

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

### Final Undertakings given by Veolia Environnement S.A. to the Competition and Markets Authority pursuant to section 82 of the Enterprise Act 2002

#### Background

- A. On 5 October 2020, Veolia Environnement S.A. (**Veolia**) acquired 29.9% of Suez S.A.<sup>1</sup> from Engie S.A. and announced its intention to launch a public offer for all of Suez's remaining issued share capital. On 14 May 2021 Veolia and Suez S.A. announced that they had reached an agreement regarding the anticipated transaction. On 27 January 2022, Veolia completed its acquisition of the remaining issued share capital of Suez (the **Merger**).
- B. On 1 February 2021, the Competition and Markets Authority (**CMA**) made an initial enforcement order pursuant to section 72(2) of the Enterprise Act 2002 (the **Act**) for the purpose of preventing pre-emptive action in accordance with that section. On 20 December 2021 the CMA revoked the previous initial enforcement order served on 1 February 2021 and the CMA served a new initial enforcement order (**IEO**). On 14 January 2022 (and subsequently varied on 18 January 2022), the CMA issued directions under the IEO for the appointment of a monitoring trustee (**Monitoring Trustee**) in order to monitor and ensure compliance with the IEO. On 11 August 2022, the IEO was varied pursuant to a variation order to reflect Suez S.A.'s change in name to Vigie S.A.
- C. On 21 December 2021, the CMA, in accordance with section 33(1) of the Act, referred the Merger to a group of CMA panel members to determine, pursuant to section 36(1) of the Act:
- (i) whether a relevant merger situation has been created; and
  - (ii) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in any market or markets in the United Kingdom (**UK**) for goods or services.

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<sup>1</sup> On 29 July 2022, Suez S.A. changed its corporate name to Vigie, a company registered in France at Société Anonyme au capital de 2 558 811 124 €, 433 466 570 R.C.S. Paris, Siège social : 21 rue La Boétie, 75008 Paris'.

- D. On 26 August 2022, the CMA published a final report pursuant to section 38 of the Act (the **Report**) which concluded that:
- (i) the Merger has created a relevant merger situation;
  - (ii) the creation of that situation has resulted in, or may be expected to result in, an SLC in:
    - (A) the following waste management services markets in the UK:
      - (I) non-hazardous municipal waste collection services;
      - (II) operation and maintenance (**O&M**) services for material recovery facilities to local authorities;
      - (III) O&M services for energy recovery facilities (**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 commercial and industrial waste collection services; and
    - (B) the following water services markets in the UK:
      - (I) O&M services for water and wastewater treatment facilities to industrial customers; and
      - (II) mobile water services (**MWS**); and
  - (iii) the CMA should take action to remedy the SLCs and any adverse effects resulting from them.

E. **The CMA, having regard to its findings in the Report, requires:**

- (i) a divestiture of Suez's entire UK waste management services business (the **Waste Divestiture Remedy**);
- (ii) a divestiture of all of Suez's UK industrial water O&M services business (the **Water O&M Divestiture Remedy**); and
- (iii) a divestiture of Veolia's European MWS business (subject to the inclusion of the Solys workshop in Stoke-on-Trent, unless the purchaser does not wish to purchase the Solys workshop and is able to demonstrate that it has a satisfactory alternative) (the **MWS Divestiture Remedy**)

(together, the **Remedies**).

- F. The implementation of the Remedies will be subject to the following safeguards:
- (a) Veolia will be subject to regular reporting requirements (as set out in paragraph 6);
  - (b) the asset maintenance provisions of the IEO should continue to remain in force during the implementation of the Remedies until completion of the Remedies;
  - (c) the Monitoring Trustee appointed in accordance with paragraph 8 will monitor compliance with these Final Undertakings, including the progress of the implementation of the Remedies.
  - (d) each purchaser must be an Approved Purchaser in accordance with the Purchaser Approval Criteria in Annex 2; and
  - (e) these Final Undertakings include provisions enabling the CMA to direct the appointment of:
    - (i) a Divestiture Trustee to effect the Remedies in accordance with the conditions set out in paragraph 11; and
    - (ii) a Hold Separate Manager to act as an independent interim manager with executive powers to manage any of the Divestment Businesses in accordance with the conditions set out at paragraph 12.
- G. The IEO ceases to be in force on the date of acceptance by the CMA, pursuant to section 82 of the Act, of these Final Undertakings.
- H. Now therefore, each of Veolia and Vigie Groupe SAS (**Vigie**) gives to the CMA on behalf of itself and, where relevant, its Subsidiaries and Affiliates, the following Final Undertakings pursuant to section 82 of the Act for the purpose of remedying, mitigating or preventing the SLCs identified in the Report and any adverse effects resulting from them.

