁷⁴⁵ Veolia's response to notice of possible remedies, paragraph 82.

¹⁷⁴⁶ Veolia's response to CMA phase 2 s.109 notice, 14 June 2022, q.157.

¹⁷⁴⁷ We understand that the Right of First Refusal notice was sent to the New Suez Consortium on 8 August 2022. Email from Cleary Gottlieb Steen & Hamilton LLP, 12 August 2022.

¹⁷⁴⁸ Veolia's response to notice of possible remedies, paragraph 83.

15.174 Veolia told us that it expected the sale to be completed within [REDACTED] after signing.¹⁷⁴⁹

15.175 In response to our question on how Veolia intended to run its divestiture process to ensure its timely completion, including under a possible scenario where the CMA rejected [REDACTED] as a suitable purchaser, Veolia told us that it [REDACTED].¹⁷⁵⁰

(a) [REDACTED]

(b) [REDACTED]

New Suez's right of first refusal – conclusions

15.176 In addition to Veolia's submission above, we note that the terms under the New Suez SAPA governing New Suez's right of first refusal [REDACTED]¹⁷⁵¹

(a) [REDACTED]

(b) [REDACTED]

15.177 If these above conditions are not met, the New Suez SAPA stipulates that [REDACTED].¹⁷⁵²

15.178 Based on the above, and given the possibility that [REDACTED], we note the possible risk of a protracted divestiture process arising from running our divestiture process specified along the lines set out in the New Suez SAPA. We consider that this risk of a protracted divestiture process could also have a further adverse impact on the willingness of other potential purchasers to engage with the divestiture process.

15.179 We conclude that it is for Veolia to fully take on the risk in terms of how it uses the Initial Divestiture Period available to it to approach New Suez and accommodate its interest as a potential purchaser of Suez's UK waste business, including the risk that New Suez does not meet our Purchaser Suitability Criteria. Therefore, we would expect Veolia to take all steps necessary to ensure that by running its divestiture process along the lines set out in the New Suez SAPA, this does not give rise to any material delays to the timely implementation of our remedies and within the agreed

¹⁷⁴⁹ [Veolia's response to notice of possible remedies](#), paragraph 84.

¹⁷⁵⁰ Veolia's response to CMA phase 2 s.109 notice, 14 June 2022, q.157.

¹⁷⁵¹ Section 2.8 of the New Suez SAPA.

¹⁷⁵² Section 2.8 of the New Suez SAPA.

timescales. In this regard, and given our need to ensure a timely completion of any divestiture, we do not currently consider that it would be appropriate to grant an extension to the Initial Divestiture Period to [X].

Divestiture Trustee

- 15.180 We consider below whether there is a need for the appointment of a Divestiture Trustee, either from the outset of the divestiture process or, more conventionally, should the CMA have any concerns that Veolia will not achieve an effective disposal within the Initial Divestiture Period.
- 15.181 Third parties did not provide comments in relation to a Divestiture Trustee. We set out below the views of the Parties before setting out our assessment and conclusions.

Divestiture Trustee – views of Parties

- 15.182 Veolia told us that it did not consider that appointing a Divestiture Trustee from the outset was appropriate for the sale of any of the divestment businesses, and that there was no reason to believe that Veolia would not be able to procure the divestiture of each divestment business to a suitable purchaser within the implementation period given that:¹⁷⁵³
- (a) there were no unusual circumstances in this case that would warrant deviating from the standard position (ie the CMA not appointing a Divestiture Trustee at the outset of any divestiture process);
 - (b) the waste and water divestment businesses were attractive and profitable packages containing all elements necessary to comprise viable stand-alone businesses;
 - (c) the waste and water markets in the UK and the rest of Europe contained an array of competitive and well-capitalised businesses looking to make a strategic acquisition. Veolia considered that there would be a broad range of potential purchasers for whom the waste and water divestment businesses would represent an appealing prospect; and

¹⁷⁵³ [Veolia's response to notice of possible remedies](#), paragraphs 187 and 188.

- (d) Veolia had already received numerous informal indications of interest in relation to potential waste and water divestments, including entering a put-option with Saur in relation to Veolia's European MWS business.

Divestiture Trustee – our assessment

- 15.183 The ability to appoint a Divestiture Trustee enables the CMA to manage risks that the merger parties take an unacceptably long period of time to achieve a sale.
- 15.184 We consider that our purchaser approval process would mitigate the risk of an unsuitable purchaser acquiring Suez's UK waste business. However, it would not mitigate the risk that an effective divestiture may not be achieved in a timely manner. For example, if the CMA were to reject all of the potential purchasers shortlisted by Veolia during a divestiture process, this could have significant implications on the timely completion of this remedy.
- 15.185 We consider that the possibility of CMA intervention by way of a Divestiture Trustee appointment would ensure that Veolia considers very carefully the CMA's Purchaser Suitability Criteria when shortlisting potential purchasers for the CMA's approval. We consider that this would provide Veolia with stronger incentives to run an efficient process and reduce its incentives to target potential purchasers whom it perceives to be weaker competitors, or less likely to be committed to the long-term competitiveness or viability of Suez's UK waste business.
- 15.186 However, currently, we do not see a need to require a Divestiture Trustee from the outset of the divestiture process, provided that Veolia engages constructively with the process, for example in relation to its proposed timetable for divestiture.

Divestiture Trustee – our conclusions

- 15.187 Based on the above, to ensure a timely completion of this remedy, we conclude that under the Waste Divestiture Remedy, the CMA should reserve its right to appoint a Divestiture Trustee.
- 15.188 We also conclude that the CMA should exercise the power to appoint a Divestiture Trustee, in particular, if:
- (a) Veolia fails to complete the divestiture process within the Initial Divestiture Period and/or the CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;

- (b) Veolia is not engaging constructively with the divestiture process; and/or
- (c) there is further and material deterioration in the divestment business during the divestiture process.

15.189 We further conclude, in line with the CMA's normal practice,¹⁷⁵⁴ that if appointed, a Divestiture Trustee should be tasked with completing the divestiture to a potential purchaser approved by the CMA and at no minimum price.

Waste Divestiture Remedy – conclusions on effectiveness

15.190 Based on our assessment above, we set out below our conclusions on the effectiveness of the Waste Divestiture Remedy requiring the full divestiture of Suez's UK waste business (the scope of which is in line with the scope of the Proposed Suez UK Waste Business detailed in Appendix C).

15.191 We would expect a full divestiture of Suez's UK waste business (designed according to our specifications above) would result in Veolia and Suez continuing to operate under separate ownership as independent competitors in each of the markets where we have found the Waste SLCs. It would result in preventing each of the SLCs we have found in the UK waste management services market, and in our view, represent a comprehensive solution to all aspects of the Waste SLCs (and consequently any resulting adverse effects).

15.192 We would also expect a full divestiture of Suez's UK waste business to restore on its completion the market structure and dynamic rivalry expected in the absence of the Merger, and therefore, have an immediate and comprehensive effect in addressing our Waste SLCs and their resulting adverse effects.

15.193 In relation to the practicality of implementing the Waste Divestiture Remedy, we would be able to specify clearly the scope of the divestiture package by requiring the sale of 100% of shares in Suez's UK holding company containing all of its UK waste business, including all its assets and activities. We would also expect a remedy requiring the full divestiture of Suez's UK waste business to involve little risk of omitting any key assets that may be necessary to ensure its stand-alone viability and competitive capability and

¹⁷⁵⁴ CMA87, paragraph 5.43.

therefore ensure the Suez UK waste business's ongoing ability to exert an effective competitive constraint on Veolia in the relevant UK waste markets.

15.194 We also considered the practical issues relating to the potential composition, purchaser and asset risks normally associated with a divestiture remedy and have reached our conclusion that the design of our remedy as we have specified above fully addresses these risks. We have set out above our conclusions on the criteria for a suitable purchaser and the procedural safeguards which should be put in place to ensure an effective divestiture process. We consider the likelihood of achieving a successful divestiture to be high and consider the risk of not finding a suitable purchaser to be low. Therefore, with regard to the practicality of this remedy, we conclude that it would be capable of effective implementation and require minimal ongoing monitoring after its full implementation.

15.195 In relation to the risk profile of a full divestiture remedy, given that a full divestiture of Suez's UK waste business would address the Waste SLCs and resulting adverse effects at source, we conclude that there is a high degree of certainty that this remedy would achieve its intended effect. We therefore consider that the risks in terms of the effectiveness of a full divestiture remedy are low.

15.196 In summary, we conclude that a full divestiture of Suez's UK waste business to a suitable purchaser would be effective in addressing the Waste SLCs. We would expect this remedy to be a timely and low risk solution to the Waste SLCs we have identified, with extremely limited future monitoring requirements on the CMA or others.

Assessment of the effectiveness of a divestiture remedy to address the Water O&M SLC

15.197 In this section, we now turn to consider the effectiveness of a divestiture remedy to address the Water O&M SLC, ie a Water O&M Divestiture Remedy. Our assessment is structured as follows:

- (a) our assessment of the effectiveness of a Water O&M Divestiture Remedy; and
- (b) our conclusions on the effectiveness of a Water O&M Divestiture Remedy.

Water O&M Divestiture Remedy – our assessment of effectiveness

15.198 The CMA's guidance on remedies states that we will seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.¹⁷⁵⁵ We will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.¹⁷⁵⁶

15.199 In our Remedies Notice, we set out our initial view that while we had yet to form an initial view on the scope of what would constitute the smallest viable, stand-alone business that could form the basis of an effective divestiture package in relation to the provisional Water O&M SLC, we would consider exploring the following possible divestiture options:¹⁷⁵⁷

- (a) a divestiture of the operations of either Veolia or Suez, which engage in the supply of industrial water O&M services in the UK; or
- (b) a divestiture of a broader divestiture package that goes beyond the UK operations of either Suez or Veolia that engage in the supply of industrial water O&M services.

15.200 We would expect a divestiture of a viable, stand-alone business which contains all of the business and assets engaged in the supply of industrial water O&M services in the UK, of one of the Parties, if designed to address the practical risks normally associated with any divestiture remedy, would re-establish the structure of the market and address all of our concerns at source and would therefore represent a comprehensive solution to all aspects of our Water O&M SLC.

15.201 In its response to our RWP, Veolia told us that it maintained that the divestment of either the Veolia UK Water O&M business or the Suez WTS UK Water O&M business would be effective to resolve our concerns in Water O&M.¹⁷⁵⁸ It also told us that it nevertheless agreed with our conclusion

¹⁷⁵⁵ [CMA87](#), paragraph 5.7.

¹⁷⁵⁶ Purchaser risk refers to the risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser; composition risk refers to the 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 market; [CMA87](#), paragraph 5.3 and 5.12.

¹⁷⁵⁷ [Remedies notice](#), paragraphs 41 and 42.

¹⁷⁵⁸ Veolia response to RWP, paragraph 14.

that the Suez WTS UK Water O&M business would be an effective remedy and accepted our proposed decision to require a divestment of that business.¹⁷⁵⁹

15.202 Our assessment of the practical risks associated with a divestiture of a viable, stand-alone business is set out below.

Water O&M Divestiture Remedy – design considerations

15.203 An effective divestiture remedy should give us confidence that the composition, purchaser and asset risks normally associated with a divestiture remedy can be properly addressed in its design. We therefore consider the following:

- (a) the appropriate scope of the divestiture package;
- (b) the identification and availability of suitable purchasers; and
- (c) ensuring an effective divestiture process.

Water O&M Divestiture Remedy – scope of the divestiture package

15.204 In determining the appropriate scope of the divestiture package, we first set out the evidence from third parties and the Parties (including an overview of Veolia's Water O&M Remedy Proposal, as set out in its response to our Remedies Notice). We follow this with our assessment and conclusions on the appropriate scope of the divestiture package.

Scope of the divestiture package – third parties' views

15.205 In relation to the scope of a divestiture package comprising the UK O&M industrial water services business, Alpheus told us that we should consider three options which could address our SLC and 'protect' the relevant market:¹⁷⁶⁰

- (a) a divestiture of Veolia's entire water O&M business covering all of its customers (eg municipal and industrial);
- (b) a partial divestiture of just Veolia's industrial water O&M business; or

¹⁷⁵⁹ Veolia response to RWP, paragraph 15.

¹⁷⁶⁰ Transcript of hearing call with Alpheus, 30 May 2022, p.28.

- (c) a divestiture of Suez's entire water O&M business, which would only contain industrial customers (as Suez did not work on the municipal side). Alpheus clarified that this divestment business would not need to include Suez's 'chemicals business', which was completely separate from the O&M side of the business.

15.206 Alpheus told us that operating in industrial water O&M services was mostly about developing credibility and relationships, and therefore the people working in the business, in particular the site operators and contract managers, were the 'key assets', as well as possibly the technical staff, chemist, process scientist and engineering manager.¹⁷⁶¹

15.207 Nalco told us that a divestiture of either Veolia's or Suez's UK O&M business would be sufficient to maintain competition, and that it would not be necessary to achieve the latter by requiring a full divestiture of Suez's WTS business.¹⁷⁶² Nalco told us however that it was important to ensure that any industrial water O&M business was divested as a whole and 'as one piece', and that we should not consider 'splitting up' the divestment business for sale to multiple purchasers, eg where 'larger customer contracts' would be divested to one purchaser and smaller customer contracts would be divested to another. Nalco told us that divesting the industrial water O&M business as a whole would: (a) be in the 'best interests' of ensuring the divestment business's ongoing 'competitiveness' and achieving a market where there would be 'strong competitors' and 'long-lasting competition'; (b) be 'relevant' to the divestment business's reputation in the market and its ability to develop a customer base; (c) give the divestment business the 'critical mass' it would need to 'make these O&M contracts work'; and (d) ensure customers received the 'same choice and the same service levels'.¹⁷⁶³

15.208 Nalco told us that in the O&M of water, Nalco had a [X], but it considered that its success came from its long-standing customer relationships; the 'innovative technologies' it deployed; and its track record. It added that a stand-alone industrial water O&M business would also need 'onsite service providers', as well as the relevant licences to avoid any disruption and also 'adequate operations and management resources'.¹⁷⁶⁴

15.209 In chapter 13, in relation to industrial water O&M services in the UK, we found that the Merger would remove a direct and significant constraint on the

¹⁷⁶¹ Transcript of hearing call with Alpheus, 30 May 2022, pp.33 to 35 and p.38.

¹⁷⁶² Transcript of hearing call with Nalco, 31 May 2022, pp.18-19.

¹⁷⁶³ Transcript of hearing call with Nalco, 31 May 2022, pp.10-11.

¹⁷⁶⁴ Transcript of hearing call with Nalco, 31 May 2022, p.13.

Merged Entity.¹⁷⁶⁵ We also set out the evidence from customers and competitors which indicated that in order to compete effectively in the supply of industrial water O&M services, a significant competitor would need:¹⁷⁶⁶

- (a) to have the requisite experience, including a track record (eg of providing a reliable service) and operational know-how;
- (b) to have the requisite technical expertise, technical compliance and regulatory certifications;
- (c) the requisite scale (eg in terms of personnel and technical capability), know-how and insurance to service large water and wastewater O&M contracts;
- (d) to have the capability to offer a reliable service;
- (e) the ability to service both water and wastewater facilities;
- (f) to have quality systems and insurances;
- (g) to have a good financial standing; and
- (h) a physical UK presence (eg to provide onsite support and to deliver rapid response times, but not necessarily for back office technical support).

15.210 In chapter 13, we also found that:¹⁷⁶⁷

- (a) the Parties' competitive strength comes from their experience, capabilities, technical compliance and financial size; and
- (b) customers considered Veolia and Suez were strong suppliers at least in part due to their organisational support and technical expertise, eg from their respective back office technical staff who would not TUPE across to the customer, but could bring knowledge and learnings from experience with other contracts (in the UK and globally).

¹⁷⁶⁵ Chapter 13, paragraphs 13.132.

¹⁷⁶⁶ Chapter 13, various sources, including paragraphs 13.47, 13.110, 13.117, 13.118 and 13.124].

¹⁷⁶⁷ Chapter 13, paragraph 13.131.

Scope of the divestiture package – Veolia’s Water O&M Remedy Proposal

- 15.211 Under Veolia’s Water O&M Remedy Proposal, Veolia has proposed to transfer the entirety of Veolia’s UK business for industrial water O&M services (the **Proposed Veolia UK O&M Business**);¹⁷⁶⁸ [REDACTED].¹⁷⁶⁹
- 15.212 During its response hearing, Veolia told us that the reason for putting the Veolia UK O&M business as the primary remedy was [REDACTED].¹⁷⁷⁰
- 15.213 Suez told us that divesting either Veolia’s or Suez’s UK O&M business would be effective, and that as long as the people with the right skillsets and the infrastructure were being provided, each divestment package would be equally effective.¹⁷⁷¹
- 15.214 We provide an overview of the scope of each of the Proposed Veolia UK O&M Business and the Proposed Suez UK O&M Business below, based on Veolia’s submissions on Veolia’s Water O&M Remedy Proposal.

Scope of the Proposed Veolia UK O&M Business

- 15.215 Veolia told us that the Proposed Veolia UK O&M Business generated revenues of [REDACTED] million and profits of [REDACTED] million in 2021, and that it would comprise all of the assets [REDACTED], staff and resources necessary to operate the business and to compete for new business.¹⁷⁷²
- 15.216 The details of Veolia’s proposed scope for the Proposed Veolia UK O&M Business are set out in Appendix C.

Scope of the Proposed Suez UK O&M Business

- 15.217 Suez told us that the Proposed Suez UK O&M Business generated revenues of around [REDACTED] and an EBITDA of around [REDACTED] in 2021.¹⁷⁷³ Veolia told us that the Proposed Suez UK O&M Business would comprise all of the assets (including all of its [REDACTED] contracts with [REDACTED]); the staff employed to deliver those services; all of WTS’s ongoing bids, and any TSAs necessary to

¹⁷⁶⁸ Veolia’s response to notice of possible remedies, paragraph 58.

¹⁷⁶⁹ Veolia’s response to notice of possible remedies paragraphs 9, 57 and 59.

¹⁷⁷⁰ Transcript of response hearing with Veolia, 9 June 2022, pp.60 to 61.

¹⁷⁷¹ Transcript of response hearing with Suez, 7 June 2022, p.71.

¹⁷⁷² Veolia’s response to notice of possible remedies, paragraphs 57 to 59.

