

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

Undertakings given by Bouygues S.A. and Equans S.A.S. to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002

Whereas:

- (a) Bouygues S.A. (**Bouygues**) entered into a definitive merger agreement with ENGIE S.A. and ENGIE Energy Services International S.A. on 12 May 2022 by agreeing to acquire the entire issued share capital of Equans S.A.S. (**Equans**) (together with Bouygues, the **Parties**) (the **Transaction**), such that Bouygues and Equans will cease to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) As a result of the Transaction, Bouygues would indirectly acquire control of SPL Powerlines UK Limited (**Powerlines UK**) and Ineo SCLE Ferroviaire SNC (**Ineo SCLE**), as Subsidiaries of Equans;
- (c) Powerlines UK and Ineo SCLE are members of the consortium tendering for the overhead catenaries system (**OCS**) works for High Speed 2 (**HS2 OCS Tender**) along with the third party Keltbray Rail Limited (**Keltbray**) (together the **Rapide JV**). Bouygues' Subsidiary Colas Rail Limited (**Colas Rail UK**) is also participating in the HS2 OCS Tender;
- (d) Under section 33(1) of the Act the Competition and Markets Authority (**CMA**) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (e) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall 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;
- (f) As set out in the CMA's decision of 19 July 2022 (the **Decision**), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation;
- (g) The CMA considers that the undertakings given below by Bouygues and Equans are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision;
- (h) The CMA made an Initial Enforcement Order applying to Bouygues and Equans on 2 August 2022 in respect of the Transaction pursuant to section 72 of the Act for the

purposes of prohibiting completion of the Transaction, preventing the withdrawal of the Parties' bids for the HS2 OCS Tender, and preventing pre-emptive action. Pursuant to section 72(6)(b) of the Act, this Initial Enforcement Order ceases to be in force on the acceptance by the CMA of the undertakings given below by Bouygues and Equans.

NOW THEREFORE Bouygues and Equans hereby give to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

1. EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect from the date that, having been signed by Bouygues and Equans, they are accepted by the CMA.

2. OBJECTIVE BID WITHDRAWAL MECHANISM

- 2.1 The Parties shall appoint an Objective Third Party Assessor approved by the CMA to assess which of the Colas Rail UK or Rapide JV bids is most economically advantageous for HS2 Limited (**HS2 Ltd**) in accordance with HS2 Ltd's Evaluation Methodology. The Objective Third Party Assessor will be sufficiently independent of the Parties and have the technical and other capabilities required to carry out the assessment.

- 2.2 The Objective Third Party Assessor shall carry out the following functions:

- a) Conducting an independent assessment of the Specific Tender documents submitted to HS2 Ltd by Colas Rail UK and the Rapide JV (including any correspondence that Colas Rail UK and Rapide JV may have each had with HS2 on the contents of the Specific Tender between the submission of the Specific Tender and the date of the CMA's decision accepting these UILs), using the criteria set out in the Evaluation Methodology, involving:
- (i) Awarding both the Colas Rail UK and Rapide JV bids full scores of 15% for the behavioural assessment of project team and project board capabilities required under the Evaluation Methodology;
 - (ii) Awarding each of the Colas Rail UK and Rapide JV bids a score for the technical assessment required under the Evaluation Methodology. This will include an assessment of matters such as the design of the works, the design and implementation of the isolation and earthing strategy, the exemplar design and the installation and construction methodology. This score will constitute 55% of the final score for the relevant bid.
 - (iii) Awarding each of the Colas Rail UK and Rapide JV bids a score for the commercial assessment required under the Evaluation Methodology. This will include an assessment of the overall cost of the relevant bid along with consideration of the commercial robustness of the bid and whether the proposed costs are realistic. This score will constitute 30% of the final score for the relevant bid.