## **2. Interpretation**

- 2.1 The purpose of these Final Undertakings is to give effect to the Remedies identified in the Report and they shall be construed in accordance with the Report.
- 2.2 Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report (as appropriate).

- 2.3 The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 2.4 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 2.5 References to recitals, paragraphs, subparagraphs and annexes are references to the recitals, paragraphs and subparagraphs of, and annexes to, these Final Undertakings unless otherwise stated.
- 2.6 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate. Any reference to person or position includes its or their successor in title.
- 2.7 The Annexes form part of these Final Undertakings.
- 2.8 The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.
- 2.9 Further, in these Final Undertakings:

‘the Act’	means the Enterprise Act 2002;
‘Affiliate’	means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;
‘Approved Purchaser’	means any purchaser approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 2;
‘Approved Timetable’	means the divestment timetable approved by the CMA in accordance with paragraph 4.2;
‘Asset Maintenance Undertakings’	means those undertakings set out in paragraph 7;
‘Associated Person’	means a person who is an associated person within the meaning of section 127 of the Act;
‘business’	has the meaning given by section 129(1) and (3) of the Act;
‘CMA’	means the Competition and Markets Authority;

‘Commencement Date’	means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;
‘Completion Date’	means the date on which the Final Disposal is implemented;
‘Confidential Information’	means business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;
‘control’	means the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise, as defined in section 26 of the Act;
‘Directions’	means written directions given by the CMA as set out in paragraph 5.1;
‘Divestiture Period’	means the period beginning on the Commencement Date and ending [✂] after the Commencement Date, or such longer period as the CMA may approve in accordance with paragraph 17.1;
‘Divestiture Trustee’	means a person appointed in accordance with paragraph 11;
‘Divestiture Undertakings’	means those undertakings set out in paragraph 4;
‘Divestment Businesses’	means (i) the Suez Waste Divestment Business; (ii) the Suez WTS O&M Water Divestment Business; and (iii) the Veolia MWS Divestment Business;
‘ERFs’	means energy recovery facilities;
‘Final Disposal’	means legal completion of the last divestment of a Divestment Business, such that all of the Remedies have legally completed in accordance with the Final Undertakings to an Approved Purchaser or Purchasers;
‘Final Undertakings’	means these final undertakings given by each of the Parties and accepted by the CMA, including

	the Annexes hereto, and as may be varied in terms of paragraph 12.2;
‘Hold Separate Manager’	means a person appointed in accordance with paragraph 12;
‘IEO’	means the initial enforcement order made by the CMA on 20 December 2021 (as varied on 11 August 2022);
‘Key Staff’	means those staff who are in positions of executive or managerial responsibility and/or whose performance affects the viability of the relevant business;
‘Merger’	means the acquisition by Veolia of Suez S.A.;
‘Monitoring Trustee’	means a person appointed or retained in accordance with paragraph 8;
‘MWS’	means mobile water services;
‘MWS Divestiture Remedy’	means a divestiture of Veolia’s European MWS business in accordance with the Report (subject to the inclusion of the Solys workshop in Stoke-on-Trent, unless the purchaser does not wish to purchase the Solys workshop and is able to demonstrate that it has a satisfactory alternative);
‘O&M’	means operation and maintenance;
‘ordinary course of business’	means matters connected with the day-to-day supply of goods and services but does not include matters involving significant changes to the organisational structure of or related to the post-merger integration of Vigie S.A., Vigie and Veolia;
‘Parties’	means Veolia and Vigie;
‘Purchaser Approval Criteria’	means the criteria set out in paragraphs 5.20 to 5.27 of the CMA’s guidance document Merger Remedies (CMA87) and summarised in Annex 2;
‘Related Person’	means any Subsidiary, Affiliate or Associated Person;
‘Remedies’	means the Waste Divestiture Remedy, the Water O&M Divestiture Remedy and the MWS