¹⁷⁷³ Suez’s ‘Note to Monitoring Trustee re proposed WTS UK O&M divestment remedy’ (19 June 2022), Table 1.

enable to purchaser to operate the Proposed Suez UK O&M Business and to compete for new business.¹⁷⁷⁴

15.218 The details of Veolia's proposed scope for the Proposed Suez UK O&M Business are set out in Appendix C.

Scope of the divestiture package – Parties' views

15.219 Veolia told us that given the availability of a less onerous remedy available in the form of either the Proposed Veolia UK O&M Business [REDACTED] a broader divestment package would be unreasonable and disproportionate, and that this applied whether the broader divestment package consisted of Suez WTS or any broader Veolia divestment package:¹⁷⁷⁵

- (a) *Suez WTS*: Veolia told us that the overlap between the Parties in UK industrial water O&M services was a tiny fraction of WTS's global revenues of around £2.5 billion. It added that in 2020, WTS's UK revenues from its O&M activities were only [REDACTED], and were [REDACTED]. Therefore, Veolia considered that a global divestment of the WTS business would be entirely disproportionate.
- (b) *Veolia*: Veolia told us that the overlap between the Parties in UK industrial water O&M services was a tiny fraction of Veolia's IWE UK's revenues of [REDACTED] in 2021. Veolia told us that the IWE UK division was a 'broad umbrella' that covered unrelated businesses, including energy services (in particular for hospitals), oil rig decommissioning, demolition and land remediation, municipal water services (under PFI contracts) and Ministry of Defence work.¹⁷⁷⁶ It told us that a broader divestment would therefore be entirely disproportionate, given that the Proposed Veolia UK O&M Business would be effective, practical and proportionate.

15.220 We set out the Parties' views on the scope of each of the Proposed Veolia UK O&M Business and the Proposed Suez UK O&M Business.

¹⁷⁷⁴ [Veolia's response to notice of possible remedies](#), paragraph 95.

¹⁷⁷⁵ [Veolia's response to notice of possible remedies](#), paragraph 181.

¹⁷⁷⁶ [Veolia's response to notice of possible remedies](#), paragraphs 11 and 12, and Veolia Response Hearing presentation (9 June 2022), slide 5.

Scope of the Proposed Veolia UK O&M Business – Parties' views

- 15.221 Veolia told us that there was no single holding company for the IWE business line within which Veolia's UK industrial water O&M business sat. It added that the contracts and assets that fell under this broad business line were held by a number of different legal entities, with a large number of its industrial water O&M contracts held by Veolia's main waste operating legal entity, Veolia ES (UK) Limited.¹⁷⁷⁷ However, Veolia told us that it would be able to implement the divestiture of the Proposed Veolia UK O&M Business quickly and effectively by setting up a proposed single legal entity to divest to the purchaser as a share sale.¹⁷⁷⁸
- 15.222 Veolia told us that the Proposed Veolia UK O&M Business would allow its purchaser to compete as an effective competitor and restore the competitive constraint imposed by Suez on Veolia which we found would be lost by the Merger.¹⁷⁷⁹ Veolia told us that the Proposed Veolia UK O&M Business would:¹⁷⁸⁰
- (a) fully address the provisional concerns outlined in the Provisional Findings, eliminating any overlap between the Parties in industrial water O&M and removing any increment in the Merged Entity's market share for the supply of UK industrial water O&M and thereby resolving our SLC in this market;
 - (b) result in a competitor with the necessary assets, resources and experienced employees to be a strong, credible competitor in the UK industrial water O&M market, including specialist maintenance experience and processes, and the ability to 'asset manage' the life cycle of industrial water O&M;
 - (c) allow any purchaser to be an effective and credible competitor in the UK industrial water O&M market on an ongoing basis, and that it would provide the purchaser with all of Veolia's contracts for industrial water O&M services, current development opportunities, staff (including operational onsite staff, contract managers, technical support and the bidding team), experienced management, tangible (operational) assets, site monitoring systems, site permit and, if required by the purchaser,

¹⁷⁷⁷ [Veolia's response to notice of possible remedies](#), paragraph 183.

¹⁷⁷⁸ [Veolia's response to notice of possible remedies](#), paragraph 77.

¹⁷⁷⁹ [Veolia's response to notice of possible remedies](#), paragraph 72.

¹⁷⁸⁰ [Veolia's response to notice of possible remedies](#), paragraphs 9, 60 and 61.

back office support (through a TSA for a short period of time until the purchaser had the equivalent support in place);

- (d) be viable as a stand-alone business: it would include all personnel currently involved in carrying out Veolia's industrial water O&M contracts in the UK, together with an experienced manager and staff necessary to compete for new contracts;
- (e) be attractive to purchasers, particularly to operators with experience in the water or wider industrial services sector, and would allow the purchaser to enter or expand its presence in the UK industrial water O&M market; and
- (f) be straight-forward to implement as Veolia could identify the relevant assets that would form part of the divestiture package and separate them from the rest of the Veolia UK&I water business in a stand-alone legal entity. It added that the divestment would entail a straight-forward sale of shares, which would result in the automatic transfer of the contracts, staff and related assets. [REDACTED].

Scope of the Proposed Suez UK O&M Business – Parties' views

15.223 We now set out the Parties' comments in relation to the scope of the Proposed Suez UK O&M Business.

15.224 Veolia told us that the Proposed Suez UK O&M Business was a stand-alone business with annual revenues of around [REDACTED].¹⁷⁸¹ It told us that the sale of the Proposed Suez UK O&M Business would directly address our concerns by eliminating the entire overlap between Veolia and Suez's activities in industrial water O&M in the UK, and that it would remove any increment in the Merged Entity's market share for the supply of UK industrial water O&M, resolving our SLC in this market.¹⁷⁸²

15.225 Veolia told us that the Proposed Suez UK O&M Business would provide a purchaser with the assets, ability and experience to bid for future O&M opportunities, given that it included:¹⁷⁸³

¹⁷⁸¹ Veolia's response to notice of possible remedies, paragraphs 10 to 12.

¹⁷⁸² Veolia's response to notice of possible remedies paragraph 98.

¹⁷⁸³ Veolia's response to notice of possible remedies, paragraph 96.

- (a) all of WTS's ongoing and future bids for UK industrial water O&M contracts; and
- (b) the transfer of all personnel necessary for its operation. It added that the purchaser would therefore have access to the technical staff, operational staff and the sales staff required for the operation of the Proposed Suez UK O&M Business, as well as all qualified personnel necessary for the commercial, technical and administrative management.

15.226 Veolia also told us that the Proposed Suez UK O&M Business would result in a competitor with the assets and experienced employees required to be a strong, credible competitor in the UK Industrial Water O&M market.¹⁷⁸⁴

15.227 Veolia told us that the Proposed Suez UK O&M Business could be easily carved out from the wider Suez WTS business, with no detrimental effect, and that this was because the Proposed Suez UK O&M Business already operated as a viable, stand-alone business, and was almost entirely contained in a single legal entity, [REDACTED].¹⁷⁸⁵ Veolia told us that the Proposed Suez UK O&M Business was separate from the rest of Suez WTS's UK business (its water treatment chemicals business as well as Engineered Systems (ES) Projects, Engineered Systems (ES) Products and MWS activities), which sat in [REDACTED]. Veolia told us that this divestment could therefore be implemented by a straightforward share sale, with no detrimental impact on the remaining Suez WTS business.¹⁷⁸⁶

15.228 Veolia and Suez each told us that the sale of the Proposed Suez UK O&M Business would also provide a more proportionate remedy than the sale of the global Suez WTS business.^{1787, 1788}

15.229 Suez told us that its UK industrial water O&M services business was largely self-contained, unlike WTS's other businesses which were globally run. It explained that this was because its UK industrial water O&M services

¹⁷⁸⁴ [Veolia's response to notice of possible remedies](#), paragraph 97.

¹⁷⁸⁵ Veolia told us that the Proposed Suez UK O&M Business had separate origins from much of the rest of the current Suez WTS UK (and global) business. It told us that prior to 2017, Suez WTS's UK O&M business was run out of the [REDACTED], part of the legacy Degremont business, and that in 2017, the [REDACTED] business was combined with the former GE Water business (which did not have any O&M activities in the UK) to form what was now the Suez WTS global business. Veolia told us that since then, Suez WTS's UK O&M business had remained separate from the former GE Water businesses in the UK and that the Proposed Suez UK O&M Business had continued to operate out of the [REDACTED]. Source: [Veolia's response to notice of possible remedies](#), paragraph 92.

¹⁷⁸⁶ [Veolia's response to notice of possible remedies](#), paragraph 104.

¹⁷⁸⁷ [Veolia's response to notice of possible remedies](#), paragraph 91.

¹⁷⁸⁸ Transcript of response hearing with Suez, 7 June 2022, p.8.

business had separate origins from the rest of the global Suez WTS business.¹⁷⁸⁹

15.230 Suez told us that its O&M industrial water services business was not capital-intensive. It told us that the overheads for its O&M business were primarily its staff costs, with selling, general and administrative overheads.¹⁷⁹⁰

15.231 In relation to the attributes and capabilities which made Suez's UK O&M business an effective competitor, Suez told us that it was its expertise and having the 'infrastructure' to support its contracts. Suez told us that providing industrial water O&M services was very labour-intensive, with onsite staff and technical support being required to ensure that contracts were running well and value being delivered.¹⁷⁹¹

15.232 As noted in chapter 13, Suez told us that in industrial water O&M services, [REDACTED].¹⁷⁹² In this regard, Suez told us that it considered that its UK O&M business's [REDACTED] would give it 'sufficient scale'.¹⁷⁹³

Scope of the divestiture package – our assessment

15.233 For the purpose of assessing the appropriate scope of a Water O&M Divestiture Remedy, we note that Veolia has proposed the divestiture of either Veolia's or Suez's UK industrial water O&M business.

15.234 Based on our review and assessment of Veolia's proposal to divest the Proposed Veolia UK O&M Business, we have identified a number of significant concerns in relation to its scope and design, which we consider raise significant risks to its effectiveness as a remedy. We set out below our assessment and our concerns .

Assessment of Veolia's proposed UK O&M divestment businesses

15.235 Under Veolia's Water O&M Remedy Proposal, Veolia would implement the divestiture of the Proposed Veolia UK O&M Business by transferring the relevant assets to a dedicated legal entity, which could then be sold by way of a sale of shares to the purchaser.

¹⁷⁸⁹ Transcript of response hearing with Suez, 7 June 2022, pp.58 to 59.

¹⁷⁹⁰ Transcript of response hearing with Suez, 7 June 2022, p.62.

¹⁷⁹¹ Transcript of response hearing with Suez, 7 June 2022, p.57.

¹⁷⁹² Chapter 13, paragraph 13.137.

¹⁷⁹³ Transcript of response hearing with Suez, 7 June 2022, p.66.

- 15.236 While Veolia has characterised the Proposed Veolia UK O&M Business as ‘stand-alone’, we note that the Proposed Veolia UK O&M Business is part of Veolia’s IWE UK business line, which itself is a part of the Veolia UK&I business unit.
- 15.237 Divestitures involving carve-outs are inherently riskier than the transfer of fully stand-alone existing businesses (eg brought about by the transfer in ownership of pre-existing corporate entities by way of share sale), with risks to effectiveness arising from the identification of assets, the allocation of shared assets and the transfer of assets to the businesses to be divested.¹⁷⁹⁴
- 15.238 In this case, the Proposed Veolia UK O&M Business does not involve a divestiture of an existing, self-contained legal entity. Instead, it would require carve-outs of assets, operations, employees and customer and supplier contracts from multiple legal entities (given Veolia’s corporate structure), which would then be transferred into a new single legal entity set up to facilitate a share sale transaction. The Proposed Veolia UK O&M Business also has a number of ‘shared capabilities’, which are services provided to the Proposed Veolia UK O&M Business by the Veolia group.
- 15.239 We consider that Veolia’s proposal to transfer the relevant assets of the Proposed Veolia UK O&M Business into a new dedicated legal entity, which can then be sold by way a sale of shares to a purchaser, does not address the risks inherent in an asset sale. For example, given the need to identify and then transfer the relevant assets, we consider that this transaction will in substance remain an asset sale, which will not involve the sale of an existing legal entity which has demonstrated that it contains all of the assets necessary to compete in this market.
- 15.240 In our view, given the current organisation and set-up of the Proposed Veolia UK O&M Business and the complex and wide-ranging carve-outs proposed by Veolia in relation to the Proposed Veolia UK O&M Business, we consider that these factors present substantial risks to the effectiveness of a remedy requiring the divestiture of the Proposed Veolia UK O&M Business. As such, we consider that there is material uncertainty over the exact specification and configuration of the proposed divestment business (the identification of the assets and people needed to operate the divestment business effectively).

¹⁷⁹⁴ CMA87, paragraph 5.14.

- 15.241 We also consider that the Proposed Veolia UK O&M Business does not appear to have a formal management team or structure in place, noting Veolia's proposal to promote [REDACTED] to lead and manage the Proposed Veolia UK O&M Business (see paragraph 4(c) of Appendix C (Scope of the Proposed Veolia UK O&M Business)).
- 15.242 We consider that the lack of a formal management team or structure within the Proposed Veolia UK O&M Business is likely to undermine its ability to be an effective competitor and place greater reliance on the management capabilities of the purchaser.
- 15.243 We also note that the contracts which will be transferred along with the Proposed Veolia UK O&M Business excluded the following [REDACTED] contracts (the **Excluded Veolia Contracts**) which were taken into account in our competitive assessment and formed the basis of our Water O&M SLC:¹⁷⁹⁵
- (a) [REDACTED] contracts which Veolia classified as [REDACTED]; and
 - (b) [REDACTED] contracts which Veolia classified as [REDACTED].
- 15.244 Veolia told us that these contracts were different types of contracts from industrial water O&M services contracts, [REDACTED]. In relation to the [REDACTED].¹⁷⁹⁶
- 15.245 Veolia told us that the assets associated with [REDACTED] would not form part of the Proposed Veolia UK O&M Business, and [REDACTED]. Veolia told us that these assets were unrelated to the operation of its UK industrial water O&M business, and that the inclusion of these assets would weaken rather than strengthen the Proposed Veolia UK O&M Business, because these assets would [REDACTED].¹⁷⁹⁷
- 15.246 Veolia told us that [REDACTED] would not 'fit' with the Veolia UK O&M business being divested, and that it was aware that there were buyers who would be interested in acquiring the Veolia UK O&M business without the need to add to it, and that adding the excluded [REDACTED] contracts would make the divestiture package unattractive.¹⁷⁹⁸ Veolia also told us that [REDACTED].¹⁷⁹⁹ Veolia subsequently told us that it had received [REDACTED].¹⁸⁰⁰

¹⁷⁹⁵ Veolia's response to CMA phase 2 s.109 notice, 21 December 2021, Annex Q66.

¹⁷⁹⁶ Transcript of response hearing with Veolia, 9 June 2022, pp.69 to 72.

¹⁷⁹⁷ Veolia's response to CMA phase 2 s.109 notice, 14 June 2022, q.162.

¹⁷⁹⁸ Transcript of response hearing with Veolia, 9 June 2022, pp.75 to 76.

¹⁷⁹⁹ Veolia Response Hearing presentation (9 June 2022), slide 2.

¹⁸⁰⁰ Veolia's response to CMA phase 2 s.109 notice, 14 June 2022, q.160.

- 15.247 Veolia has proposed a divestiture package which does not address the full extent of the overlap. We cannot be sure that a divestiture package which is less than the full overlap between the Parties would be sufficient to comprehensively address the Water O&M SLC.
- 15.248 In circumstances where the scope of the divestiture package is insufficiently configured to address the SLC, it is irrelevant whether a purchaser has made an indicative bid for a divestiture package, which is ineffective in comprehensively addressing the SLC. It is also not sufficient for merger parties to demonstrate that a purchaser for a proposed divestiture package could be found during the remedy implementation phase. The CMA must also have a high degree of certainty that the divestiture will achieve its intended effect.
- 15.249 We therefore consider that if Veolia's UK O&M business was required to be divested, the Excluded Veolia Contracts should form part of that divestiture package. In relation to Veolia's submission that purchasers would not be interested in acquiring the Excluded Veolia Contracts, we consider that this is an untested proposition and in any event, secondary to the primary question of whether the scope of the divestiture package comprehensively addresses the Water O&M SLC. We consider that the retention of the Excluded Veolia Contracts by Veolia would result in a structurally weaker competitor in the form of the divested Veolia UK O&M business, and would not fully restore the loss in the competitive constraint arising from the Merger in UK industrial water O&M services.
- 15.250 We wish to highlight, however, that even if the scope of the Proposed Veolia UK O&M Business was modified to include these Excluded Veolia Contracts, this on its own, would not address the risks we have identified above which are associated with its carve-out from the wider Veolia group.
- 15.251 In our view, each of the risks associated with the Proposed Veolia UK O&M Business taken individually raises substantial concerns as to whether the Proposed Veolia UK O&M Business would achieve its intended effect with a sufficiently high degree of certainty. Cumulatively, we consider that the risks are such that the Proposed Veolia UK O&M Business is unlikely to constitute an effective remedy and therefore a comprehensive solution to the Water O&M SLC.
- 15.252 While it may be possible that some of these risks when considered individually might be capable of effective mitigation, we consider that it is unlikely that all such risks could be effectively mitigated. The number and complexity of the risks in terms of scope, and their potential interaction, leads to the Proposed Veolia UK O&M Business having a high risk profile,

especially if combined with the other composition and carve-out risks we have identified above.

- 15.253 We consider that the composition and implementation (eg carve-out) risks we have identified above are not exhaustive. Given the challenges arising from the information asymmetry between Veolia and the CMA (which limits our ability to assess what assets would be necessary for the business to continue to operate with the same competitive intensity), we consider that there is a material risk that there may be other assets, which are important (but less apparent) for the effectiveness of the Proposed Veolia UK O&M Business, which could be omitted from the eventual divestiture package.
- 15.254 Based on the above, we conclude that a remedy requiring the divestiture of the Proposed Veolia UK O&M Business would have only a very limited impact in addressing the Water O&M SLC and its resulting adverse effects, and therefore would not represent a comprehensive solution. Instead, we consider that a divestiture of the Proposed Veolia UK O&M Business would have the opposite effect of strengthening Veolia's market position in industrial waste O&M services given its retention of the relevant contracts excluded from the divestment transaction, while creating a significantly weakened divestment business and undermining its ability to compete effectively in the provision of industrial water O&M services.
- 15.255 The CMA's guidance on remedies states that 'the CMA will seek remedies that have a high degree of certainty of achieving their intended effect. Customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects'.¹⁸⁰¹
- 15.256 Given the clear shortcomings of the scope of the Proposed Veolia UK O&M Business and the complexities and risks associated with Veolia's proposal for what we consider in substance to be materially no different to an asset sale, we do not consider it necessary to conduct a detailed or further assessment of the composition, purchaser and asset risks associated with Veolia's Proposed O&M Business. In any case, we consider it likely that an effective divestiture package involving Veolia's UK industrial water O&M business would need to be much broader in scope than what Veolia had proposed under Veolia's Water O&M Remedy Proposal.