- b) Identifying as a result of its assessment of the Specific Tender documents in accordance with paragraphs 2.2(a)(i) to (iii) above which of the Colas Rail UK and Rapide JV bids has the highest total score and would therefore be the “**Most Economically Advantageous Tender**” for HS2 Ltd as defined in the Evaluation Methodology; and
 - c) Notifying the CMA, Bouygues and the Trustee of the results of its assessment as soon as reasonably practicable after the date these undertakings are accepted by the CMA, by way of a report summarising its determination which does not contain any Confidential Information as between the Parties.
- 2.3 Bouygues shall propose to HS2 Ltd promptly and in any event within 10 Working Days of completion of the Transaction that, whichever of Colas Rail UK or the Rapide JV the Objective Third Party Assessor has found to have submitted the Most Economically Advantageous Tender if any (as notified to the CMA and Bouygues pursuant to paragraph 2.2(c)) will continue in the HS2 OCS Tender.
- 2.4 In the event that the Objective Third Party Assessor finds that neither one of the Colas Rail UK and the Rapide JV bids is more economically advantageous to HS2 than the other, Bouygues shall propose to HS2 Ltd within 10 Working Days of completion of the Transaction that the [X] will continue in the HS2 OCS Tender.
- 2.5 Bouygues shall procure the withdrawal of the other bid as soon as is practicable after the proposal referred to in paragraph 2.3 or paragraph 2.4 above is made to HS2 Ltd, in accordance with the HS2 OCS Tender Rules.
- 2.6 Bouygues and/or Equans shall procure that Keltbray is informed of the outcome of the Objective Third Party Assessor's assessment as soon as practicable after its notification pursuant to paragraph 2.2(c).

3. APPOINTMENT OF A TRUSTEE

- 3.1 Within five Working Days of the CMA notifying Bouygues and Equans in writing that they must do so, Bouygues and Equans shall propose to the CMA for approval:
- a) the names of at least two individuals to exercise the Trustee Functions; and
 - b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.
- 3.2 Bouygues, Equans, and/or any individuals nominated pursuant to paragraph 3.1 shall satisfy the CMA that, save as required or permitted by the CMA:
- a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;

- b) such nominated individuals are each independent of Bouygues and Equans, and of the Group of Interconnected Bodies Corporate to which Bouygues and Equans belong and of any Associated Person or Affiliate of Bouygues and Equans or of such Group of Interconnected Bodies Corporate, and, in the reasonable opinion of Bouygues and Equans, are appropriate to be appointed as Trustee; and
- c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

3.3 Within two Working Days of the CMA approving, at its discretion, one or more of the persons nominated by Bouygues and Equans and their proposed mandates pursuant to paragraph 3.1 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, Bouygues and Equans shall use their best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 3.1 above.

3.4 In the event that:

- a) Bouygues and/or Equans fails to propose any person or persons in accordance with paragraph 3.1 above; or
- b) none of the persons proposed by Bouygues and Equans pursuant to paragraph 3.1 are approved by the CMA; or
- c) Bouygues and/or Equans are unable for any reason to appoint within the time limit stipulated in paragraph 3.3 above any such person following approval by the CMA,

Bouygues and Equans shall use their best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. Bouygues and Equans shall use their best endeavours to make such appointment within five Working Days of receiving the nominations from the CMA.

3.5 The appointment of the Trustee pursuant to paragraph 3.3 or paragraph 3.4 above shall be irrevocable unless:

- a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- b) the Trustee ceases to perform the Trustee Functions; or
- c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

3.6 In the event that the appointment of the Trustee is terminated in accordance with paragraph 3.5 above, Bouygues and Equans shall, if requested to do so in writing by the CMA, use their best endeavours to appoint from persons nominated by

the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. Bouygues and Equans shall use their best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

4. THE MANDATE

- 4.1 The terms of the mandate proposed by Bouygues and/or Equans pursuant to paragraph 3.1 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:
- a) an exclusive, irrevocable mandate to monitor and enforce compliance with the obligations set out above;
 - b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
 - c) a mandate to comply with any orders and/or directions given by the CMA; and
 - d) a mandate to appoint at Bouygues' and/or Equans' expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

5. FUNCTIONS OF TRUSTEE

- 5.1 The Trustee shall supervise the implementation of these undertakings including (for such period as the Objective Third Party Assessor is completing its assessment of the Colas Rail UK and Rapide JV bids as described in paragraph 2 above):
- a) supervising the provision of information by Bouygues and Equans to the Objective Third Party Assessor;
 - b) acting as an intermediary for any clarificatory questions the Objective Third Party Assessor may have for Bouygues and Equans; and
 - c) reporting in writing to the CMA if the Trustee concludes on reasonable grounds that the Objective Third Party Assessor is failing or may fail to carry out its functions in accordance with these undertakings.
- 5.2 The Trustee may give written directions to Bouygues or Equans to take such steps as may be specified or described in the directions for the purpose of securing Bouygues' or Equans' compliance with their obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions.
- 5.3 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes

of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds that Bouygues and/or Equans are failing or will fail to comply with any of their obligations under these undertakings.