	Divestiture Remedy as set out in Chapter 15 of the Report;
‘the Report’	means the report entitled ‘Acquisition by Veolia Environnement S.A. of Suez S.A. - Final report’ dated 25 August 2022; <sup>2</sup>
‘SLC’	means a substantial lessening of competition;
‘Specified Period’	means the period beginning on the Commencement Date and terminating on the Completion Date;
‘Subsidiary’	unless otherwise expressly stated has the meaning given by section 1159 of the Companies Act 2006;
‘Suez’	means Suez Industrial Water Limited (UK) and Suez Recycling and Recovery UK Group Holdings Ltd and their subsidiaries;
‘Suez Divestment Businesses’	means the Suez Waste Divestment Business and the Suez WTS O&M Water Divestment Business;
‘Suez WTS O&M Water Divestment Business’	means Suez’s entire WTS UK industrial water O&M services business in accordance with the Report;
‘Suez Waste Divestment Business’	means Suez’s entire UK waste business in accordance with the Report
‘Transaction Agreements’	means each of the sale agreements and all other agreements to be concluded between Veolia and the relevant Approved Purchaser which are necessary in order to effect: (i) the Waste Divestiture Remedy; (ii) the Water O&M Divestiture Remedy; and (iii) the MWS Divestiture Remedy, including, without limitation, any Transitional Services Agreements, supply or framework agreements, brand licences and other ancillary or related documents;
‘Trustee Divestiture Period’	means a period as the CMA may direct for the Divestiture Trustee to meet the Trustee Obligation

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<sup>2</sup> Final report ([publishing.service.gov.uk](https://publishing.service.gov.uk))

	commencing from the date of appointment of the Divestiture Trustee;
'Trustee Obligation'	means bringing about the Final Disposal, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of effecting the Final Disposal promptly and, in any event, within the Trustee Divestiture Period;
'UK'	means the United Kingdom of Great Britain and Northern Ireland;
'Veolia'	means Veolia Environnement S.A.;
'Veolia Business'	means Veolia Environnement S.A. and its subsidiaries, excluding the Divestment Businesses;
'Veolia MWS Divestment Business'	means Veolia's European MWS business (subject to the inclusion of the Solys workshop in Stoke-on-Trent, unless the purchaser does not wish to purchase the Solys workshop and is able to demonstrate that it has a satisfactory alternative) in accordance with the Report;
'Vigie'	means Vigie Groupe SAS, a société par actions simplifiée, registered in France with company number 410118608, 21 Rue la Boétie 75008, Paris, and its subsidiaries.
'Waste Divestiture Remedy'	means a divestiture of Suez's entire UK waste management services business in accordance with the Report;
'Water O&M Divestiture Remedy'	means a divestiture of all of Suez's UK industrial water O&M services business in accordance with the Report;
'Working Day'	means a day that is not a Saturday, Sunday, Good Friday or Christmas Day or a bank holiday in England; and
'written consent'	means a consent given in writing, including by email.



### **3. Commencement**

- 3.1 These Final Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

### **4. Divestiture Undertakings**

- 4.1 Veolia gives the following undertakings:

- (a) to give effect to, and implement, each of the Remedies within the Divestiture Period having due regard to the findings in the Report and procure that its Subsidiaries do all things necessary to ensure the Parties are able to comply with these Final Undertakings;
- (b) to provide the CMA as soon as practicable, with a shortlist of potential purchasers for each of the Divestment Businesses being drawn up for the CMA's formal approval against the Purchaser Approval Criteria; and
- (c) to provide the CMA with sufficient information regarding each potential purchaser for which Veolia seeks formal approval from the CMA, having regard to the Purchaser Approval Criteria to enable the CMA to give its approval of the potential purchaser(s), which shall not be unreasonably withheld. In respect of the MWS Divestiture Remedy only, this information shall include whether the potential purchaser(s) intend to purchase the Solys workshop or are able to demonstrate that they have a satisfactory alternative.