¹⁸⁰¹ CMA87, paragraph 3.5(d).

15.257 We therefore focus the remainder of this section on our assessment of the Proposed Suez UK O&M Business.

Our assessment of the scope of the Proposed Suez UK O&M Business

15.258 Having concluded that the Proposed Veolia UK O&M Business would not be effective based on the significant risks associated with that remedy, we now turn to a more detailed assessment of the scope of the Proposed Suez UK O&M Business based on the details of its scope set out in Appendix C.

15.259 In paragraphs 15.221 to 15.242 above, we found that the scope and design of a divestiture remedy requiring the divestiture of the Proposed Veolia UK O&M Business raised significant risks which could undermine its effectiveness as a remedy to address the Water O&M SLC, and explained why we did not consider that that remedy could be modified to mitigate all of these risks. However, we consider that these risks are materially lower for a sale of the Proposed Suez UK O&M Business:

- (a) The Proposed Suez UK O&M Business is largely self-contained within an existing legal entity, appears largely separate from the wider WTS corporate and organisational structure and comprises a more comprehensive asset base, including staff.
- (b) We note from Suez's response hearing that the [X] contracts included within Suez's UK O&M divestment business were 'pure O&M' services contracts, which were not bundled with any other service, and that these contracts were '[X]'.¹⁸⁰² However, we have identified one contract which was omitted from the scope of this divestiture package. We consider this issue further later in this paper (see paragraphs 15.248 to 15.261 below).
- (c) We note that the Proposed Suez UK O&M Business provides a more formal management structure, eg in the form of its territorial managers. We consider this issue in further detail below as part of our detailed assessment of the scope of the Proposed Suez UK O&M Business (see paragraphs 15.262 to 15.277).

15.260 We consider that a sale of the Proposed Suez UK O&M Business could be implemented by way of a share sale of [X] (see also Figure 1 of Appendix C

¹⁸⁰² Transcript of response hearing with Suez, 7 June 2022, p.69.

for a simplified legal structure of Suez WTS), subject to a limited number of asset transfers both into, and out of, that legal entity. Based on our review of that evidence, we focus on the following key areas of composition, carve-out and/or implementation risks we have identified:

- (a) completeness of customer contracts;
- (b) availability of a management team and completeness of staff;
- (c) site monitoring systems;
- (d) R&D capabilities;
- (e) absence of the 'Suez' brand;
- (f) transfer of customer contracts to a purchaser;
- (g) access to Suez WTS products;
- (h) minority shareholder consent; and
- (i) TSAs.

15.261 We consider each of these in turn below.

Completeness of customer contracts

15.262 We note that the contracts which the Parties proposed would be transferred along with the Proposed Suez UK O&M Business (see Table 2 of Appendix C) excluded Suez's contract with [REDACTED].¹⁸⁰³

15.263 Suez told us that the [REDACTED] was not an O&M contract, and that it was a 'third-party investor funded capital project' established through a SPV. It told us that it was a 'Build, Own, Transfer' (**BOT**) or 'Build, Own, Operate' (**BOO**) project, with a small O&M component (which had not yet begun). Suez told us that the ownership structure and external financing arrangements [REDACTED] were unique to this project, and added that [REDACTED].¹⁸⁰⁴

¹⁸⁰³ Suez's response to CMA phase 2 s.109 notice, 21 December 2021, Q37 and Q66.

¹⁸⁰⁴ Suez's response to CMA phase 2 RFI, 30 June 2022, q.186.

- 15.264 Suez told us that as requested by [REDACTED], Suez [REDACTED] and [REDACTED] initially entered into an ‘Offtake contract’, which included the provision of D&C, O&M and financing services. It told us [REDACTED].¹⁸⁰⁵
- 15.265 At its response hearing, Suez told us that if the [REDACTED] Contract had to form part of any divestiture package, it would discuss with the CMA and [REDACTED] to determine if it was possible to derive a structure that could satisfy the client and the CMA.¹⁸⁰⁶ In this regard, Suez told us that to be able, even in principle, to include the O&M Element in the divestment, [REDACTED].¹⁸⁰⁷
- 15.266 Suez told us that the [REDACTED].¹⁸⁰⁸
- 15.267 Suez told us that [REDACTED].¹⁸⁰⁹
- 15.268 We enquired whether in the event the D&C Element and the O&M Element could not be separated (with the O&M Element forming part of the Proposed Suez UK O&M Business), whether the entire [REDACTED] Contract (including both the D&C Element and O&M Element) should form part of the divestment business and what additional assets might be required to support the D&C Element. In its response, Suez told us that [REDACTED]. For example, Suez told us [REDACTED]. Suez told us that [REDACTED].¹⁸¹⁰
- 15.269 Suez told us that it would be to the ‘significant detriment’ of the global Suez WTS business if these individuals, with all the other individuals working on the project, were included in the divestment in order to enable the [REDACTED] Contract to transfer in full to Suez’s UK industrial water O&M business. Suez told us that once the D&C Element of the project was [REDACTED], there would be no need for these employees in the UK industrial water O&M business, noting that their work, including that carried out for [REDACTED] and separate activities for Engineered Systems (ES) Projects, was entirely different from the work of the WTS UK industrial water O&M business, which was, by its nature, focused on O&M.¹⁸¹¹
- 15.270 Suez told us that the UK O&M team was therefore not set up to develop the type of work that these individuals carried out, and it would be [REDACTED]. It added

¹⁸⁰⁵ Suez’s response to CMA phase 2 RFI, 30 June 2022, q.186.

¹⁸⁰⁶ Transcript of response hearing with Suez, 7 June 2022. P.69.

¹⁸⁰⁷ Suez’s response to CMA phase 2 RFI, 30 June 2022, q.186.

¹⁸⁰⁸ Suez’s response to CMA phase 2 RFI, 30 June 2022, q.186.

¹⁸⁰⁹ Suez’s response to CMA phase 2 RFI, 30 June 2022q.186.

¹⁸¹⁰ Suez’s response to CMA phase 2 RFI, 30 June 2022, q.186.

¹⁸¹¹ Suez’s response to CMA phase 2 RFI, 30 June 2022 q.186.

that this would make the business unattractive to a potential purchaser and degrade the business's ability to function efficiently and effectively.¹⁸¹²

15.271 Based on the information available to us, we note that:¹⁸¹³

(a) [REDACTED]

(b) [REDACTED].

15.272 Our Water O&M SLC was based only on O&M services (and not on D&C services). In chapter 13, we found that once a water or wastewater facility has been constructed, if the customer requires such facilities to be operated and managed, then O&M services could be provided either by the original D&C provider (if it also offered O&M services), or by a different O&M service provider.¹⁸¹⁴ This, in our view, provides some indication that the D&C Element and O&M Element can be fully separated.

15.273 In response to our RWP, Veolia told us that WTS's [REDACTED] Contract is not a water O&M contract. It referred to Suez's response and reiterated that the contract is not a typical [REDACTED] contract of a water or wastewater facility [REDACTED].¹⁸¹⁵

15.274 It also told us that the separation and transfer of the O&M Element would raise a number of practical difficulties and that its inclusion in the divestment remedy was disproportionate and unnecessary.¹⁸¹⁶ It told us that:¹⁸¹⁷

(a) Veolia and Suez should both be required to take only reasonable steps to ensure that Suez [REDACTED] and to ensure that the [REDACTED] contract [REDACTED] was assigned to [REDACTED]. It submitted that there were limits on the steps that Veolia could take in light of the IEO and that Veolia was not in a position to take steps to [REDACTED] the relevant contract in [REDACTED], nor was it able to assign the [REDACTED] contract between Suez entities.

(b) Veolia should be required at most to provide reasonable assurance and incentives to ensure that [REDACTED] were not disadvantaged by [REDACTED], and to secure consent to the separation and transfer.

¹⁸¹² Suez's response to CMA phase 2 RFI, 30 June 2022, q.186.

¹⁸¹³ Suez's response to CMA phase 2 s.109 notice, 21 December 2021, Q37 and Q66.

¹⁸¹⁴ Chapter 13, paragraph 13.10.

¹⁸¹⁵ Veolia response to RWP, paragraph 18.

¹⁸¹⁶ Veolia response to RWP, paragraph 19.

¹⁸¹⁷ Veolia response to RWP, paragraph 19.

- (c) The [X] Contract can be serviced by the staff already in the scope of the WTS UK Water O&M business and that it was unnecessary to include a requirement for the Parties to transfer any additional staff.

15.275 In order to ensure that our remedy comprehensively addresses the Water O&M SLC and restores the pre-Merger competitive situation, we consider that as part of a divestiture of the Proposed Suez UK O&M Business, the Parties should be required to:

- (a) Use best endeavours to:
 - (i) secure Suez's [X] consent to [X], as well as the transfer of the [X] to the purchaser;
 - (ii) secure [X] consent to assign the [X] contract with the [X];
 - (iii) assure and incentivise [X] and [X] such that they are not disadvantaged [X];
 - (iv) [X];
 - (v) provide the purchaser of the Proposed Suez UK O&M Business with the support and information necessary for the smooth transfer [X].
- (b) Subject to (i) to (v) above, take the necessary steps to:
 - (i) separate out the [X] in consultation with [X] and [X] (see also paragraph 15.250 above);
 - (ii) assign the [X] contract [X], for the purpose of transferring [X] along with the Proposed Suez UK O&M Business; and
 - (iii) transfer [X] to the purchaser of the Proposed Suez UK O&M Business as well as any additional staff necessary to service the [X] contract.

Availability of a management team and staff

15.276 Organisationally, Suez's UK industrial water O&M business forms part of WTS's wider Engineered Systems business, whose two UK territory leaders [REDACTED].¹⁸¹⁸

15.277 Veolia told us that the operational management team of the Suez UK industrial water O&M business would transfer with the divested legal entity, comprising: (a) [REDACTED] territory managers responsible for the operational management of Suez's UK industrial water O&M business; (b) sales managers; and (c) a finance manager.¹⁸¹⁹

15.278 Suez told us that its [REDACTED] UK territory managers were each responsible for: [REDACTED].¹⁸²⁰

15.279 Veolia told us that [REDACTED]. Veolia told us that [REDACTED].¹⁸²¹

15.280 In this regard, Veolia told us that [REDACTED]:¹⁸²²

(a) [REDACTED];

(b) [REDACTED]

(c) [REDACTED].

15.281 Veolia told us that [REDACTED],¹⁸²³ [REDACTED].¹⁸²⁴

15.282 Suez also told us that [REDACTED].¹⁸²⁵

15.283 Suez told us that [REDACTED].¹⁸²⁶

15.284 In total, Suez told us that its UK industrial water O&M business employed [REDACTED] its Grangemouth office which included a testing laboratory and back office functions, [REDACTED]. Suez told us that the 'primary expertise' relied on by its

¹⁸¹⁸ Veolia's response to CMA phase 2 s.109 notice, 22 June 2022, q.183.

¹⁸¹⁹ Veolia's response to CMA phase 2 s.109 notice, 22 June 2022, q.183.

¹⁸²⁰ Suez's response to CMA phase 2 s.109 notice, 22 June 2022, q.173, Annex 173.1.

¹⁸²¹ Veolia's response to CMA phase 2 s.109 notice, 22 June 2022, q.183.

¹⁸²² Veolia's response to CMA phase 2 s.109 notice, 22 June 2022, q.183.

¹⁸²³ Veolia told us that [REDACTED]. Source: Veolia's response to CMA phase 2 s.109 notice, 22 June 2022, q.183.

¹⁸²⁴ Veolia's response to CMA phase 2 s.109 notice, 22 June 2022, q.183.

¹⁸²⁵ Suez's response to CMA phase 2 s.109 notice, 22 June 2022, q.173, Annex 173.1.

¹⁸²⁶ Email from Monitoring Trustee, 27 June 2022, based on Monitoring Trustee's discussions with Suez WTS.

UK industrial water O&M business was provided by [REDACTED] in terms of what they did and how they operated the particular plant.¹⁸²⁷

15.285 Veolia told us that a small number of employees would be transferred to the [REDACTED] legal entity prior to the sale of the shares in that entity, while a small number of employees who were not necessary to the Proposed Suez UK O&M Business would be transferred out of the entity.¹⁸²⁸ In this regard, Suez told us that around [REDACTED] would need to be transferred into the legal entity being divested, and around [REDACTED] would need to be transferred out.¹⁸²⁹

15.286 Veolia told us that the majority of the employees in the Proposed Suez UK O&M Business [REDACTED] could work remotely, and therefore no head office premises were required. However, Veolia told us that [REDACTED] office in Grangemouth (which would be divested as part of the Proposed Suez UK O&M Business) could be used as a head office if necessary.¹⁸³⁰

15.287 Based on the evidence set out above, we consider that the Proposed Suez UK O&M Business would have the key operational management capabilities (both centrally and at onsite) to continue to operate the divestment business effectively. We note that while certain decisions concerning Suez's UK industrial water O&M business are made at a global level, these relate to [REDACTED]. Following a divestment, we would expect such decisions (ie which currently require approval at a global level) to either be subject to the eventual purchaser's own delegation of authority limits or be taken by the UK management team of the divested business.

15.288 We also note that there are [REDACTED] management roles which are currently undertaken by three individuals with Europe-wide responsibilities (see paragraph 15.266) above), namely the roles of the [REDACTED]. We note that under Veolia's Water O&M Remedy Proposal:

- (a) the current [REDACTED] will transfer with the divestment business to head up the Proposed Suez UK O&M Business and take on the roles of the [REDACTED]; and
- (b) the role of the [REDACTED] will be taken on by [REDACTED].

¹⁸²⁷ Email from Monitoring Trustee, 27 June 2022, based on Monitoring Trustee's discussions with Suez WTS.

¹⁸²⁸ [Veolia's response to notice of possible remedies](#), paragraph 18.

¹⁸²⁹ Transcript of response hearing with Suez, 7 June 2022, pp.59 to 60.

¹⁸³⁰ [Veolia's response to notice of possible remedies](#), paragraph 99.

15.289 While we note that [REDACTED] of the individuals with Europe-wide responsibilities who currently have partial responsibility for Suez's UK industrial water O&M business will not transfer with the divestment business, on balance, we consider this would not undermine the ability of the divestment business to compete effectively, given:

- (a) that decisions are predominantly made by the UK operational management team and not at a European or global level;
- (b) our view that Veolia's proposed replacements for these roles, including the new 'UK O&M Leader' to be acceptable given their current roles and responsibilities within the business, which we consider make them particularly suitable for their new roles within the divestment business.

15.290 Based on the above, we consider that the Proposed Suez UK O&M Business has a credible management team and structure (including its territorial managers and UK operational management) with the necessary track record. Given this, and also that Suez's industrial water O&M business is self-contained within its own separate legal entity, which contains predominantly all of the employees necessary to operate the business effectively, we consider that the risk of omitting key or critical staff from the divestment business to be low.

15.291 On the basis set out above, we conclude that the Proposed Suez UK O&M Business will have the appropriate management and operational staff to run and operate the divestment business as an effective competitor.

Site monitoring systems

15.292 Suez told us that most of its UK O&M client sites relied on a [REDACTED].¹⁸³¹ Suez told us that its Site Monitoring Centre [REDACTED].¹⁸³²

15.293 Suez told us that [REDACTED].¹⁸³³

15.294 Suez told us that out of its currently operating UK O&M contracts, there were [REDACTED] sites which used the [REDACTED] platform for data collection.¹⁸³⁴ Suez told us that the use of the [REDACTED] platform would enable the purchaser of the Proposed Suez UK O&M Business to access information and data on the [REDACTED] client

¹⁸³¹ Transcript of response hearing with Suez, 7 June 2022, p.63.

¹⁸³² Suez's response to CMA phase 2 s.109 notice, 14 June 2022, q.153.

¹⁸³³ Transcript of response hearing with Suez, 7 June 2022, pp.62 to 63.

¹⁸³⁴ Suez's response to CMA phase 2 s.109 notice, 14 June 2022, q.153 (as amended in the cover email to Suez's RFI 6 response, dated 4 July 2022).

sites, including operational technical information such as pressures, flows and temperatures.¹⁸³⁵ Suez told us that [REDACTED].¹⁸³⁶

15.295 In relation to its [REDACTED] UK O&M customers who required Suez's Site Monitoring Centre and the connectivity to WTS's [REDACTED] platform, Suez told us that there were a number of options:

- (a) it could provide a TSA or an arm's-length commercial contract to allow the purchaser to utilise the [REDACTED] service.¹⁸³⁷ Suez told us that under this option, the Insight software could be licensed by the Merged Entity either to the purchaser or SUEZ Industrial Water Limited directly, on an arm's-length basis. Suez told us that WTS would be willing to provide technical support, including supporting additional analysis, should the purchaser choose to request this. [REDACTED];¹⁸³⁸
- (b) alternatively, the purchaser could install one of the many third-party data collection services available on the market.¹⁸³⁹ In this regard, Suez told us that there many third-party providers offering 'similar tools and services', including Synauta or Pani Energy;¹⁸⁴⁰ and
- (c) if the purchaser already operated a site monitoring programme [REDACTED], the purchaser would likely wish to utilise its own system.¹⁸⁴¹

15.296 Suez told us that [REDACTED]. In this regard, [REDACTED].¹⁸⁴²

15.297 Suez told us that in the event the Proposed Suez UK O&M Business was required to be divested, it would not be necessary or cost-effective to duplicate the Peterborough site monitoring centre, and added [REDACTED]. In this regard, it told us that data monitoring was provided, and would still be available, in different ways (see paragraph 15.281 above).¹⁸⁴³

15.298 Alpheus told us that telemetry and monitoring systems could be purchased 'off-the-shelf' and therefore there was no need for a centralised monitoring centre to form part of the divested business. Alpheus also told us that in relation to monitoring systems, it was 'not a case of somebody sitting in front

¹⁸³⁵ Suez's response to RFI 6 (follow-up response dated 6 July 2022), q.187.

¹⁸³⁶ Suez's response to CMA phase 2 s.109 notice, 14 June 2022, q.153.

¹⁸³⁷ Suez's response to CMA phase 2 s.109 notice, 14 June 2022, q.153.