- 5.4 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Bouygues or Equans nor shall the Trustee Functions be extended or varied in any way by Bouygues and/or Equans save with the prior express written consent of the CMA.

6. OBLIGATIONS OF THE PARTIES FOLLOWING APPOINTMENT OF TRUSTEE

- 6.1 Bouygues and Equans shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 6.2 Bouygues and Equans shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:
- a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 5.2 above; and
 - b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

7. REMUNERATION OF TRUSTEE

- 7.1 Bouygues and/or Equans shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 4 above.

8. Interim Action

- 8.1
- 8.2 Except with the prior written consent of the CMA, Bouygues and Equans shall not, prior to the Objective Third Party Assessor notifying the CMA, Bouygues and the Trustee of the results of its assessment pursuant to para. 2.2(c) above (such notification to be made after the date these undertakings are accepted by the CMA), take any action which would:
- a) transfer the ownership or control of the Equans business (as a whole) or the Bouygues business (as a whole) or of any of their subsidiaries which are active, directly or indirectly, in supplying OCS products and / or services in Europe;
 - b) result in the withdrawal of the OCS Businesses' tenders for the supply of high-speed OCS to HS2; or

- c) otherwise impair the ability of the Equans business to compete independently in the supply of high-speed OCS in the UK.
- 8.3 Up until the Objective Third Party Assessor notifies the CMA, Bouygues and the Trustee of the results of its assessment pursuant to para. 2.2(c) above (such notification to be made after the date these undertakings are accepted by the CMA), Bouygues and Equans will actively keep the CMA informed of any material developments relating to the Equans or Bouygues OCS Businesses in Europe that relate to their bids for the HS2 OCS tender, which includes, but is not limited to:
- (a) details of Key Staff who leave or join the OCS Businesses;
 - (b) any interruption of the Parties' OCS Businesses (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes lost by the Parties' OCS Businesses; and
 - (d) substantial changes in the Parties' OCS Businesses' contractual arrangements or relationships with key suppliers.

9. COMPLIANCE

- 9.1 Bouygues and/or Equans shall comply promptly with such written directions as the CMA may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 9.2 Bouygues and Equans shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and
 - (b) investigating potential breaches of the provisions of these undertakings.
- 9.3 Bouygues and Equans shall procure that any member of the same Group of Interconnected Bodies Corporate as Bouygues and Equans, respectively, complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Bouygues and Equans shall be attributed to Bouygues and Equans, respectively, for the purposes of these undertakings.
- 9.4 Where any Affiliate of Bouygues and Equans is not a member of the same Group of Interconnected Bodies Corporate as Bouygues and Equans, respectively,

Bouygues and/or Equans shall use their best endeavours to procure that any such Affiliate shall comply with these undertakings as if they had given them.

10. PROVISION OF INFORMATION

- 10.1 Bouygues and Equans shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

11. EXTENSION OF TIME LIMITS

- 11.1 The CMA may, in response to a written request from Bouygues and/or Equans, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

12. SERVICE

- 12.1 Bouygues hereby authorises Slaughter and May, whose address for service is One Bunhill Row, London, EC1Y 8YY, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to Bouygues or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 12.2 Unless Bouygues informs the CMA in writing that Slaughter and May has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Bouygues if it is served on Slaughter and May; and service shall be deemed to have been acknowledged by Bouygues if it is acknowledged by Slaughter and May or such other nominee.
- 12.3 Paragraph 12.2 above has effect irrespective of whether, as between Bouygues and Slaughter and May or other nominees, Slaughter and May or other nominees has or continues to have any authority to accept and acknowledge service on Bouygues or any of its respective Subsidiaries' behalf.
- 12.4 No failure or mistake by Slaughter and May or other nominees (including a failure to notify Bouygues of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 12.5 Equans hereby authorises BDGS Associés, whose address for service is 51, rue François 1er – 75008 Paris, France, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to Equans or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).