- 4.2 Veolia undertakes that within five Working Days following the Commencement Date, or such other period as may be agreed by the CMA, to provide a timetable setting out the key milestones to ensure completion of each of the Remedies within the Divestiture Period. This timetable should include, without limitation, information about any restructuring of the Divestment Businesses such as the transfer of assets into or out of those businesses or changes to the management structure, necessary to reflect the scope and management of each Divestment Business as set out in the Report and the timelines relevant to any third party right of first refusal affecting the Divestment Businesses. The CMA will as soon as reasonably practicable either approve this timetable as proposed or require reasonable amendments to it. Veolia shall notify the CMA as soon as reasonably practicable, and in any event within two Working Days, of any material changes or amendments to the timetable as approved by the CMA.

- 4.3 In the event that Veolia does not meet or is unlikely to meet a step as set out in the Approved Timetable or is otherwise delayed in implementing any of the Remedies, Veolia undertakes to inform the CMA promptly in writing of the occurrence, the reasons for the failure and any remedial steps, but not later

than three Working Days from becoming aware that a step in the Approved Timetable has not been or is unlikely to be met. In addition, Veolia shall keep the CMA updated on the implications of the exercise of any right of first refusal on the overall timeline for the sale of the relevant Divestment Business.

- 4.4 The CMA will advise Veolia whether any potential purchaser is an Approved Purchaser within a reasonable period from the time the CMA concludes it has received sufficient information about the potential purchaser. The CMA will promptly inform Veolia where it considers it has received insufficient information about the potential purchaser.
- 4.5 In respect of the Water O&M Divestiture Remedy, the Parties agree to use best endeavours to:
- (a) secure Suez's [X] consent to the [X], as well as the transfer of the [X] to the purchaser of the Water O&M Divestment Business;
  - (b) secure [X] consent to assign the contract [X];
  - (c) assure and incentivise [X] and [X] such that they are not disadvantaged [X];
  - (d) [X];
  - (e) provide the purchaser of the Water O&M Divestment Business with the support and information necessary for the smooth transfer [X].
- 4.6 Subject to the obligation to use best endeavours in paragraph 4.5 and the provisions of paragraph 4.5 (a) to (e) above, the Parties undertake to take the necessary steps to:
- (a) separate out the [X] in consultation with [X] and [X];
  - (b) assign the contract [X], for the purpose of transferring [X] along with the Water O&M Divestment Business; and
  - (c) transfer [X] to the purchaser of the Water O&M Divestment Business as well as any additional staff necessary to service the contract [X].
- 4.7 Veolia undertakes to inform the CMA as soon as practicable, and in any event within two Working Days, of any material developments in relation to the steps outlined in paragraphs 4.5 and 4.6.
- 4.8 Veolia undertakes to inform the CMA as soon as practicable, and in any event within two Working Days of the date when: (i) Veolia has agreed any heads of terms (if applicable) in respect of any of the Remedies; (ii) any of the Transaction Agreements have been agreed; and (iii) each of the Waste Divestiture Remedy, the O&M Water Divestiture Remedy and the MWS Divestiture Remedy has legally completed.

- 4.9 Veolia undertakes to seek CMA approval of the final terms of each of the divestitures prior to the completion of the relevant divestiture and provide all Transaction Agreements or other information the CMA may require.
- 4.10 Veolia undertakes to inform the CMA as soon as practicable, and in any event within two Working Days of becoming aware, if it will not, or believes it is unlikely to, achieve completion of any of the Remedies within the Divestiture Period.
- 4.11 Vigie undertakes to cooperate with Veolia and take all reasonable steps as may be required to assist Veolia to comply with the Divestiture Undertakings.

## **5. Additional Obligations**

- 5.1 Each of the Parties undertakes to comply and, where necessary, to procure that its Subsidiaries comply with all Directions the CMA may issue relating to these Final Undertakings and will promptly take such steps as may be specified or described in the Directions.
- 5.2 The Parties acknowledge that the CMA may choose not to issue Directions immediately upon becoming entitled to do so, and recognise that any delay by the CMA in making a written Direction shall not affect the obligations of each of the Parties at such time as the CMA makes any written Direction.
- 5.3 Veolia undertakes that for a period of ten years from the Final Disposal, it will not, and shall procure that any Related Person will not, bring under common ownership or control in whole or in part any of the Divestment Businesses without the prior written consent of the CMA.