¹⁸³⁸ Suez's response to CMA phase 2 RFI, 30 June 2022, (follow-up response dated 6 July 2022), q.187.

¹⁸³⁹ Transcript of response hearing with Suez, 7 June 2022, p.63.

¹⁸⁴⁰ Suez's response to CMA phase 2 RFI, 30 June 2022, (follow-up response dated 6 July 2022), q.187.

¹⁸⁴¹ Suez's response to CMA phase 2 s.109 notice, 14 June 2022, q.153.

¹⁸⁴² Transcript of response hearing with Suez, 7 June 2022, pp.63 to 64.

¹⁸⁴³ Suez's 'Note to Monitoring Trustee re. proposed WTS UK O&M divestment remedy' 19 June 2022, paragraph 3.1

of a bank of screens, watching all of this information’, but rather that if the monitoring situation was ‘complicated’, then the site would be manned ‘full time’ and there would be a dedicated team of people onsite all of the time.¹⁸⁴⁴

15.299 Nalco told us that it centrally monitored [REDACTED] its customers’ sites, which enabled it to see remotely what was going on within each customer’s ‘water systems’. It added that whether a customer wanted its site to be monitored centrally would depend on a case-by-case basis, on the contract, eg its ‘scope of supply’ and whether ‘digital innovation’ could be deployed or would need to be deployed.¹⁸⁴⁵

15.300 Based on the evidence set out above, given that some of Suez’s industrial water O&M customers are currently connected to Suez’s [REDACTED] platform and according to one third party (Nalco), the need for central monitoring of a site depends on the scope of a contract and the customer’s needs, we would expect the Proposed Suez UK O&M Business to have the capabilities to be able to offer customers the option to have central site monitoring as part of its offering. However, we also note the evidence from the Parties and one third party (Alpheus) that such monitoring systems could be procured from third parties and as such, it would not be necessary to include a Site Monitoring Centre as part of the divestment business.

15.301 On balance, and taking into account the evidence on the availability of alternative monitoring platforms and noting that Suez’s current Site Monitoring Centre [REDACTED], we consider that a duplication of WTS’s Site Monitoring Centre at Peterborough would likely be a less practical and cost-effective option than a transitional arrangement (under a TSA) whereby a purchaser of the Proposed Suez UK O&M Business could be given a licence to access to the [REDACTED] platform for a reasonable period until such time the purchaser can replace the [REDACTED] platform with an alternative platform (including, if available, its own platform). We also consider that any transitional arrangement should last for a relatively short period of time to incentivise the purchaser to procure an alternative platform in a timely manner in order to sever its links with the Parties and limit the extent to which the divestment business will rely on the Parties. We would also require the Parties to put in place appropriate firewalls and procedural safeguards to ring-fence the site-level data relating to the Proposed Suez UK O&M Business for the duration of the TSA, including the requirement on the

¹⁸⁴⁴ Transcript of hearing call with Alpheus, 30 May 2022, pp.47 to 48.

¹⁸⁴⁵ Transcript of hearing call with Nalco, 31 May 2022, pp.17-18.

Parties to transfer to the purchaser any data gathered from the [REDACTED] platform relating to the Proposed Suez UK O&M Business.

R&D capabilities

- 15.302 Veolia told us that no intangible assets, and in particular no IPRs, or R&D capability, were necessary for the operation of the Proposed Suez UK O&M Business as a viable and competitive business. It added that the Proposed Suez UK O&M Business did not have any IPRs, nor did the Suez WTS business have plans to develop any IPRs for the Proposed Suez UK O&M Business.¹⁸⁴⁶ Veolia told us that the customer would normally choose and deliver the technology it wanted for its own site, and then approach Veolia to provide O&M water services. Therefore, Veolia considered that [REDACTED].¹⁸⁴⁷
- 15.303 Veolia told us that while Suez was not aware of any relevant IPRs or know-how, in the event that any were identified by a purchaser as being necessary, Suez would grant a UK licence to that IPR or know-how. Veolia told us that the ability to attract customers was mainly based on the level of experience of the sales and technical teams.¹⁸⁴⁸
- 15.304 Suez told us that innovation within its industrial water O&M business was site-specific and designed to meet the individual site's needs and Suez's contractual obligations, and that these were [REDACTED].¹⁸⁴⁹
- 15.305 Suez also told us [REDACTED]. In this regard, Suez told us that the primary expertise relied on by its UK O&M business [REDACTED].¹⁸⁵⁰
- 15.306 [REDACTED]. In the event that know-how was needed in relation to a particular process, [REDACTED], Suez told us that this could be sourced from third-party consultants, [REDACTED].¹⁸⁵¹
- 15.307 Suez told us that the Proposed Suez UK O&M Business [REDACTED].¹⁸⁵²
- 15.308 Alpheus told us that the 'intellectual property' associated with the water O&M business was the know-how generated from operating and running the

¹⁸⁴⁶ [Veolia's response to notice of possible remedies](#), paragraph 99.

¹⁸⁴⁷ Transcript of response hearing with Veolia, 9 June 2022, pp.79 to 80.

¹⁸⁴⁸ [Veolia's response to notice of possible remedies](#), paragraph 99.

¹⁸⁴⁹ Transcript of main party hearing with Suez, 13 April 2022, pp.98 to 99.

¹⁸⁵⁰ Suez's 'Note to Monitoring Trustee re. proposed WTS UK O&M divestment remedy', 19 June 2022, paragraph 3.1

¹⁸⁵¹ Suez's 'Note to Monitoring Trustee re. proposed WTS UK O&M divestment remedy', 19 June 2022, paragraph 3.1

¹⁸⁵² Suez's response to CMA phase 2 RFI, 30 June 2022, q.190.

assets in the past for the client, and added that it was ‘critical’ that know-how and knowledge were retained. It explained that ‘intellectual property’ would cover matters such as operating manuals and contracts to operational data. It added that often the clients did not have a copy of that information.¹⁸⁵³

15.309 Nalco told us that among the factors which contributed to its own success in water O&M was that it had the ‘innovation’ to provide it with the ability to deploy ‘innovative technologies’ for its customers.¹⁸⁵⁴ It told us that based on its experience in the sector, innovation did play a ‘large part’ in its own success as an organisation and therefore R&D was ‘fundamental to feed the ongoing growth’ of its business, but added that innovation needed to be relevant to ‘individual customer needs and requirements’, and that not all customers would ‘buy innovation’.¹⁸⁵⁵

15.310 New Suez told us that it understood that Suez’s UK industrial water O&M business required access to certain WTS patents to ensure its ‘viability and competitiveness’ given that some of these patents related to ‘irreplaceable and indispensable technologies’, and understood that these were held in a separate and dedicated legal entity.¹⁸⁵⁶

15.311 We also note the evidence from [X] in Chapter 13, who told us that ‘the combined engineering and innovation capabilities of Veolia and Suez would create a very significant distance between the Merged Entity and its most immediate competitors’.¹⁸⁵⁷

15.312 Based on the evidence set out above, we consider that innovation within Suez’s UK industrial water O&M business takes place predominantly at the site-level to meet individual customer needs, and that innovation is the result of the accumulation of know-how and experience of the staff employed within the business. We therefore consider that in order to capture these types of innovation capabilities, this would require all of the relevant staff working within Suez’s industrial water O&M business, in particular the onsite staff working with the customers at their facilities, to form part of the scope of any divestiture package. We consider that this is appropriately achieved by the scope of the Proposed Suez UK O&M Business.

¹⁸⁵³ Transcript of hearing call with Alpheus, 30 May 2022, pp.30 to 36.

¹⁸⁵⁴ Transcript of hearing call with Nalco, 31 May 2022, p.12.

¹⁸⁵⁵ Transcript of hearing call with Nalco, 31 May 2022, p.16.

¹⁸⁵⁶ Response to CMA phase 2 RFI from New Suez, 23 June 2022, q.7.

¹⁸⁵⁷ Chapter 13, paragraph 13.118.

15.313 In relation to the evidence from one third party (New Suez) that its understanding was that Suez's UK industrial water O&M business relied on WTS's patents, we note that this referred to patents concerning WTS technologies, and this issue is considered separately below in paragraphs 15.314 to 15.322.

15.314 While we note the submission from Suez that its UK industrial water O&M business did not use or rely on any proprietary IPR, in the event any were identified during the course of the divestiture process, we would expect a purchaser to be granted a UK licence to any IPR or know-how.

Absence of the 'Suez' brand

15.315 Suez told us that between 2012 and 2015, WTS's 'heritage businesses' in the UK used the 'Degrémont' brand, and after the acquisition of GE Water by Suez in 2017, the brand was changed to 'Suez Water Technologies and Solutions'.¹⁸⁵⁸

15.316 Veolia told us that given that the 'Suez' brand was sold to New Suez, it would therefore not form part of the Proposed Suez UK O&M Business. Veolia told us that branding was not important in the industrial water O&M market and that the focus was on the Suez WTS business's employees' relationship with the client.¹⁸⁵⁹ Veolia told us that in O&M services, the O&M business did not rely on the brand, but rather [X].¹⁸⁶⁰

15.317 However, Veolia told us that if we considered that branding was an important element of the Proposed Suez UK O&M Business, Veolia could address this in two ways:¹⁸⁶¹

- (a) the Proposed Suez UK O&M Business could be sold to an existing operator with an established brand in industrial water O&M services, and that there were many who would be interested in acquiring the business; and/or
- (b) the Suez WTS business could provide a transitional brand licensing agreement for the 'WTS' brand, which could aid the purchaser in

¹⁸⁵⁸ Suez's response to CMA phase 2 RFI, 30 June 2022, q.184.

¹⁸⁵⁹ [Veolia's response to notice of possible remedies](#), paragraph 99.

¹⁸⁶⁰ Transcript of response hearing with Veolia, 9 June 2022, p.27.

¹⁸⁶¹ [Veolia's response to notice of possible remedies](#), paragraph 99.

establishing its UK industrial water O&M presence, before switching to its own brand.

15.318 Suez told us that the ‘Suez’ brand was not an important factor to winning or maintaining customers, as customers in the industry were more focused on delivery and value rather than branding. In this regard, it told us that the O&M service was not ‘branded’ in any meaningful way: the O&M service involved installing engineers who worked on the customer’s site (which carried that customer’s brand). Therefore, it told us that the inability to include the ‘Suez’ brand in the assets forming part of the Proposed Suez UK O&M Business was not of importance to its viability or attractiveness to potential purchasers who, in any event, might wish to use their own brand.¹⁸⁶²

15.319 Similarly, Suez told us that rather than the brand, having ‘references’ to demonstrate that it could provide O&M services, and the business’s ability and capability, was most important. In that regard, it considered that [X] contracts would be sufficient to demonstrate that track record. Suez told us that it was not aware of any sites where the customer was attracted by the brand, but instead Suez considered that customers were attracted by the ‘value’ and the ‘proposed price’.¹⁸⁶³

15.320 In relation to the views of third parties on the importance of a brand to compete effectively, we received mixed evidence:

- (a) Nalco told us that brand was important in order to be successful in industrial water O&M services, as well as reputation. It explained that brand and reputation were gained by competitors through, for example, developing good relationships with customers and delivering ‘outstanding’ results for the customers.¹⁸⁶⁴
- (b) [X] told us that it did not consider that the absence of the ‘Suez’ brand would have a material impact on the ability of the divested UK industrial water O&M business to compete effectively if it were acquired by a purchaser with an established reputation and expertise in the sector. In this regard, [X] told us that [X].¹⁸⁶⁵

¹⁸⁶² Suez’s ‘Note to Monitoring Trustee re. proposed WTS UK O&M divestment remedy’, 19 June 2022, paragraph 3.1

¹⁸⁶³ Transcript of response hearing with Suez, 7 June 2022, pp.65 to 66.

¹⁸⁶⁴ Transcript of hearing call with Nalco, 31 May 2022, pp.19-20.

¹⁸⁶⁵ [X] [Company X’s response to the notice of possible remedies](#).

- 15.321 We found no evidence to indicate that Suez’s UK industrial water O&M business’s ability to compete effectively would be undermined by not having the ‘Suez’ brand, and noted the evidence that customers placed far greater value on a provider’s capabilities and track record.
- 15.322 Similar to our conclusion above in relation to brand for the Waste Divestiture Remedy, in order to ensure an orderly and smooth transition to a new brand (to be determined by the eventual purchaser) and minimise any potential disruption to the purchaser and customers, Veolia should take steps to ensure that the purchaser of Suez’s UK industrial water O&M business is given the option to continue to use the ‘Suez’ brand for the UK industrial water O&M business until the Rebranding Long-Stop Date provided under the New Suez SAPA or a shorter period as requested or required by the eventual purchaser. For the avoidance of doubt, if the purchaser wishes for a period shorter than the period of time until the Rebranding Long-Stop Date Veolia may agree such shorter period with the eventual purchaser.

Transfer of customer contracts to a purchaser

- 15.323 Suez told us that the Suez contracting entity in respect of its UK industrial water O&M contracts [REDACTED].¹⁸⁶⁶ Veolia told us that [REDACTED].¹⁸⁶⁷
- 15.324 Suez told us that WTS had reviewed to date [REDACTED] of the [REDACTED].¹⁸⁶⁸
- 15.325 Veolia told us that [REDACTED].¹⁸⁶⁹
- 15.326 Veolia also told us that [REDACTED].¹⁸⁷⁰
- 15.327 Given that the Suez UK industrial water O&M business being divested will include the key onsite staff (including the contract manager responsible for the site and the customer relationship), we consider that this would provide greater comfort and reassurance to customers that the key staff contracting counterparty would remain essentially unchanged. Given this, and noting also the relatively small number of contracts which would trigger a change of control provision, we consider the risk of customers not consenting to a

¹⁸⁶⁶ Suez’s ‘Note to Monitoring Trustee re. proposed WTS UK O&M divestment remedy’, 19 June 2022, paragraph 3.1

¹⁸⁶⁷ [Veolia’s response to notice of possible remedies](#), paragraph 103.

¹⁸⁶⁸ Suez’s response to CMA phase 2 RFI, 30 June 2022, q.188.

¹⁸⁶⁹ [Veolia’s response to notice of possible remedies](#), paragraph 103.

¹⁸⁷⁰ [Veolia’s response to notice of possible remedies](#), paragraph 103.

transfer to the purchaser of Suez's UK industrial water O&M business to be low.

Access to WTS products

- 15.328 Veolia told us that the few Suez WTS business products (eg membrane bioreactor technologies) used at a small number of industrial water O&M customer sites were widely available for third parties to purchase on the market on an arm's length basis. It told us that the majority of the Suez WTS's UK industrial water O&M sites already used third-party technologies that were available on the market. Therefore, Veolia told us that the Proposed Suez UK O&M Business did not require access to WTS technologies.¹⁸⁷¹
- 15.329 Suez told us that all WTS products currently used by the Proposed Suez UK O&M Business would remain available to the business should it be divested. It told us that WTS sold its products generally in the marketplace and the Proposed Suez UK O&M Business would be able to continue to buy those products on an arms' length basis, just as it did today. It also told us that in many cases, WTS products were purchased directly by customers rather than Suez's industrial water O&M business, and this arrangement would also be unaffected by any divestment. Suez also told us that the Proposed Suez UK O&M Business (or its customers) could alternatively choose to buy the types of WTS products it used from other third-party suppliers, eg [REDACTED].¹⁸⁷²
- 15.330 Suez told us that its UK industrial water O&M business used WTS membranes at [REDACTED] of its sites, where:¹⁸⁷³
- (a) the membranes at [REDACTED] of the sites were [REDACTED]
 - (b) [REDACTED].
- 15.331 Suez told us that should the purchaser of the Proposed Suez UK O&M Business be interested, [REDACTED].¹⁸⁷⁴ Suez told us that in the last financial year, Suez's UK industrial water O&M business's annual expenditure on WTS products (ie membranes and chemicals) was around [REDACTED] (or around [REDACTED] of its annual revenues of around [REDACTED]).¹⁸⁷⁵

¹⁸⁷¹ [Veolia's response to notice of possible remedies](#), paragraph 99.

¹⁸⁷² Suez's response to CMA phase 2 RFI, 30 June 2022, q.189.

¹⁸⁷³ Suez's response to CMA phase 2 RFI, 30 June 2022, q.189.

¹⁸⁷⁴ Suez's response to CMA phase 2 RFI, 30 June 2022, q.189.

¹⁸⁷⁵ Suez's response to CMA phase 2 RFI, response dated 8 July 2022, q.189.

- 15.332 New Suez told us that in relation to WTS's membranes in water treatment services, denial of access to WTS membranes would put the acquirer of Suez's UK industrial water O&M business at a 'competitive disadvantage', and that the divestment business's 'workload and costs' of O&M could 'peak'. It explained that this inefficiency would arise because of the need to redesign and replace related parts of the system, and that when systems have been designed and built by WTS (and/or Suez), they most often included WTS membranes but also other related parts that were specifically designed to fit with the WTS membranes. As such, it told us that there was an 'ecosystem' around the WTS membranes. It told us that if the acquirer of the divestment business were to be denied access to the WTS membranes, the 'whole system' would have to be redesigned and rebuilt in order to switch to non-WTS membranes.¹⁸⁷⁶
- 15.333 In its response to our RWP, Veolia told us that it is not the case that the WTS UK Water O&M business requires patents for irreplaceable and indispensable technologies. It also told us that the inclusion of the staff that provide the relevant innovation capabilities in the divestiture package was appropriately achieved by the scope of Veolia's proposal WTS UK Water O&M divestment business.¹⁸⁷⁷
- 15.334 Regarding access to WTS membranes, Veolia submitted that there was no reason to think that a purchaser would not have access to WTS membranes; that these were sold to third parties and were freely available. It further submitted that it would have no incentive to withdraw them from the market. It told us that, if access to WTS membranes was somehow restricted, customers would not have to redesign or rebuild their facilities.¹⁸⁷⁸
- 15.335 Finally, Veolia submitted that framework agreements were unnecessary for the divestment business to compete effectively. It submitted that, [✂].¹⁸⁷⁹
- 15.336 On the basis of the evidence set out above, we note that the Proposed Suez UK O&M Business will be able to source the WTS products it requires for its clients' sites from the open market or source alternative products (in some cases after making certain site-level adjustments). We consider that in order to ensure greater certainty and continuity of supply for the WTS products required by the Proposed Suez UK O&M Business, the purchaser of the Proposed Suez UK O&M Business should be given the option to enter into

¹⁸⁷⁶ Response to CMA phase 2 RFI from New Suez, 23 June 2022, q.7.

¹⁸⁷⁷ Veolia response to RWP, paragraph 23.