- 12.6 Unless Equans informs the CMA in writing that BDGS Associés has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Equans if it is served on BDGS Associés; and service shall be deemed to have been acknowledged by Equans if it is acknowledged by BDGS Associés or such other nominee.
- 12.7 Paragraph 12.6 above has effect irrespective of whether, as between Equans and BDGS Associés or other nominees, BDGS Associés or other nominees has or continues to have any authority to accept and acknowledge service on Equans or any of its respective Subsidiaries' behalf.
- 12.8 No failure or mistake by BDGS Associés or other nominees (including a failure to notify Equans of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 12.9 Any communication from the Parties to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, 25 Cabot Square, London, E14 4QZ or such other person or address as the CMA may direct in writing.

13. EFFECT OF INVALIDITY

- 13.1 Should any provision of these undertakings be contrary to law or invalid for any reason, Bouygues and Equans undertake to continue to observe the remaining provisions.

14. GOVERNING LAW

- 14.1 Bouygues and Equans recognise and acknowledge that these undertakings shall be governed and construed in all respects in accordance with English law.
- 14.2 In the event that a dispute arises concerning these undertakings, Bouygues and Equans undertakes to submit to the courts of England and Wales.

15. TERMINATION

- 15.1 The Parties recognise and acknowledge that these undertakings shall be in force until such time as they are varied, released, or superseded under the Act, and that they will terminate after either:
- a) Bouygues procures the withdrawal of the bid pursuant to paragraph 2.5 above; or
 - b) HS2 Ltd communicates a decision either through written correspondence privately to Colas Rail UK or Rapide JV or publicly that either Colas Rail UK or Rapide JV's bid for HS2 OCS Tender has been removed from the process,
- whichever occurs earlier.

- 15.2 Bouygues and Equans recognise and acknowledge that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

16. INTERPRETATION

- 16.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

- 16.2 References in these undertakings to any English law term for any legal status, interest, concept, or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

- 16.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

- 16.4 For the purposes of these undertakings:

"the Act" means the Enterprise Act 2002;

"Affiliate" a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with Bouygues or Equans within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"Bouygues" means Bouygues S.A. (company number 572 015 246);

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

"CMA" means the Competition and Markets Authority or any successor body;

"Colas Rail UK" means Colas Rail Limited (company number 02995525);

"Confidential Information" means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

"Decision" means the CMA's decision under section 22 of the Act dated [19 July 2022] in connection with the Transaction;

"enterprise" has the meaning given in section 129(1) of the Act;

"Equans" means Equans S.A.S. (company number 892 318 312 - R.C.S NANTERRE);

“Evaluation Methodology” means the evaluation methodology applied by HS2 Limited to assess the HS2 OCS Tender;

“Group of Interconnected Bodies Corporate” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“HS2 OCS Tender Rules” means the rules applied by HS2 for the purposes of the HS2 OCS Tender;

“Ineo SCLE” means Ineo SCLE Ferroviaire SNC (company number 440 253 169 - R.C.S. TOULOUSE);

“Key Staff” means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

“Most Economically Advantageous Tender” is as defined in paragraph 2.2;

“Objective Third Party Assessor” means the independent third party approved by the CMA to assess which of the Colas Rail UK or Rapide JV bids is the Most Economically Advantageous Tender. Bouygues and Equans have proposed Ingerop as the Objective Third Party Assessor.

“OCS Businesses” means:

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

“Powerlines Holding UK” means SPL Powerlines Holding UK Limited (company number SC355244);

“Powerlines UK” means SPL Powerlines UK Limited (company number SC202412);

“Specific Tender” means the tender submissions made by Colas Rail UK and the Rapide JV on 20 April 2022;

“Subsidiary” shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

“the Transaction” means the proposed acquisition by Bouygues of 100% of Equans' share capital from ENGIE S.A. and ENGIE Energy Services International S.A.;

“Trustee” means the person appointed pursuant to paragraph 3.3, 3.4 and 3.6 to carry out the Trustee Functions;

“Trustee Functions” means the functions set out in paragraph 5;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“Working Day” means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales;

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

FOR AND ON BEHALF OF BOUYGUES S.A.

Signature

FOR AND ON BEHALF OF EQUANS S.A.S

Signature

Name

Title

Date

Name

Title

Date

DATE ACCEPTED BY THE CMA: [•]