## **6. Divestiture Reporting Obligations**

- 6.1 Veolia undertakes to provide a written report to the CMA every two weeks from the commencement of the Divestiture Period, or such other interval as agreed with the CMA, until Final Disposal. With the consent of the CMA, the reports may be provided through the Monitoring Trustee. The report shall outline the progress Veolia has made towards each of the Remedies and the steps that have otherwise been taken to comply with these Final Undertakings and shall in particular report on:
- (a) the progress that has been made against the Approved Timetable;
  - (b) details of the efforts taken by Veolia and its financial advisers to solicit purchasers for each of the Divestment Businesses;
  - (c) the total number of persons who have lodged a formal bid with Veolia for the acquisition of any of the Divestment Businesses since the publication of the Report;

- (d) the name, address, email address, contact point and telephone number of each person who has lodged a formal bid with Veolia since the publication of the Report and subsequently been short-listed by Veolia as a preferred purchaser for any of the Divestment Businesses;
- (e) the status of any discussions that have been held with potential purchasers of any of the Divestment Businesses;
- (f) the progress that has been made towards agreeing heads of terms (if applicable) in relation to any of the Divestment Businesses;
- (g) the steps that have been taken towards reaching Transaction Agreements in relation to any of the Divestment Businesses and the persons to whom any draft agreements have been distributed; and
- (h) such other matters as may be directed by the CMA from time to time.

## **7. Asset Maintenance Undertakings**

7.1 Except with the prior written consent of the CMA (which, for the avoidance of doubt, includes any derogations already granted by the CMA pursuant to the IEO, which shall remain applicable during the Specified Period), the Parties undertake not to take any action and to procure that their Subsidiaries do not take any action during the Specified Period which might:

- (a) lead to the integration of any of the Suez Divestment Businesses with the Veolia Business;
- (b) transfer the ownership or control of all or any part of any Divestment Business or any of its Subsidiaries except in the course of complying with these Final Undertakings; or
- (c) otherwise impair the ability of any Divestment Business and the Veolia Business to compete independently in any of the markets affected by the Merger.

7.2 Further and without prejudice to the generality of paragraph 7.1, the Parties undertake during the Specified Period to procure that, until a Divestment Business is divested to an Approved Purchaser and except with the prior written consent of the CMA (which includes any previous derogations granted pursuant to the IEO, which will remain applicable during the Specified Period):

- (a) each Divestment Business is carried on separately from the Veolia Business (subject to any necessary transitional arrangements required in the period up to divestment) and each Divestment Business's existing sales or brand identity is maintained;

- (b) each Divestment Business is maintained as a going concern and sufficient resources are made available for the development of each Divestment Business to enable it to continue to compete independently in any of the markets affected by the Merger;
- (c) until its divestment to an Approved Purchaser, except in the ordinary course of business and for the purpose of complying with these Final Undertakings, no substantive changes are made to the organisational structure of, or the management responsibilities within, each Divestment Business;
- (d) the nature, description, range and quality of goods and/or services supplied by each Divestment Business is maintained and preserved;
- (e) except in the ordinary course of business:
  - (i) all of the assets of each Divestment Business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of any Divestment Business are disposed of; and
  - (iii) no interest in the assets of any Divestment Business and the Veolia Business is created or disposed of;
- (f) there is no integration (or no further integration, whichever applies) of the information technology of each of the Divestment Businesses and the Veolia Business, and the software and hardware platforms of the Divestment Businesses shall remain essentially unchanged, except for routine changes and maintenance in the ordinary course of business, except where strictly necessary to comply with these Final Undertakings;
- (g) the customer and supplier lists of the Divestment Businesses and the Veolia Business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Divestment Businesses will be carried out by the respective Divestment Business alone and, for the avoidance of doubt, the Veolia Business will not negotiate on behalf of any Divestment Business or enter into any joint agreements with any Divestment Business;
- (h) all existing contracts of the Divestment Businesses continue to be serviced by the business to which they were awarded;
- (i) no changes are made to the Key Staff of any Divestment Business (except where strictly necessary to comply with these Final Undertakings);

- (j) no Key Staff are transferred between, on the one hand, any Divestment Business or its Subsidiaries and, on the other hand, Veolia or its Subsidiaries or Related Parties (except where strictly necessary to comply with these Final Undertakings);
- (k) all reasonable steps are taken to encourage all Key Staff to remain with each Divestment Business, including the retention packages currently in place in respect of each Divestment Business; and
- (l) no Confidential Information shall pass, directly or indirectly, from any of the Divestment Businesses (or any of their employees, directors, agents or Related Persons) to Veolia (or any of its employees, directors, agents, or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations).