¹⁸⁷⁸ Veolia response to RWP, paragraph 24.

¹⁸⁷⁹ Veolia response to RWP, paragraph 25.

framework agreements with WTS for the supply of WTS products, provided that these were on arm's length terms and did not restrict the divested business from sourcing similar products from alternative suppliers. In line with our normal practice, the CMA will approve the terms of such agreements between the purchaser and WTS prior to the completion of any divestiture transaction.

Minority shareholder consent

15.337 In relation to a possible divestiture of the Proposed Suez UK O&M Business, Veolia told us that Suez owned only 70% of the Suez WTS business, with the remaining 30% held by CDPQ.¹⁸⁸⁰

15.338 Veolia told us that [REDACTED].¹⁸⁸¹

15.339 Veolia told us that it understood from Suez that if CDPQ approval was required, [REDACTED].¹⁸⁸² Suez however told us that given the annual revenues of Suez's UK industrial water O&M business, [REDACTED].¹⁸⁸³

15.340 [REDACTED], and [REDACTED]. We therefore do not consider this issue to represent a material risk in terms of implementing the divestiture of the Proposed Suez UK industrial O&M business.

TSA's

15.341 Similar to the Suez UK waste business, we understand that Suez's UK industrial water O&M business also receives:¹⁸⁸⁴

(a) [REDACTED]

(b) [REDACTED], for which alternative arrangements will be sought if the business is being required to be divested.

15.342 Separately, we also note the possibility that a purchaser will need certain TSA's from the Parties.

¹⁸⁸⁰ Veolia's response to notice of possible remedies, paragraph 105.

¹⁸⁸¹ Veolia's response to notice of possible remedies, paragraph 105.

¹⁸⁸² Veolia's response to notice of possible remedies, paragraph 105.

¹⁸⁸³ Suez's response to CMA phase 2 s.109 notice, 14 June 2022, q.152.

¹⁸⁸⁴ Transcript of response hearing with Suez, 7 June 2022, p.32.

15.343 Suez told us that [REDACTED].¹⁸⁸⁵

15.344 Veolia told us that the Proposed Suez UK O&M Business would have no continuing links with Suez in relation to the current contracts, assets, personnel, IT and other systems, customers or administrative and other support functions (except that where necessary, and at the request of the purchaser, Suez would arrange TSAs for a period, on arms' length terms). Veolia told us that the scope of these TSAs would be very limited and relate to certain back-office functions, eg accounting, payroll and IT (eg Microsoft).¹⁸⁸⁶

15.345 Similar to our conclusion for the Waste Divestiture Remedy (see paragraph 15.91 above), we consider the above separation and TSA issues to be narrow in scope and limited in impact, such that they would not materially increase the implementation risks of this remedy. We would expect these issues to be discussed as part of any sale process, and where necessary, with the eventual purchaser.

15.346 In its response to our RWP, Veolia submitted that, in line with its response regarding the waste divestment, [REDACTED].

Scope of the divestiture package – our conclusions

15.347 Based on our assessment above, we conclude that the appropriate scope of the divestiture package should comprise Suez's UK industrial water O&M services business (the scope of which is in line with the scope of the Proposed Suez UK O&M Business detailed in Appendix C), subject to the inclusion of the O&M Element of the [REDACTED] Contract on the terms specified above (see paragraph 15.261 above).

15.348 We also conclude that Veolia should:

- (a) provide the purchaser a reasonable period under a TSA to continue to access the [REDACTED] platform until such time it can replace the [REDACTED] platform with an alternative platform (including, if available its own platform), subject to appropriate firewalls and procedural safeguards to ring-fence the site-level data relating to the Proposed Suez UK O&M Business for the duration of the TSA (see paragraph 15.287 above);

¹⁸⁸⁵ Email from Monitoring Trustee to the CMA, 27 June 2022, based on Monitoring Trustee's discussions with Suez WTS.

¹⁸⁸⁶ Transcript of response hearing with Veolia, 9 June 2022, p.59.

- (b) take steps to ensure that the purchaser of Suez's UK industrial water O&M business can be given the option to continue to use the 'Suez' brand for the acquired business until the Rebranding Long-Stop Date provided under the New Suez SAPA (or a shorter period as requested or required by the eventual purchaser), to ensure a smooth transition for the purchaser and customers (see paragraph 15.308 above); and
- (c) give the purchaser the option to enter into a framework agreement with WTS for the supply of WTS products, the terms of which will be subject to CMA approval (see paragraph 15.322 above).

15.349 On the basis of our conclusion above, we do not consider it necessary to require a broader scope for the divestiture package than Suez's UK industrial water O&M business.

Water O&M Divestiture Remedy – criteria and availability of suitable purchasers

15.350 We now turn to consider the risks that Suez's UK industrial water O&M business may be sold to a weak or otherwise inappropriate purchaser or that a suitable purchaser may not be available.

15.351 In our Remedies Notice, we invited views on whether there were any specific factors to which we should pay particular regard in assessing purchaser suitability, and whether there were risks that a suitable purchaser was not available.¹⁸⁸⁷

15.352 We set out the views of the Parties and third parties below, before we set out our assessment.

Criteria and availability of suitable purchasers – views of Parties and third parties

15.353 We set out below the views of the Parties and third parties on the criteria for a suitable purchaser, and then on the availability of a suitable purchaser.

Criteria for a suitable purchaser

15.354 Veolia told us that in assessing purchaser suitability, other than the CMA's standard criteria for a suitable purchaser, it did not consider that there were

¹⁸⁸⁷ Remedies notice, paragraph 56.

any particular circumstances of this case or the relevant market that would mean we should pay particular regard to any other specific factors or requirements.¹⁸⁸⁸

15.355 Veolia told us that [REDACTED]. It told us that it did not consider that there were any specific purchasers or types of purchaser that should be ruled out as potentially suitable purchasers.¹⁸⁸⁹

15.356 Suez told us that any purchaser with sufficient financial resources and the experience investing in this sector would be capable of running the Proposed Suez UK O&M Business ‘competitively’, thereby addressing the Water O&M SLC. It explained that this was because ‘any purchaser would be able to acquire the experience, capabilities and technical compliance’ to meet customers’ requirements from the Proposed Suez UK O&M Business itself.¹⁸⁹⁰

15.357 Alpheus told us that while the operating in industrial water O&M services was mostly about developing credibility and relationships, and therefore the people working in the business were the ‘key assets’, the purchaser’s credibility was also an important consideration. It told us that customers might expect a purchaser to be credible both financially and reputationally.¹⁸⁹¹

15.358 Nalco told us that given the importance of having customer relationships and ‘customer intimacy’ in the industrial water O&M market, it would be ‘beneficial’ for the purchaser to have some ‘customer relationship DNA’ and customer-focus within its organisation.¹⁸⁹²

Availability of a suitable purchaser

15.359 Veolia told us that [REDACTED]. Veolia also provided a list of [REDACTED] (other than New Suez) potential purchasers¹⁸⁹³ for the UK industrial water O&M divestment business whom Veolia considered would satisfy the CMA’s standard criteria for a suitable purchaser.¹⁸⁹⁴ It added that [REDACTED].¹⁸⁹⁵

¹⁸⁸⁸ [Veolia’s response to notice of possible remedies](#), paragraph 79.

¹⁸⁸⁹ Transcript of response hearing with Veolia, 9 June 2022, pp.84 to 85.

¹⁸⁹⁰ Suez’s ‘Note to Monitoring Trustee re. proposed WTS UK O&M divestment remedy’, 19 June 2022, paragraph 4.1.

¹⁸⁹¹ Transcript of hearing call with Alpheus, 30 May 2022, pp.34 to 35.

¹⁸⁹² Transcript of hearing call with Nalco, 31 May 2022, p.16.

¹⁸⁹³ [REDACTED]. Source: [Veolia’s response to notice of possible remedies](#), Confidential Annex 3.

¹⁸⁹⁴ [Veolia’s response to notice of possible remedies](#), paragraph 79.

¹⁸⁹⁵ [Veolia’s response to notice of possible remedies](#), paragraph 86.

- 15.360 Veolia also told us that a divestiture package going beyond the Proposed Suez UK O&M Business would make it harder to sell, [REDACTED].¹⁸⁹⁶
- 15.361 Suez told us that in relation to Suez's UK O&M business, it believed that there would be a lot of interest from quite a 'wide net' of potential buyers, whether from financial buyers or from strategic buyers, [REDACTED]. Suez told us that given the attractiveness of its UK O&M business to potential purchasers, [REDACTED].¹⁸⁹⁷
- 15.362 Alpheus told us that there were few operators of industrial water assets outside of the UK, and queried whether industrial customers would consider non-UK purchasers to be credible. In this regard, it considered that non-UK purchasers would 'probably struggle' to establish credibility in the UK. However, it told us that it would expect UK purchasers to be interested in acquiring Suez's UK O&M business, and confirmed that Alpheus itself would be interested in acquiring that business.¹⁸⁹⁸
- 15.363 Alpheus also told us that it would expect customers to be 'more comfortable' dealing with a large O&M provider, because the customer would expect a purchaser to have Professional Indemnity insurance cover, which a small provider would find difficult to put in place. It added that in order to put this insurance in place, a provider would need turnover to be at least the size of the contract being bid for.¹⁸⁹⁹
- 15.364 [REDACTED].¹⁹⁰⁰

Criteria and availability of suitable purchasers – our assessment

15.365 We set out below:

- (a) our assessment of the criteria for a suitable purchaser; and
- (b) our assessment of the availability of a suitable purchaser.

Criteria for a suitable purchaser

15.366 We noted Veolia's submission that [REDACTED]. We agree and consider that our Purchaser Suitability Criteria (as defined in paragraph 15.100 above) would

¹⁸⁹⁶ Transcript of response hearing with Veolia, 9 June 2022, pp.11 to 12.

¹⁸⁹⁷ Transcript of response hearing with Suez, 7 June 2022, pp.67 to 68.

¹⁸⁹⁸ Transcript of hearing call with Alpheus, 30 May 2022, p.19.

¹⁸⁹⁹ Transcript of hearing call with Alpheus, 30 May 2022, p.44.

¹⁹⁰⁰ Transcript of hearing call with Nalco, 31 May 2022, p.26.

be appropriate for the purpose of identifying a suitable purchaser for Suez's UK industrial water O&M business, including identifying a purchaser with the relevant experience and capabilities.

- 15.367 Given the particular circumstances of this case, we consider that a purchaser without the relevant expertise or experience would be unlikely to be a suitable purchaser, and consider that a financial buyer who cannot demonstrate that it has that relevant expertise or experience would be unlikely to be approved by the CMA as a potential purchaser.

Availability of a suitable purchaser

- 15.368 We note from Veolia that [redacted],¹⁹⁰¹ a smaller business than the Proposed Suez UK O&M Business. We also note that S  ch   Environnement entered into a put-option agreement with Veolia to acquire Veolia's French industrial water business (ie the Veolia IWF Divestment Business as required under the EC Remedies).¹⁹⁰² This may provide some indication that there is likely to be interest from strategic buyers in Suez's industrial water UK O&M business.
- 15.369 We also considered that the list of potential purchasers provided by Veolia appeared reasonable and provide some further indication that the risk of not finding a suitable purchaser would be low.
- 15.370 We have not seen evidence to suggest that a suitable purchaser cannot be found nor that we should have material doubts about the marketability of Suez's UK industrial water O&M business, and therefore, in our view, we consider that it would not be necessary to require an upfront buyer (ie require a purchaser by the date the CMA accepts final undertakings or makes a final order).
- 15.371 In any case, we would note that the CMA's guidance on remedies states that in relation to whether divestiture is feasible, substantial uncertainty as to whether a suitable purchaser will emerge will generally not be sufficient for the CMA to conclude that any form of divestiture remedy is not feasible. The CMA has found that it is normally possible to implement divestiture

¹⁹⁰¹ Veolia Response Hearing presentation, 9 June 2022, slide 2.

¹⁹⁰² Veolia's website: [Veolia and S  ch   Environnement sign an agreement to sell a part of Veolia' activities in industrial water treatment services in France to S  ch   Environnement](#), 24 May 2022, accessed by the CMA on 7 July 2022..

remedies, despite such uncertainties, given flexibility in the disposal price.¹⁹⁰³

Criteria and availability of suitable purchasers – our conclusions

- 15.372 Based on our assessment above, we conclude that a purchaser of Suez’s UK industrial water O&M services business should satisfy our Purchaser Suitability Criteria, and that the risk of not finding a suitable purchaser is low.
- 15.373 In considering the suitability of a purchaser for the divested business, we consider that a purchaser with existing operations in water and the industrial water O&M services sectors would likely represent a suitable purchaser (provided that the purchaser does not raise further competition concerns), and that a financial buyer who cannot demonstrate that it has that relevant expertise or experience would be unlikely to be approved by the CMA as a potential purchaser.

Water O&M Divestiture Remedy – ensuring an effective divestiture process

- 15.374 An effective divestiture process will safeguard the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale, as well as allowing prospective purchasers to make an appropriately informed acquisition decision.

Submissions on ensuring an effective divestiture process

- 15.375 In relation to the need for further interim measures, Veolia told us that it saw no reason why any hold-separate or business preservation obligations should apply to parts of Veolia’s or Suez’s businesses which did not form part of any divestment remedy. In particular, Veolia told us that the relevant provisions of the IEO could continue to apply to the Proposed Suez UK O&M Business, but not to the wider Suez WTS business, which would not be subject to any divestment remedy.¹⁹⁰⁴
- 15.376 In relation to the divestment of the Proposed Suez UK O&M Business, Veolia told us that it would be able to implement the proposed divestment quickly and effectively given that the divestment would be a straight-forward

¹⁹⁰³ CMA87, paragraph 3.51.

¹⁹⁰⁴ Veolia’s response to CMA phase 2 s.109 notice, 14 June 2022, q.161.

share sale.¹⁹⁰⁵ Veolia also told us that a [X] initial divestiture period (ie from the date final undertakings have been accepted) would be sufficient to complete the sale, including to accommodate New Suez's right of first refusal process, and the CMA's purchaser approval process.¹⁹⁰⁶

15.377 Alpheus told us that in order to protect staff and customers, a divestiture should be completed quickly. It told us that the 'people' were the 'key assets'.¹⁹⁰⁷

Our assessment and conclusions

15.378 For the purpose of divesting Suez's UK industrial water O&M business, we considered:

- (a) the need for additional interim measures during the divestiture process;
- (b) the appropriate timescale for divestiture to take place;
- (c) New Suez's right of first refusal to acquire Suez's UK industrial water O&M business; and
- (d) whether, and under what circumstances, there is a need to appoint a Divestiture Trustee. We considered that the circumstances which applied to a divestiture process for the Waste Divestiture Remedy would apply equally to a divestiture process for the Water O&M Divestiture Remedy.

15.379 In relation to Veolia's submission that the current asset maintenance provisions of the IEO could be disapplied for Veolia's or Suez's businesses which are not subject to any divestment remedies, for the duration of the divestiture process, we do not consider it necessary for the purpose of determining an appropriate remedy for the CMA to decide on this point prior to our final report, the question of whether to amend the scope of any asset maintenance provisions at this stage.

15.380 We consider that our views and conclusions from our assessment in paragraphs 15.125 to 15.175 above, to ensure an effective divestiture

¹⁹⁰⁵ [Veolia's response to notice of possible remedies](#), paragraph 106.

¹⁹⁰⁶ Veolia's response to CMA phase 2 s.109 notice, 14 June 2022, q.157.

¹⁹⁰⁷ Transcript of hearing call with Alpheus, 30 May 2022, pp.33 to 34.

process for the Waste Divestiture Remedy apply to the Water O&M Divestiture Remedy, namely that:

- (a) the IEO's current asset maintenance obligations should continue to apply until completion of the divestiture remedy; the Monitoring Trustee's appointment should continue in order to monitor the Parties' compliance with these obligations and its role expanded to monitor the divestiture process; and the CMA should reserve its rights to appoint a Hold Separate Manager (if necessary) (see paragraphs 15.144 and 15.145).
- (b) the Initial Divestiture Period for the Water O&M Divestiture Remedy should [X] and that Veolia should be required to submit a draft timetable for the CMA's approval (by no later than five working days after the CMA's acceptance of final undertakings or the making of a final order) (see paragraph 15.156);
- (c) the Initial Divestiture Period for the Water O&M Divestiture Remedy should not be extended to separately accommodate any possible delays arising from the processes envisaged under the New Suez SAPA concerning a possible sale of the divestment business to New Suez (see paragraph 15.165); and
- (d) it would not be necessary to appoint a Divestiture Trustee at the outset, but that the CMA should reserve its rights to appoint one where necessary (see paragraphs 15.173 to 15.175).

Water O&M Divestiture Remedy – conclusions on effectiveness

15.381 Based on our assessment above, we set out below our conclusions on the effectiveness of the Water O&M Divestiture Remedy requiring the divestiture of Suez's UK industrial water O&M business, the scope of which is in line with the scope of the Proposed Suez UK O&M Business detailed in Appendix C, subject to the inclusion of the O&M Element of the [X] Contract on the terms specified in paragraph 15.261 above.

15.382 We would expect a divestiture of Suez's UK industrial water O&M business (designed according to our specifications above) to restore on its completion the market structure and dynamic rivalry expected in the absence of the Merger, and address the Water O&M SLC at source. It would therefore represent a comprehensive solution to all aspects of the Water O&M SLC and its resulting adverse effects.

15.383 In relation to the practicality of implementing the Water O&M Divestiture Remedy, a divestiture of Suez's UK industrial water O&M business would

involve a share sale of an existing legal entity holding the Suez UK industrial water O&M business, thereby minimising the transfer or the need to undertake an extensive carve-out exercise, which could give rise to the risk of omitting key assets that could result in the divested business being a structurally weaker competitor.

15.384 We also considered the practical issues relating to the potential composition, purchaser and asset risks normally associated with a divestiture remedy and have reached our conclusion that the design of our remedy as we have specified above addresses these risks.

15.385 In relation to the risk profile of the Water O&M Divestiture Remedy, we conclude that there is a high degree of certainty that this remedy would achieve its intended effect, and therefore, the risks in terms of this remedy's effectiveness are low.

15.386 Based on our assessment above, we conclude that a divestiture of Suez's UK industrial water O&M business (as specified above) to a purchaser approved by the CMA would represent an effective remedy to the Water O&M SLC and its resulting adverse effects.

Assessment of the effectiveness of a divestiture remedy to address the MWS SLC

15.387 In this section, we consider the effectiveness of a divestiture remedy to address the MWS SLC, ie an MWS Divestiture Remedy. Our assessment is structured as follows:

- (a) our assessment of the effectiveness of an MWS Divestiture Remedy; and
- (b) our conclusions on the effectiveness of an MWS Divestiture Remedy.