7.3 The Parties each undertake that until the Final Disposal, they will keep the CMA updated of any material developments (and, with the consent of the CMA, such updates may be provided through the Monitoring Trustee) relating to the Divestment Businesses (excluding a Divestment Business that has already been sold to an Approved Purchaser), which include but are not limited to:

- (a) details of Key Staff who leave or join any of the Divestment Businesses;
- (b) any interruption to any Divestment Business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for any period of time that could be expected to have a material and detrimental impact on any Divestment Business and/or its customers;
- (c) all substantial customer volumes won or lost by any of the Divestment Businesses including any substantial changes in customers' demand;
- (d) substantial changes in any Divestment Business's contractual arrangements or relationships with key suppliers;
- (e) substantial adverse changes in any material litigation or regulatory enforcement action;
- (f) the initiation, defence, progress and resolution of any material litigation or regulatory enforcement action; and
- (g) the financial position and/or performance of any of the Divestment Businesses.

7.4 The Parties each undertake that within a period of two weeks from the Commencement Date, they will provide written compliance statements to the

CMA in the form set out in Annexes 3 and 4, confirming compliance with their respective obligations under paragraph 7 of these Final Undertakings (subject to any granted derogations and excluding a Divestment Business that has already been sold to an Approved Purchaser). Each Party shall set out any details of material developments for the purposes of paragraph 7.3 of which they are aware. Thereafter, each of the Parties will provide similar compliance statements to the CMA (or, with the consent of the CMA, such statements may be provided through the Monitoring Trustee) every two weeks until the Completion Date.

- 7.5 If any of the Parties has any reason to suspect that this paragraph 7 might have been breached, it shall immediately notify the CMA and the Monitoring Trustee appointed in accordance with the terms of paragraph 8.
- 7.6 The CMA may give Directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out or ensuring compliance with this paragraph 7 or do or refrain from doing any specified action in order to ensure compliance with this paragraph 7. The CMA may vary or revoke any Directions so given.
- 7.7 The Parties shall comply and procure compliance by their Subsidiaries where necessary insofar as they are able with such Directions as the CMA may from time to time give to take such steps as may be specified or described in the Directions for the purpose of carrying out or securing compliance with this paragraph 7.

## **8. Monitoring Trustee**

- 8.1 Veolia undertakes to secure the appointment or retention of an independent Monitoring Trustee to perform the functions set out in paragraph 10 on behalf of the CMA. Provided that the other conditions set out in this paragraph are complied with, the Monitoring Trustee may be the same as already appointed pursuant to the written directions made by the CMA on 14 January 2022 (and subsequently varied on 18 January 2022) under the IEO.
- 8.2 In the event that Veolia proposes to retain the current Monitoring Trustee, appointed pursuant to the IEO, Veolia shall provide the CMA with a copy of the updated agreed terms and conditions of appointment and the revised mandate that reflect these Final Undertakings no later than five Working Days after the Commencement Date.
- 8.3 The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities.

- 8.4 The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Final Undertakings unless it can be resolved in a manner and within a time frame acceptable to the CMA.
- 8.5 Veolia shall remunerate and reimburse the Monitoring Trustee for all reasonable costs and professional fees properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out its functions.
- 8.6 Unless paragraph 8.2 applies:
- (a) the appointment of the Monitoring Trustee and its terms and conditions must be approved by the CMA. Veolia shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that it proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed by Veolia, Veolia shall provide the CMA with a copy of the agreed terms and conditions of appointment.
  - (b) If the proposed Monitoring Trustee is rejected by the CMA, Veolia shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 8.3 to 8.5 above.
- 8.7 The provisions of paragraph 8.8 below shall apply if:
- (a) paragraph 8.2 does not apply; and
  - (b) Veolia fails to nominate persons in accordance with paragraphs 8.1 or 8.6 above; or
  - (c) those persons nominated by Veolia in accordance with paragraphs 8.1 or 8.6 above are rejected by the CMA; or
  - (d) Veolia is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
- 8.8 The CMA shall nominate one or more persons to act as Monitoring Trustee, and Veolia shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
- 8.9 The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out in paragraph 10 below and that the Monitoring



Trustee will monitor the compliance of the Parties with their obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as it reasonably considers necessary to carry out its functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out its functions under these Final Undertakings.