MWS Divestiture Remedy – our assessment of effectiveness

15.388 As mentioned in paragraph 15.184 above, the CMA's guidance on remedies states that the CMA will seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. The CMA's guidance also states that the CMA will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, to the divestiture of part of a business or a collection of assets, given that the divestiture of a complete business is less likely to be

subject to purchaser and composition risk and can generally be achieved with greater speed.¹⁹⁰⁸

15.389 In Chapter 14, we considered that the Parties are close competitors in the supply of MWS in the UK and that they are the two largest MWS suppliers in the UK in terms by market share and fleet size.¹⁹⁰⁹

15.390 In our Remedies Notice, we set out our initial view that while we had yet to form an initial view on the scope of what would constitute the smallest viable, stand-alone business that could form the basis of an effective divestiture package in relation to the provisional MWS SLC, we would consider exploring the following possible divestiture options:¹⁹¹⁰

- (a) a divestiture of the Veolia EEA MWS Divestment Business as required under the EC Remedies on the basis that it already includes Veolia's UK MWS business;
- (b) a divestiture of Suez's UK MWS business; or
- (c) a divestiture of a broader divestiture package that goes beyond the UK operations of either Suez or Veolia.

15.391 Provided that we can be confident that the usual design risks (ie composition, purchaser and asset risks) associated with a divestiture remedy can be appropriately mitigated, we would expect a complete divestiture of a UK MWS business of one of the Parties to result in the creation of a new competitor in the UK MWS market which could potentially replicate the full capabilities in MWS as one of the Parties, including the capabilities to offer MWS using both membrane and resin technologies and to serve both water and wastewater markets. We would expect such a remedy to be effective in addressing our MWS SLC.

15.392 We consider below the effectiveness of Veolia's proposed divestiture remedy under the EC Remedies, as part of which we consider whether the scope of the proposed divestiture package should be amended, or whether we should consider a different divestiture package in order to comprehensively address our MWS SLC.

¹⁹⁰⁸ CMA87, paragraph 5.7.

¹⁹⁰⁹ Chapter 14, paragraphs 14.26 and 14.47.

¹⁹¹⁰ Remedies notice, paragraphs 41 and 42.

MWS Divestiture Remedy – design considerations

15.393 An effective divestiture remedy should give us confidence that the composition, purchaser and asset risks normally associated with a divestiture remedy can be properly addressed in its design. We therefore consider the following:

- (a) the appropriate scope of the divestiture package;
- (b) the identification and availability of suitable purchasers; and
- (c) ensuring an effective divestiture process.

15.394 Our assessment is set out below.

MWS Divestiture Remedy – scope of the divestiture package

15.395 We set out below our assessment of the appropriate scope of the divestiture package required to address the MWS SLC, and mitigate the risk that the scope of the divestiture business is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor.

Scope of the divestiture package – third parties' views

15.396 [X] told us that the divestment of Veolia's European MWS business, under Veolia's remedy commitments to the European Commission, would result in returning the market to a situation that would have existed if the Merger had not taken place.¹⁹¹¹ In relation to the appropriate scope of a divestiture package, [X] told us that:

- (a) infrastructure and a regeneration facility were critical for mobile water units and that it would be possible to use regeneration facilities which were based on the continent outside of the UK;¹⁹¹²
- (b) workshops to design and manufacture technology solutions were a key capability if the provider was building new equipment to sell;¹⁹¹³

¹⁹¹¹ Transcript of hearing call with [X].

¹⁹¹² Transcript of hearing call with [X].

¹⁹¹³ Transcript of hearing call with [X].

- (c) the manufacturing capability of mobile water units was essential if the provider wanted to be competitive in the market;¹⁹¹⁴
- (d) IT systems and software had become increasingly important due to customers wanting to understand processes and have greater visibility, and therefore these systems should be part of any divestment package;¹⁹¹⁵
- (e) the divestment business should include the key staff of the business, including: a sales team; engineering team (including a team to build the equipment and a team working on the applications); technical personnel; a field service team and a team to run the regeneration plant;¹⁹¹⁶ and
- (f) know-how was an important feature of the MWS market and were related to how equipment was built and the processes used.¹⁹¹⁷

15.397 Nalco told us that in order to operate effectively in the MWS market, the business would need to have a fleet of mobile units available within ‘certain geographic areas’, and with a ‘certain core mass’ to be able to service those ‘key markets’.¹⁹¹⁸ Nalco also told us that it considered that competition in the MWS market would be ‘vivid and ongoing’ if Veolia’s European MWS business was divested to Saur.¹⁹¹⁹

15.398 Nijhuis, which is ultimately owned by Saur, told us that a divestiture of Veolia’s European MWS business would represent a comprehensive and effective remedy, which was capable of implementation.¹⁹²⁰

15.399 In Chapter 14, we set out the evidence we received from customers and competitors which indicated that in order to compete effectively in the supply of MWS in the UK, a significant provider would need to:¹⁹²¹

- (a) have a large fleet of mobile units;
- (b) have the requisite know-how, expertise, experience and references;

¹⁹¹⁴ Transcript of hearing call with [REDACTED].

¹⁹¹⁵ Transcript of hearing call with [REDACTED].

¹⁹¹⁶ Transcript of hearing call with [REDACTED].

¹⁹¹⁷ Transcript of hearing call with [REDACTED].

¹⁹¹⁸ Transcript of hearing call with Nalco, 31 May 2022, pp.9-10.

¹⁹¹⁹ Transcript of hearing call with Nalco, 31 May 2022, p.4.

¹⁹²⁰ [Saur's response to the notice of possible remedies](#), paragraph 2.7.

¹⁹²¹ Chapter 14, paragraphs 14.9, 14.15, 14.33, 14.37, 14.38(b) and 14.39.

- (c) have the capabilities to offer both membrane and resin technologies;
- (d) have sufficient financial resource to invest in its fleet and technologies; and
- (e) be based in the UK and have a local presence, and have the ability to offer customers quick response times.

15.400 We also noted in Chapter 14 the evidence from some customers that one of the reasons why they would find it difficult to switch to another supplier was because they did not view other suppliers as having the same capabilities as the Parties, eg in terms of the Parties' fleet size and their swift response times.¹⁹²²

Scope of the divestiture package – Veolia's MWS Remedy Proposal

15.401 Under Veolia's MWS Remedy Proposal, Veolia is proposing to divest the Veolia EEA MWS Divestment Business (including Veolia's UK MWS business), which Veolia had already committed to divest under its remedy commitments to the European Commission.¹⁹²³ For the purpose of this paper and our assessment, we refer to the Veolia EEA MWS Divestment Business as the **Proposed Veolia EEA MWS Business**.

15.402 Veolia told us that the Proposed Veolia EEA MWS Business was a fully stand-alone, viable business that would be able to compete effectively in the UK MWS market, and that it was a profitable business, with revenues of [X] million and an EBITDA (earnings before interest, tax, depreciation and amortisation) of [X] million in 2021 and forecast revenues of [X] and EBITDA of [X] million for 2022.¹⁹²⁴

15.403 The details of the scope of the Veolia EEA MWS business which Veolia proposes to divest under Veolia's MWS Remedy Proposal is set out in Appendix C.

Scope of the divestiture package – Parties' views

15.404 Veolia told us that the scope of the Proposed Veolia EEA MWS Business was appropriately configured to attract a suitable purchaser, and to allow that purchaser to operate as an effective competitor. It told us that in order to

¹⁹²² Chapter 14, paragraph 14.47.

¹⁹²³ [Veolia's response to notice of possible remedies](#), paragraph 13.

¹⁹²⁴ [Veolia's response to notice of possible remedies](#), paragraph 135.

operate independently immediately on divestment, the divested business would require:¹⁹²⁵

- (a) a fleet of mobile units with a range of technologies to meet all mobile water treatment requirements;
- (b) parking capacity;
- (c) a team of technicians trained in water treatment; and
- (d) a sales team.

15.405 Veolia told us that under Veolia's MWS Remedy Proposal, the divestiture of the Proposed Veolia EEA MWS Business would be fully effective in eliminating the relevant SLC, proportionate to our concerns, and simple to implement. In this regard, Veolia told us that:¹⁹²⁶

- (a) Veolia's MWS Remedy Proposal would fully address the concerns in relation to MWS, as it included the divestment of all of Veolia's MWS activities in the UK;
- (b) Veolia's MWS Remedy Proposal would allow the purchaser to be an effective and credible competitor in the UK MWS market as the purchaser would gain Veolia's entire MWS business in the UK and in the EEA;
- (c) the Proposed Veolia EEA MWS Business was viable as a stand-alone business and would come with all personnel currently involved in VWT's UK and EEA MWS business, and had no links to Veolia's remaining MWS business which was organised by region, ie Americas, Asia-Pacific, and Middle East;
- (d) the Proposed Veolia EEA MWS Business was attractive to buyers; and
- (e) its divestiture would be straight-forward to implement (the divestiture would be implemented by way of an asset sale).¹⁹²⁷ Veolia told us that it had already entered into a put-option agreement with Saur giving Veolia the right to sell the Proposed Veolia EEA MWS Business to Saur, which demonstrated that the Proposed Veolia EEA MWS

¹⁹²⁵ [Veolia's response to notice of possible remedies](#), paragraph 136.

¹⁹²⁶ [Veolia's response to notice of possible remedies](#), paragraph 13.

¹⁹²⁷ Veolia told us that the Proposed Veolia EEA MWS Business was organised within indirect, wholly-owned subsidiaries of Veolia under VWT. Source: [Veolia's response to notice of possible remedies](#), paragraph 145.

Business was attractive and viable, and that its divestment would be straight-forward to implement.¹⁹²⁸

- 15.406 Veolia told us that the Proposed Veolia EEA MWS Business had the capabilities to supply all MWS within the UK and EEA, namely: emergency services, planned services and multi-year services,¹⁹²⁹ and therefore, a purchaser of the divestment business would be an effective competitor across the full range of MWS, restoring fully the competition in the MWS market between Suez and Veolia that could be expected in the absence of the Merger.¹⁹³⁰
- 15.407 In relation to whether the Veolia or Suez MWS business should be divested, Veolia told us that a divestment of Veolia's European MWS business was the 'most effective, proportionate and practical divestment option'.¹⁹³¹ It added that since Veolia was already required to divest its European MWS business under its commitments to the European Commission, an additional divestment of Suez WTS's MWS business would be unnecessary and disproportionate, and added that if Veolia were required to divest Suez's UK MWS business as well, it would be left with no MWS activities in the UK at all.¹⁹³²
- 15.408 Veolia told us that a broader divestment than the Proposed Veolia EEA MWS Business to address the MWS SLC was disproportionate to the size of the overlap, and this applied to whether the broader divestment package consisted of Suez WTS or VWT globally or any broader Veolia divestment package.¹⁹³³
- (a) *Suez WTS*: Veolia told us that the overlap between the Parties in MWS was a tiny fraction of WTS's global revenues, and that in 2019, WTS's combined UK and EEA turnover from its MWS activities was only [%]; and
- (b) *VWT*: Veolia told us that the overlap between the Parties in MWS was a tiny fraction of VWT's global revenues of [%] in 2019 and 2020, and that in 2019, VWT's UK and EEA turnover from its MWS activities was

¹⁹²⁸ Veolia's response to notice of possible remedies, paragraph 14.

¹⁹²⁹ Veolia's response to notice of possible remedies, paragraph 137.

¹⁹³⁰ Veolia's response to notice of possible remedies, paragraph 138.

¹⁹³¹ Veolia's response to notice of possible remedies, paragraph 172.

¹⁹³² Veolia's response to notice of possible remedies, paragraph 173.

¹⁹³³ Veolia's response to notice of possible remedies, paragraph 181.

only [REDACTED]. It therefore considered that a global divestment of the VWT business would be entirely disproportionate.

15.409 Suez told us that that operating in the MWS market was very capital-intensive, requiring capital both to maintain and grow the fleet. It told us that in addition to the fleet, the MWS business would require: [REDACTED].¹⁹³⁴

15.410 In relation to whether it was important for an MWS business to have the in-house capability to manufacture mobile units in order to compete effectively in the UK market, Suez told us that there would be some benefit, eg the ability to build in-house would help the business to control its costs. However, it added that this manufacturing capability could also be outsourced, and that Suez [REDACTED].¹⁹³⁵

15.411 In relation to whether Suez's UK MWS business could be carved out of the Suez WTS business and divested, Suez told us that it would be very difficult to separate out its UK MWS business. It told us that Suez's European MWS business was run out of Peterborough, [REDACTED]. Therefore, Suez told us that divesting its UK MWS business (including the Peterborough service centre) would have a significantly detrimental impact on its wider European MWS business. In any case, Suez told us that Veolia was proposing to sell its European MWS business and that this business would have more scale than Suez's UK MWS business.¹⁹³⁶

Scope of the divestiture package – our assessment

15.412 Based on the evidence above and our assessment of the scope of the Proposed Veolia EEA MWS Business (the details of which are set out in Appendix C), we focus our assessment on the following possible key areas of composition, carve-out and implementation risks we have identified:

- (a) capabilities to build technological solutions;
- (b) absence of a brand; and
- (c) TSAs.

15.413 We consider each of these in turn below.

¹⁹³⁴ Transcript of response hearing with Suez, 7 June 2022, pp.46 to 49.

¹⁹³⁵ Transcript of response hearing with Suez, 7 June 2022, pp.49 to 50.

¹⁹³⁶ Transcript of response hearing with Suez, 7 June 2022, pp.50 to 51.

Capabilities to build technological solutions and mobile units

15.414 We consider that in order to ensure that the Proposed Veolia EEA MWS Business can compete effectively in the UK MWS market, its manufacturing capabilities should capture Veolia's existing manufacturing capabilities necessary to compete in the UK MWS market.

15.415 Veolia told us that the Proposed Veolia EEA MWS Business would also comprise the following, as elected by Saur and therefore part of its put-option agreement with Veolia to acquire the Proposed Veolia EEA MWS Business:¹⁹³⁷

- (a) all activities of Solys' technology solutions manufacturing workshop at the Stoke-on-Trent site (mobile and non-mobile), and the accompanying employees ([REDACTED]), which was a workshop used for the design and manufacture of technology solutions used by the Proposed Veolia EEA MWS Business (the **Solys workshop**);¹⁹³⁸
- (b) a mobile units manufacturing agreement governing the rights and obligations of Veolia and the purchaser in the context of the ongoing manufacturing of several mobile water units, which would be entered into on arm's length terms (the **MU Manufacturing Agreement**);
- (c) a mobile units supply agreement, whereby the purchaser may order from Veolia up to [REDACTED] mobile water units of its choice, which will be entered into on arm's length terms and contain customary provisions for this type of agreement (including a no less favourable treatment clause and provisions relating to supply chain, logistic and capacity constraints) (the **MU Supply Agreement**);
- (d) contracts for the supply of technological solutions used in Veolia's current fleet of mobile units, [REDACTED], for use exclusively in the European MWS market, to the extent they could not be assembled at the Stoke-on-Trent site (namely (Hydrotech, Idraflot and Actiflo Pack)).¹⁹³⁹ Veolia told us that these supply contracts would cover the supply of spare parts for these technological solutions [REDACTED] (the **TS Supply Agreement**).

¹⁹³⁷ Veolia's response to notice of possible remedies, paragraphs 119 to 127.

¹⁹³⁸ Veolia's response to notice of possible remedies, paragraphs 119 to 127.

¹⁹³⁹ Veolia's response to notice of possible remedies, paragraph 128.

- 15.416 Veolia told us that the elements necessary for a purchaser to manufacture the mobile units were the Solys workshop and the TS Supply Agreement, the latter covering the supply of spare parts and technological solutions used in the current fleet of mobile units for use exclusively in the European MWS market, and to the extent they could not be assembled at the Stoke-on-Trent site.¹⁹⁴⁰
- 15.417 Veolia told us that [REDACTED]. It told us that manufacturing involved putting the relevant equipment on to a trailer and assembling it. Veolia told us that (at the European Commission's request) Veolia had included an option for the purchaser for it to acquire the capabilities to manufacture its own mobile assets, ie in the form of the Solys workshop.¹⁹⁴¹
- 15.418 Veolia told us that [REDACTED] the Solys workshop at Stoke-on-Trent [REDACTED] needed to manufacture mobile units used by the MWS divestment business at the Stoke-on-Trent site (as well as mobile and non-mobile technological solutions). It added that there were a few technological solutions that could not be manufactured at Stoke-on-Trent, which would be provided for through supply agreements with VWT [REDACTED]. Veolia told us that in any event, the technological solutions and equipment were highly standardised, so if the purchaser was not active in the supply of technological equipment and solutions, it could easily rent or buy those required. Veolia told us that it was not necessary for the purchaser to manufacture these technological solutions to be competitive in the mobile water services market, all of the technological solutions were mature and, as a result, easily available to all in the market.¹⁹⁴²
- 15.419 Veolia told us that the Solys workshop, [REDACTED] as part of the Proposed Veolia EEA MWS Business, could produce almost all of the technological solutions, and added that to the extent any technological solutions [REDACTED] could not be produced at the Stoke-on-Trent site, [REDACTED], the Proposed Veolia EEA MWS Divestment Business would include contracts for the supply of technological solutions used in Veolia's current fleet of mobile units, [REDACTED], for use exclusively in the European MWS market.¹⁹⁴³
- 15.420 Saur told us that the Solys workshop was an important workshop, which had two key capabilities: (a) the 'design of mobile technologies', for which the Solys workshop had 'a lot of operational experience', including not only how

¹⁹⁴⁰ [Veolia's response to notice of possible remedies](#), paragraphs 119 to 127.

¹⁹⁴¹ Transcript of response hearing with Veolia, 9 June 2022, pp.44 and 45.

¹⁹⁴² [Veolia's response to notice of possible remedies](#), paragraph 159.

¹⁹⁴³ [Veolia's response to notice of possible remedies](#), paragraph 144.

to build the units, but also how to operate these units – in this regard, Saur told us that [REDACTED]; and (b) the ability to build competitive ‘mobile solution capacity’, eg trailers, containers, technology. Saur told us that the Solys workshop was the ‘in-house manufacturer’ for Veolia’s MWS business. It added that the Solys workshop would provide it with the ability to design and manufacture the proprietary technology necessary to operate those rental units and mobile units in the most efficient way. Other than the Solys workshop, Saur told us that it was not aware of any other omissions from the scope of the divestiture package.¹⁹⁴⁴

15.421 We noted the evidence above on the importance of a having a fleet of mobile units with a range of technologies to meet all mobile water treatment requirements. We also noted the view from a third party ([REDACTED]) that know-how was an important feature of the MWS market and was related to how equipment was built and the processes used.¹⁹⁴⁵

15.422 In its response to our RWP, Veolia told us that the Solys workshop was not required for a viable MWS divestment business.¹⁹⁴⁶

15.423 Veolia submitted that it disagreed with the position that the manufacturing capability of mobile water units was essential if the provider wanted to be competitive in the market. It told us that Veolia itself [REDACTED] to the MWS market in which we found a provisional SLC. It told us that our assessment of the supply of MWS did not address competition in the design and supply of mobile water units, which were widely available from third party suppliers and there was no need for the divestment business to have this capability in-house.¹⁹⁴⁷

15.424 Veolia told us that under its commitments to the EC, the Solys workshop was an optional “add on” to the scope of the divestment that could be included at the request of the purchaser. It told us that there was no reason for us not to align our proposed divestment remedy with Veolia’s commitments to the EC, such that divestment of the Solys workshop would be at the option of the purchaser, not a required part of the divestment business.¹⁹⁴⁸

15.425 Considering the evidence set out above, including Veolia’s submissions on our RWP, on balance, we consider that in order to ensure the Proposed

¹⁹⁴⁴ Transcript of hearing call with [REDACTED].

¹⁹⁴⁵ Transcript of hearing call with [REDACTED].

¹⁹⁴⁶ Veolia response to RWP, paragraph 38.

¹⁹⁴⁷ Veolia response to RWP, paragraph 39.

¹⁹⁴⁸ Veolia response to RWP, paragraph 40.

Veolia EEA MWS Business has the capabilities it needs to compete effectively as a stand-alone business, and in order to restore the pre-Merger competitive situation where Veolia's MWS business would have the capabilities to build and develop its technological solutions, any purchaser of the Proposed Veolia EEA MWS Business should be required to acquire the Solys workshop (which contains the requisite know-how and the capability to build technological solutions), unless the purchaser does not wish to acquire the Solys workshop and is able to demonstrate to the CMA that it has a satisfactory alternative. This may include the purchaser owning or having access to equivalent assets and capabilities. We consider that this would ensure the purchaser would be able to develop, manufacture or secure its own technological solutions (we also note [§]).

15.426 We consider that provided that the Proposed Veolia EEA MWS Business includes the Solys workshop, or, if relevant, the purchaser is able to demonstrate to the CMA that it has a satisfactory alternative, the purchaser would have the in-house know-how and capabilities to develop, manufacture or secure its own mobile technologies, such that it would not be dependent on Veolia. In that regard, we consider the various proposed agreements between the purchaser of the Proposed Veolia EEA MWS Business and Veolia, namely the MU Manufacturing Agreement, the MU Supply Agreement and the TS Supply Agreement, relate to capabilities which are not strictly necessary to the core manufacturing capabilities of the Solys workshop, but nonetheless provide the purchaser with greater choice in terms of its supplier options. In this regard, we note that [§]. While we do not consider it necessary to require the mandatory inclusion of these agreements as part of the divestiture package, the final terms of any agreements related to this transaction should be subject to the CMA's approval as part of the CMA's wider purchaser and transaction approval process.

TSAs

15.427 As set out in Appendix C, the purchaser would have the option to request TSAs, which:¹⁹⁴⁹

¹⁹⁴⁹ [Veolia's response to notice of possible remedies](#), paragraphs 119 to 127.

- (a) would have a duration for up to [REDACTED] years (with the purchasing having the option to extend this by a further [REDACTED] years if necessary) under the supervision of a monitoring trustee;
- (b) would cover in particular:
 - (i) software and computer systems;
 - (ii) technical services;
 - (iii) legal, administrative and management services;
 - (iv) purchasing; and
 - (v) insurance and real estate services.

15.428 Veolia told us that Veolia's European MWS business already operated as an independent business within the Veolia group and had limited operational links with the wider Veolia business. Accordingly, Veolia told us that the divestment would be straight-forward to implement and the scope and duration of any TSAs would be limited.¹⁹⁵⁰

15.429 Saur told us that for its acquisition of the Proposed Veolia EEA MWS Business, [REDACTED].¹⁹⁵¹

15.430 We consider that the scope of any TSAs a purchaser may require to be narrow in scope (ie limited to back-office functions) and therefore have a limited impact on the effectiveness of this remedy, such that these TSAs would not materially increase the implementation risks of this remedy. We would expect these issues to be discussed as part of any sale process, and where necessary, with the eventual purchaser.

15.431 While we note that the potential duration of the TSAs appears relatively long [REDACTED], we note the evidence from [REDACTED], and should Saur not be approved as a suitable purchaser of the Proposed Veolia EEA MWS Business, given the narrow scope of the TSAs and noting that [REDACTED], we consider it unlikely that the TSAs would be required for the full [REDACTED] years.

15.432 In its response to our RWP, Veolia told us that it agreed that it was unlikely that any TSA would be required for the full [REDACTED] and that any purchaser with the relevant experience, including Saur, would be able to quickly and easily

¹⁹⁵⁰ Veolia's response to notice of possible remedies, paragraph 166.

¹⁹⁵¹ Transcript of hearing call with [REDACTED].

replace the services subject to TSAs. It also told us that it agreed with us that, even if there were TSAs in place, these would be narrow in scope and would not materially increase the implementation risks of the remedy.¹⁹⁵²

Scope of the divestiture package – our conclusions

15.433 Based on our assessment above, we conclude that the appropriate scope of the divestiture package would comprise the Proposed Veolia EEA MWS Business (in line with the scope of the divestiture package required under the EC Remedies for the Veolia EEA MWS Divestment Business as set out in Appendix C), including the Solys workshop (which is included as part of the Veolia EEA MWS Divestment Business on an elective basis). However, we consider that for the purpose of ensuring an effective remedy, the Solys workshop should be included as part of the Veolia EEA MWS Divestment business unless the purchaser does not wish to purchase the Solys workshop and is able to demonstrate that it has a satisfactory alternative.

15.434 Based on our assessment above, in relation to the scope of the divestiture package, we conclude that a divestiture of the Proposed Veolia MWS Business (subject to the inclusion of the Solys workshop, unless the purchaser does not wish to purchase the Solys workshop and is able to demonstrate that it has a satisfactory alternative) would comprehensively address the MWS SLC and its resulting adverse effects.

MWS Divestiture Remedy – criteria and availability of suitable purchasers

15.435 Having concluded that the scope of the divestiture package should be Veolia's EEA MWS business, we now turn to consider the risks that it may be sold to a weak or otherwise inappropriate purchaser or that a suitable purchaser may not be available.

15.436 New Suez has already decided not to exercise its right of first refusal under the New Suez SAPA for the Proposed Veolia EEA MWS Business and Veolia has entered into a put-option agreement to sell the business to Saur. Therefore, unlike the Waste Divestiture Remedy and the Water O&M Divestiture Remedy, it is highly unlikely that it would be necessary for us to consider New Suez's potential role for the purpose of the MWS Divestiture Remedy. We therefore do not consider this matter further.

¹⁹⁵² Veolia response to RWP, paragraph 37.

15.437 In our Remedies Notice, we invited views on whether there were any specific factors to which the CMA should pay particular regard in assessing purchaser suitability, and whether there were risks that a suitable purchaser was not available.¹⁹⁵³ We set out the views of the Parties and third parties below, before we set out our assessment.

Criteria and availability of suitable purchasers – views of Parties and third parties

15.438 We set out below the views of the Parties and third parties first on the criteria for a suitable purchaser, and then on the availability of a suitable purchaser.

Criteria for a suitable purchaser

15.439 Suez told us that since the MWS business was capital-intensive, a suitable purchaser should be able to provide the MWS business with the capital it would need to grow the business.¹⁹⁵⁴

15.440 Nijhuis (Saur) told us that there was no purchaser risk associated with a divestment of the Proposed Veolia MWS Business and submitted that it was already engaging with the European Commission as a suitable purchaser, subject to final approval. It told us it would be capable of immediately providing a strong and effective competitive alternative to the Merged Entity.¹⁹⁵⁵

Availability of a suitable purchaser

15.441 Veolia told us that throughout the European Commission's commitments process, the Proposed Veolia EEA MWS Business had proven to be a highly marketable package [REDACTED].¹⁹⁵⁶ It also told us that the attractiveness of the Veolia's European MWS business was confirmed by the fact that Saur agreed to an irrevocable commitment to acquire this business by entering into a put-option agreement with Veolia.¹⁹⁵⁷

15.442 In relation to the availability of a suitable purchaser, Veolia told us that it had [REDACTED] entered into a put-option agreement with Saur on 6 May 2022. Veolia told us that Saur was a French group, with group revenues of €1.3 billion in

¹⁹⁵³ Remedies notice, paragraph 56.

¹⁹⁵⁴ Transcript of response hearing with Suez, 7 June 2022, p.56.

¹⁹⁵⁵ Saur's response to the notice of possible remedies, paragraph 2.6(b).

¹⁹⁵⁶ Veolia's response to notice of possible remedies, paragraphs 175 and 176.

¹⁹⁵⁷ Veolia's response to notice of possible remedies, paragraph 135.

2020, that designed and operated drinking water production and wastewater treatment facilities internationally. Veolia Saur already had a small presence in MWS in the UK via its subsidiary Nijhuis Saur Industries, as well as an industrial water O&M business in the UK,¹⁹⁵⁸ and was therefore, very well-placed to operate the Proposed Veolia EEA MWS Business as an effective competitor.¹⁹⁵⁹

15.443 Alpheus told us that it would expect there to be a lot of potential buyers for the MWS business, and that it would not be necessary to divest that business with the water O&M business, in particular given that the MWS and water O&M businesses were completely different businesses, with very different business models, eg mobile assets were used in MWS while the water O&M business was mainly concerned with fixed assets.¹⁹⁶⁰

15.444 [X] told us that while it did not have a particular view on the suitability of Saur, if Saur acquired Veolia's European MWS business, it had other products, which it could add to the divestment business to offer a 'wider spread of solutions' for customers.¹⁹⁶¹

15.445 Nalco told us that it believed that Saur, as purchaser of Veolia's MWS business, would ensure that competition in the MWS market would be 'vivid and ongoing'.¹⁹⁶²

Criteria and availability of suitable purchasers – our assessment

15.446 We set out below:

- (a) our assessment of the criteria for a suitable purchaser; and
- (b) our assessment of the availability of a suitable purchaser.

Criteria for a suitable purchaser

15.447 We consider that our Purchaser Suitability Criteria would be appropriate for the purpose of identifying a suitable purchaser.

¹⁹⁵⁸ [Veolia's response to notice of possible remedies](#), paragraph 14.

¹⁹⁵⁹ [Veolia's response to notice of possible remedies](#), paragraph 138.

¹⁹⁶⁰ Transcript of hearing call with Alpheus, 30 May 2022, pp.22 to 24.

¹⁹⁶¹ Transcript of hearing call with [X]

¹⁹⁶² Transcript of hearing call with Nalco, 31 May 2022, p.4.

Availability of a suitable purchaser

15.448 We note that [X] and we will consider the suitability of Saur as a potential purchaser of that divestment business, applying our Purchaser Suitability Criteria as we have decided above.

15.449 However, we consider that even if Saur was not approved either by the CMA or the European Commission, we have not seen evidence to suggest that an alternative suitable purchaser cannot be found nor that we should have material doubts about the marketability of the Proposed Veolia EEA MWS business, and therefore, we consider that the risk of not finding a suitable purchaser to be low.

Criteria and availability of suitable purchasers – our conclusions

15.450 Based on our assessment above, we conclude that:

- (a) a purchaser of the Proposed Veolia EEA MWS Business must satisfy our Purchaser Suitability Criteria; and
- (b) the risk of not finding a suitable purchaser is low.

MWS Divestiture Remedy – ensuring an effective divestiture process

15.451 We now turn to our assessment of the procedural safeguards we should put in place to ensure an effective divestiture process, which will safeguard the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale, as well as allowing prospective purchasers to make an appropriately informed acquisition decision.

15.452 For the purpose of divesting Veolia's European MWS business, we considered the following:

- (a) the need for additional interim measures during the divestiture process;
- (b) the appropriate timescale for divestiture to take place; and
- (c) whether, and under what circumstances, there is a need to appoint a Divestiture Trustee.

Need for additional interim measures

15.453 We set out below the view of the Parties and third parties on the risks that the competitive capability of a divestiture package would deteriorate before

completion of divestiture, and what safeguard measures we should put in place, before we set out our assessment and conclusions.

Need for additional interim measures – Parties’ and third parties’ views

- 15.454 Veolia told us that given that Veolia had already identified a buyer for Veolia’s European MWS business, there was little risk of deterioration of its competitive situation during the period of implementation. [REDACTED].¹⁹⁶³
- 15.455 Veolia also told us that no asset risk arose in the Veolia European MWS divestment business due to the ‘short-term’ nature of the MWS market.¹⁹⁶⁴ It explained that the majority of contracts in the market for the supply of MWS were short-term contracts: [REDACTED] of the contracts concluded by VWT were for a period of less than one year. Veolia told us that this both: (a) reduced the impact of potential loss of contracts, which would come to an end in the short-term in any event; and (b) discouraged customers from changing suppliers during the service, as the time it would take to find a new supplier was long relative to the duration of the contract.¹⁹⁶⁵
- 15.456 Veolia however told us that it recognised that the MWS divestment business was already subject to the CMA’s IEO and the business was already monitored by the Monitoring Trustee. While Veolia told us that it did not believe that a Monitoring Trustee would be needed to ensure that the operations and assets of the Veolia European MWS divestment business were maintained and properly supported during the course of the process, it had no objections to the Monitoring Trustee (already appointed by the CMA) remaining in place.¹⁹⁶⁶

Need for additional interim measures – our assessment

- 15.457 We consider that under a remedy requiring the divestiture of Veolia’s EEA MWS business, there would be a continuing need to preserve its independence and competitive capability throughout the divestiture process.
- 15.458 We consider that the asset maintenance provisions of the existing interim measures remain relevant for this purpose, and therefore should continue to remain in force during the implementation of this remedy until its completion,

¹⁹⁶³ [Veolia’s response to notice of possible remedies](#), paragraph 193.

¹⁹⁶⁴ [Veolia’s response to notice of possible remedies](#), paragraphs 175 and 176.

¹⁹⁶⁵ [Veolia’s response to notice of possible remedies](#) paragraph 163.

¹⁹⁶⁶ [Veolia’s response to notice of possible remedies](#) paragraph 193.

and that the existing Monitoring Trustee's appointment should continue to monitor the Parties' compliance with them.

15.459 We consider that the Monitoring Trustee should be involved in certain aspects of the divestiture process (as appropriate), consistent with the CMA's guidance on remedies,¹⁹⁶⁷ in order to monitor the Parties' compliance with their asset maintenance and divestiture obligations. In this regard, we would expect the Monitoring Trustee's role to include:

- (a) monitoring Veolia's progress in relation to the divestiture process;
- (b) monitoring during the divestiture process, the conduct of both Veolia and Suez to ensure timely completion of the divestiture; and
- (c) monitoring Veolia's access to Suez's commercially sensitive information during any due diligence process and its compliance with any appropriate confidentiality safeguards.

15.460 The Monitoring Trustee's mandate should be adjusted to reflect these new functions.

15.461 Separately, we considered whether there was a need to appoint a Hold Separate Manager. We do not consider that the asset risks associated with the divestiture of the Proposed Veolia EEA MWS Business necessitate the appointment of a Hold Separate Manager. Similar to our conclusion on the Waste Divestiture Remedy, the CMA will reserve its rights to appoint a Hold Separate Manager during the divestiture process if the current circumstances were to change materially.

Need for additional interim measures – our conclusions

15.462 Based on the above, we conclude that:

- (a) the Parties' current asset maintenance obligations under the IEO should continue to apply until completion of the full divestiture remedy;
- (b) the Monitoring Trustee's appointment should continue and its role expanded to monitor the Parties' compliance with their divestiture obligations; and

¹⁹⁶⁷ See also [CMA87](#), paragraphs 4.43 and 5.38.

- (c) while we do not currently see a need for a Hold Separate Manager, we conclude that the CMA should reserve its rights to appoint a Hold Separate Manager if necessary.

Timescales to complete divestiture

15.463 We set out below the evidence we received on the appropriate timescales to complete a divestiture of the Proposed Veolia EEA MWS Business, before we set out our assessment and conclusions.

Timescales to complete divestiture – Parties’ and third parties’ views

15.464 Veolia told us that it was keen to proceed quickly with the divestment of Veolia’s European MWS business,¹⁹⁶⁸ and that it aimed to coordinate the timing of the Veolia European MWS divestment business remedy in order to comply with both the European Commission and the CMA’s remedies processes.¹⁹⁶⁹

15.465 In this regard, Veolia told us that:¹⁹⁷⁰

- (a) on 6 May 2022, Veolia and Saur signed a put-option agreement, which gave Veolia the right, but not an obligation, to sell Veolia’s European MWS divestment business to Saur. It added that this agreement bound Saur, but it did not require Veolia to enter into a sale agreement;
- (b) annexed to the put-option was a term sheet setting out the principal terms to be included in a final long-form sale agreement, including – as requested by the CMA – a condition requiring CMA approval prior to completion of the transaction. Veolia told us that these terms were subject to negotiation in any final sale agreement;
- (c) following the signing of the put option with Saur, Veolia would consult with its works council regarding the transaction. It told us that in parallel, the long-form sale agreement would be negotiated with Saur. Veolia told us that once the works council consultation process was complete, Veolia would have the option whether or not to exercise the option and enter into a sale agreement with Saur; and

¹⁹⁶⁸ [Veolia’s response to notice of possible remedies](#), paragraphs 175 and 176.

¹⁹⁶⁹ [Veolia’s response to notice of possible remedies](#), paragraph 189.

¹⁹⁷⁰ [Veolia’s response to notice of possible remedies](#), paragraphs 190 to 192.

- (d) completion would be subject to CMA purchaser approval. It told us that a sale to Saur (or any other purchaser) would also require approval from the European Commission. Veolia told us that it would then have three months from the European Commission's approval of the purchaser to complete the divestment.

15.466 Veolia told us that [REDACTED].¹⁹⁷¹ Veolia clarified that [REDACTED] to enter into a binding sale and purchase agreement under Veolia's commitments to the European Commission. It added that if a binding sale and purchase agreement were to be signed, completion of the transaction would still be conditional on purchaser approval from the CMA and the European Commission (as stipulated in its put-option agreement with Saur, ie as one of the conditions precedent to legal completion).¹⁹⁷²

15.467 Veolia told us that while Veolia was required under its commitments to the European Commission to complete the divestment of its European MWS business within three months after the European Commission approved a suitable purchaser, and therefore the sale of the MWS business was likely to complete first (out of the sale of the three divestment businesses), Veolia told us that the CMA should [REDACTED].¹⁹⁷³

15.468 In its response to our RWP, Veolia told us that an upfront buyer requirement would leave no scope for unforeseen delay or complications in the EC process nor in the sale process with Saur. It told us that [REDACTED].¹⁹⁷⁴

15.469 Veolia further submitted that the remedy should be constructed in a way that allowed the CMA to accept Final Undertakings on the basis of an upfront buyer, but did not require it, ie that Veolia had the option of proposing an upfront buyer within this timeframe, but that if it could not it had the [REDACTED] divestment period to sell the business. Veolia told us it would be highly motivated to find an alternative purchaser as quickly as possible.¹⁹⁷⁵

Timescales to complete divestiture – our assessment

15.470 Given our conclusion that the divestiture of the Proposed Veolia EEA MWS Business would be an effective remedy to our MWS SLC, we consider how

¹⁹⁷¹ [Veolia's response to notice of possible remedies](#), paragraph 194.

¹⁹⁷² Veolia's response to CMA phase 2 s.109 notice, 14 June 2022, q.158.

¹⁹⁷³ Veolia's response to CMA phase 2 s.109 notice, 14 June 2022, q.160.

¹⁹⁷⁴ Veolia's response to RWP, paragraph 33.

¹⁹⁷⁵ Veolia response to RWP, paragraph 34.

our remedies implementation process may run alongside the European Commission's remedy implementation process.

- 15.471 In relation to the European Commission's remedies implementation process, we understand from Veolia that Veolia has [REDACTED],¹⁹⁷⁶ to submit a potential purchaser of the Veolia EEA MWS Divestment Business for the approval of the European Commission and enter into a binding sale and purchase agreement (**SPA**) with Saur,¹⁹⁷⁷ and that once the European Commission approves the purchaser, Veolia will have three months from the European Commission's approval of the purchaser to complete the divestment.¹⁹⁷⁸ Assuming, for simplicity's sake, that the European Commission approves a purchaser on [REDACTED], Veolia will have until around [REDACTED] to complete the sale. However, we note that there is considerable scope for completion to take place either before or after this date, eg depending on the timing of when Veolia submits a purchaser for the European Commission's approval and/or the timing of the European Commission's approval of the purchaser.
- 15.472 Given our conclusion that a divestiture of the Proposed Veolia EEA MWS Business will be an effective remedy to our MWS SLC and given [REDACTED] as its preferred purchaser, we consider that there are procedural benefits to aligning the timings of the CMA's approvals of the SPA and the purchaser with those timings of the European Commission. Given the indicative timings of the European Commission's process, we consider that there is scope for that alignment to take place, in particular in relation to the approval of the SPA and the purchaser. In this regard, and for the purpose of greater alignment between our and the European Commission's remedies processes, we note that [REDACTED].

Timescales to complete divestiture – our conclusions

- 15.473 Based on the above, we conclude that the Initial Divestiture Period for the Proposed Veolia EEA MWS Business should be [REDACTED] and that Veolia should be required to submit a draft timetable for the CMA's approval (by no later than five working days after the CMA's acceptance of final undertakings or the making of a final order). The CMA and the Monitoring Trustee will monitor Veolia's progress against an approved timetable.

¹⁹⁷⁶ Remedies notice, paragraph 194.

¹⁹⁷⁷ Veolia's response to CMA phase 2 s.109 notice, 14 June 2022, q.158.

¹⁹⁷⁸ Veolia's response to notice of possible remedies, paragraphs 190 to 192.

- 15.474 We also conclude that we would aim, to the extent possible, to align our remedies implementation process between now and after the publication of our final report, including our purchaser approval process and our approval of any related transaction documents, with those of the European Commission.
- 15.475 We note Veolia's submission above in paragraph 15.168 in relation to why it would not be necessary to appoint a Divestiture Trustee at the outset for the Waste Divestiture Remedy, also covered its views on this issue for the MWS Divestiture Remedy (and the Water O&M Divestiture Remedy).
- 15.476 In relation to whether there is a need for the appointment of a Divestiture Trustee at the outset of the divestiture process, we did not consider this to be necessary, noting our conclusion in paragraph 15.436 above that the risk of not finding a suitable purchaser is low.
- 15.477 We note the possibility that the CMA may not approve Veolia's preferred purchaser as a suitable purchaser for the Proposed Veolia EEA MWS Business, and therefore while we do not consider a need to appoint a Divestiture Trustee at the outset, we consider that we should reserve our rights to appoint a Divestiture Trustee to ensure a timely completion of this remedy.

MWS Divestiture Remedy – our assessment of remedy effectiveness

- 15.478 Based on the above, to ensure a timely completion of this remedy, we conclude that under the MWS Divestiture Remedy, the CMA should reserve its right to appoint a Divestiture Trustee, and exercise that right if:
- (a) Veolia fails to complete the divestiture process within the Initial Divestiture Period and/or the CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;
 - (b) Veolia is not engaging constructively with the divestiture process; and/or
 - (c) there is further and material deterioration in the divestment business during the divestiture process.

15.479 We also conclude, in line with the CMA's normal practice,¹⁹⁷⁹ that if appointed, a Divestiture Trustee should be tasked with completing the divestiture to a potential purchaser approved by the CMA and at no minimum price.

MWS Divestiture Remedy – conclusions on effectiveness

15.480 Based on our assessment above, subject to the inclusion of the Solys workshop (unless the purchaser does not wish to purchase the Solys workshop and is able to demonstrate that it has a satisfactory alternative), we conclude that a divestiture of the Proposed Veolia MWS Business (as outlined in Appendix C) would represent an effective remedy to the MWS SLC and its resulting adverse effects.

Assessment of the overall effectiveness of our preferred package of remedies

15.481 As we mentioned in paragraph 15.29 above, bearing in mind the CMA's statutory duty to comprehensively address all of the SLCs it finds, we approached our assessment of remedy effectiveness by first considering the effectiveness of each of the Waste Divestiture Remedy, Water O&M Divestiture Remedy and the MWS Divestiture Remedy separately and on a 'stand-alone basis'. Based on that assessment, we concluded that:

- (a) the Waste Divestiture Remedy as a 'stand-alone' remedy (as we have specified above) would comprehensively address our Waste SLCs, but not the other SLCs we have found;
- (b) the Water O&M Divestiture Remedy as a 'stand-alone' remedy (as we have specified above) would comprehensively address our Water O&M SLC, but not the other SLCs we have found; and
- (c) the MWS Divestiture as a 'stand-alone' remedy (as we have specified above) would comprehensively address our MWS SLC, but not the other SLCs we have found.

15.482 Having considered the effectiveness of each of the divestiture remedies in our preferred package of remedies on a stand-alone basis, we now consider the overall effectiveness of these three divestiture remedies taken together

¹⁹⁷⁹ CMA87, paragraph 5.43.

as a package of remedy measures in addressing all of the SLCs we have found.

- 15.483 We consider that each divestiture remedy would not interfere or undermine the effectiveness of the other divestiture remedies. Therefore, we consider that each of these divestiture remedies would be necessary to ensure all of the SLCs we have found are comprehensively addressed.
- 15.484 We also considered the question of whether the divestment businesses should be sold to a single purchaser or whether it could be sold to separate purchasers.
- 15.485 We also considered whether there were any composition risks arising from the creation, and divestiture, of up to three separate divestiture packages, as part of which we considered whether these composition risks were sufficiently material to necessitate the combination of any of the divestment businesses to ensure the effectiveness of the package of remedy measures.
- 15.486 We did this by considering whether the common ownership of waste and water businesses conferred a competitive advantage for each and all of the divestment businesses when competing in the relevant markets where we found SLCs.
- 15.487 We also considered whether there are any competitive benefits associated with the common ownership of waste and water businesses that may be lost with the divestiture of separate divestiture packages. These might arise from customer preferences or organisational synergies.
- 15.488 The evidence we considered is set out in Appendix C.
- 15.489 Based on evidence set out in Appendix C, while we received some evidence on the benefits of common ownership of the waste, industrial water O&M services and MWS businesses, we consider that these benefits were either speculative (eg not realised in practice) and limited in scope (eg in this case, limited to common central overheads). We have not seen any compelling evidence to indicate that there are substantial benefits from operating both water and waste services. While we note that some third parties indicated that there might be some cross-selling, we have not seen evidence to suggest that this has materialised or is likely to be significant.
- 15.490 We also found no evidence to suggest that the capabilities of each divestment business to compete effectively in each of their respective markets in the UK would be undermined by not bringing the waste and waster divestment businesses under common ownership.

15.491 Based on our assessment, we consider that the activities relating to each of the Waste SLCs, the Water O&M SLC and the MWS SLC are sufficiently distinct such that the ability of each divestment business to compete effectively in its relevant markets is neither enhanced nor reinforced by the common ownership of the other divestment businesses. We have found no evidence that the common ownership of the Parties' businesses in waste, industrial water O&M services and MWS confers a material competitive advantage, which would be lost if these businesses were sold to separate purchasers.

15.492 Therefore, we consider that the effectiveness of our individual divestiture remedies would not rely on a single purchaser for the effectiveness any of the divestment businesses.

Our conclusions

15.493 On the basis set out above, we have concluded that our preferred package of remedies would comprehensively address all of the SLCs we have found, and that each divestiture remedy would not interfere in the effectiveness of the other divestiture remedies.

15.494 We have also concluded that it would not be necessary for the three divestment businesses, which we have identified would be effective in addressing the SLCs, to be divested to a single purchaser (or in any combination with each other to a single purchaser).

Conclusions on effective remedies

15.495 We have concluded that a package of remedies comprising the following divestiture remedy measures (as specified above) would be effective in remedying the SLCs we have found and their resulting adverse effects:

- (a) a divestiture of Suez's entire UK waste management services business;
- (b) a divestiture of all of Suez's UK industrial water O&M services business; and
- (c) a divestiture of Veolia's European MWS business (subject to the inclusion of the Solys workshop, unless the purchaser does not wish to purchase the Solys workshop and is able to demonstrate that it has a satisfactory alternative).

15.496 Having identified effective remedies for the SLCs we have found, we next consider whether there are any RCBs which we need to take into account, before considering the issue of proportionality.

Assessment of relevant customer benefits (RCBs)

- 15.497 The Act allows the effect of a proposed remedy on RCBs to be taken into account.¹⁹⁸⁰ RCBs are defined by the Act as benefits to relevant customers (current and future customers) in the form of: (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not in the market(s) in which the SLC has occurred or may occur) or (b) greater innovation in relation to such goods or services'.¹⁹⁸¹ The Act provides that a benefit is only an RCB if it accrues or may be expected to accrue from the merger and would be unlikely to accrue without the merger 'or a similar lessening of competition'.¹⁹⁸²
- 15.498 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy and may be taken into account in our assessment of the proportionality of a remedy. An effective remedy to an SLC might be considered disproportionate if it prevents customers from realising any RCBs arising from the Merger, where these benefits outweigh the SLC and any resulting adverse effects.
- 15.499 The CMA may modify a remedy to ensure retention of RCBs or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy which retains RCBs, or it may decide that no remedy is appropriate.¹⁹⁸³

Submissions on RCBs

- 15.500 In our Remedies Notice, we invited views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these were affected by different remedy options.¹⁹⁸⁴
- 15.501 Neither Party has put forward any RCBs for consideration. We also did not receive any submissions from third parties that we should take into account any relevant costs in our consideration of the appropriate remedies.

¹⁹⁸⁰ [Section 41\(5\)](#) of the Act.

¹⁹⁸¹ [CMA87](#), paragraph 3.17 and s.30 of the Act.

¹⁹⁸² [Section 30](#) of the Act.

¹⁹⁸³ [CMA87](#), paragraph 3.16.

¹⁹⁸⁴ [Remedies notice](#), paragraph 62.

Conclusions on RCBs

15.502 The burden of proof of whether RCBs arise from a merger is on the merging parties.¹⁹⁸⁵ In this case, the Parties have not put forward any RCBs for consideration and we therefore conclude that no RCBs arise from the Merger. Consequently, we have not modified our view of the appropriate remedy in light of any RCBs that would be eliminated by the package of remedies that we have found to be effective.

Assessment of the proportionality of remedies

15.503 In this section, we set out our assessment of, and conclusions on, the proportionality of the package of remedies we have concluded would be effective in addressing the SLCs we have found.

Proportionality assessment framework

15.504 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive. In addition, the CMA will seek to ensure that no effective remedy is disproportionate in relation to the SLC and its adverse effects.¹⁹⁸⁶

15.505 To fulfil this requirement, we first consider whether there are any relevant costs associated with each effective remedy option. When considering relevant costs, the CMA's considerations may include (but are not limited to):¹⁹⁸⁷

- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
- (c) the loss of any RCBs that may arise from the Merger which are foregone as a result of the remedy.

¹⁹⁸⁵ CMA87, paragraph 3.20.

¹⁹⁸⁶ CMA87, paragraph 3.6.

¹⁹⁸⁷ CMA87, paragraph 3.10.

15.506 The costs of a remedy may be incurred by a variety of parties, including the merger parties, third parties, the CMA and other monitoring agencies. As the merger parties have the choice of whether to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties, the CMA and other monitoring agencies.¹⁹⁸⁸

15.507 Having identified the least costly effective remedy, we then consider whether even the least costly effective remedy will result in disproportionate costs that far exceed the scale of the SLC and resulting adverse effects. In doing so, we are required to compare the level of harm which is likely to arise from the SLCs with the relevant costs of the proposed remedy. In cases where all feasible remedies are likely to be disproportionate, the CMA may conclude that no remedial action should be taken. In practice, such instances are extremely rare.¹⁹⁸⁹

Submissions on proportionality

15.508 Veolia told us that in circumstances where a far less intrusive remedy that would fully address our concerns was available, requiring any broader divestment would be disproportionate.¹⁹⁹⁰ Veolia told us that the sale of Suez's UK waste business would address the SLCs in waste and the divestitures of a UK industrial water O&M services business and Veolia's European MWS business were effective remedies that were much less onerous than any alternative, and that these options would address the SLCs in water in full. Veolia told us that the other full or partial divestment options we presented in relation to addressing the water SLCs went far beyond resolving the SLCs and would be unduly restrictive and disproportionate.¹⁹⁹¹

Our assessment of proportionality

15.509 The appropriate remedy and whether it is effective and proportionate will be determined by having regard to the particular circumstances of the case and in this case, we have identified an effective package of divestiture remedies to address the SLCs identified.

¹⁹⁸⁸ CMA87, paragraph 3.8.

¹⁹⁸⁹ CMA87, paragraph 3.53.

¹⁹⁹⁰ Veolia's response to notice of possible remedies, paragraph 15.

¹⁹⁹¹ Veolia's response to notice of possible remedies, paragraph 180.

15.510 For the reasons set out in this paper, we consider that each divestiture remedy represents the smallest divestiture remedy that would be effective in achieving the legitimate aim of comprehensively remedying our SLCs and their resulting adverse effects. We also consider that each divestiture remedy is no more onerous than is required to achieve that aim, and there is not a choice of more proportionate but equally effective remedies.

15.511 We have also considered whether our preferred package of divestiture remedies would produce effects that are disproportionate to the aim pursued by considering whether there were any RCBs that would be lost as a result of pursuing a full divestiture remedy (which we would treat as a cost of the remedy). We concluded above that there would be no RCBs that would be lost as a result of our preferred package of remedies.

15.512 We considered whether there were any other costs of a full divestiture remedy we should take into account. However, the Parties have not submitted any evidence in relation to the costs of any divestiture remedy and we have not found any costs to third parties arising as a result of our preferred package of divestiture remedies. We therefore consider that our preferred package of remedies will not give rise to relevant costs or produce adverse effects that are disproportionate to the aim of comprehensively remedying the SLCs and their resulting adverse effects.

15.513 We consider that the harm arising from the SLCs (including their cumulative effect over time) is likely to be significant and have a widespread impact on customers. We did not consider that the SLCs are time-limited, and therefore we would expect these adverse effects to persist under the relevant Merger situation.

Conclusions on proportionality

15.514 Having identified an effective remedy in the form of our preferred package of divestiture remedies, we considered its proportionality to the SLCs we have found and their resulting adverse effects.

15.515 We have found that our preferred package of remedies is the least onerous effective action to achieve the legitimate aim of comprehensively remedying the SLCs and their resulting adverse effects. Based on our conclusions that the Merger is likely to lead to significant and sustained adverse effects and that there are no relevant costs which we should take into account, we conclude that our preferred package of remedies would not produce adverse effects which are disproportionate to the aim pursued.

15.516 We therefore conclude that our preferred package of remedies would be proportionate to the SLCs and their resulting adverse effects.

Remedy implementation issues

15.517 Having identified our preferred package of remedies, we now consider how it should be implemented.

15.518 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings pursuant to section 82 of the Act if the Parties wish to offer them, or by making a final order under section 84 of the Act. Either the final undertakings or the final order must be implemented within 12 weeks of publication of our final report (a deadline which can be extended once by up to six weeks under exceptional circumstances),¹⁹⁹² including the period for any formal public consultation on the draft undertakings or order as specified in Schedule 10 of the Act.

15.519 In line with the CMA's guidance on remedies, once a remedy has been fully implemented in line with the conclusions set out in this decision, we decide that the Parties should be prohibited from subsequently acquiring the assets or shares of the divested businesses or acquiring any material influence over them. The CMA's guidance on remedies states that the CMA will normally limit this prohibition to a period of 10 years.¹⁹⁹³ We find no compelling reason to depart from the guidance in this case by seeking a shorter or longer prohibition period.

Final decision on remedies

15.520 We conclude that the package of remedies containing the following remedy measures would be effective and proportionate remedies to address all of the SLCs and resulting adverse effects we have found:

- (a) a divestiture of Suez's entire UK waste management services business;
- (b) a divestiture of all of Suez's UK industrial water O&M services business; and
- (c) a divestiture of Veolia's European MWS business (subject to the inclusion of the Solys workshop, unless the purchaser does not wish to

¹⁹⁹² Section 82 and section 84 of the Act.

¹⁹⁹³ CMA87, paragraph 5.10.

purchase the Solys workshop and is able to demonstrate that it has a satisfactory alternative).