## **9. Monitoring Trustee – replacement, discharge and reappointment**

9.1 Veolia acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require Veolia to replace the Monitoring Trustee.

9.2 If the Monitoring Trustee is removed under paragraph 9.1 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in paragraph 8 above.

## **10. Monitoring Trustee Functions – Divestiture of the Divestment Businesses**

10.1 The Monitoring Trustee's functions as set out in this paragraph 10 are to monitor and review compliance with these Final Undertakings and progress towards the Final Disposal, and shall in particular include:

- (a) Monitoring ongoing compliance with the Divestiture Undertakings set out in paragraph 4 above and the Asset Maintenance Undertakings set out in paragraph 7 above;
- (b) Close monitoring of, and periodical reporting to the CMA on, the progress made against the Approved Timetable towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings including:
  - (i) the steps that have been taken towards the preparation of agreements for the transfer of the Divestment Businesses and the persons to whom such agreements have been distributed;
  - (ii) where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between Veolia and its financial or other advisers and possible purchasers or their financial or other advisers in connection with the disposal process;

- (iii) reporting on any developments that the Monitoring Trustee reasonably considers may have a material impact on the Parties' ability to meet a step or deadline in the Approved Timetable;
  - (iv) in instances where the Monitoring Trustee reasonably considers there to be a material risk that Veolia or Vigie or any of their Subsidiaries will not meet a step in the Approved Timetable, the Monitoring Trustee may attend meetings between Veolia and possible purchasers in connection with the disposal processes.
  - (v) reviewing the divestiture process marketing materials prepared by Veolia (or its external advisors) to ensure their consistency with the requirements of the Remedies;
  - (vi) making recommendations to the CMA in order to ensure an efficient divestiture process and within the Divestiture Period;
  - (vii) undertaking any further investigations as may be required by the CMA in relation to compliance with these Final Undertakings and/or any proposed extension of the Divestiture Period; and
  - (viii) assisting the CMA (as appropriate) to ensure an effective divestiture; and
- (c) Monitoring Veolia's access to Suez's Confidential Information during any due diligence process and its compliance with any appropriate confidentiality safeguards (except as permitted by the CMA, including any derogations already granted by the CMA pursuant to the IEO).

10.2 The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these Final Undertakings and will provide a written report to the CMA every four weeks, the first report to be submitted no later than three weeks from the Commencement Date.

## **11. Divestiture Trustee**

11.1 The Parties recognise and acknowledge that the CMA may direct the appointment of a Divestiture Trustee:

- (a) following the expiration of the Divestiture Period if the Parties fail to achieve the Final Disposal within the Divestiture Period, or;
- (b) prior to the expiry of the Divestiture Period including where:
  - (i) the CMA reasonably believes that there is a risk that the Final Disposal would be delayed or fail to be completed within the Divestiture Period;

- (ii) the CMA reasonably believes after raising its concerns with the Parties that either Party or both Parties are not engaging constructively with each of their respective obligations under these Final Undertakings or that either of the Parties has otherwise failed to comply with each of their respective obligations under these Final Undertakings; or
- (iii) the CMA reasonably believes there is a material deterioration in any of the Divestment Businesses during the divestiture process.

11.2 A Divestment Trustee will be appointed only in relation to the specific Divestment Business in respect of which the disposal has not been completed prior to the expiry of the Divestiture Period or in respect of which the CMA has identified concerns under paragraph 11.1(a)-(c). To give effect to this paragraph 11, Veolia undertakes to enter into a Divestiture Trustee Mandate with the Divestiture Trustee in accordance with Annex 1.

## **12. Hold Separate Manager**

12.1 The Parties recognise and acknowledge that the CMA may direct the appointment by Veolia of a Hold Separate Manager as an independent interim manager with executive powers to manage any of the Divestment Businesses.

12.2 The Hold Separate Manager shall be appointed at the written direction of the CMA where the CMA, upon reasonable grounds, considers that there has been a material change in relation to any of the Divestment Businesses including a material change to the existing senior management team of any of the Divestment Businesses and the Hold Separate Manager shall undertake such matters as the CMA may specify in the written direction. A Hold Separate Manager will be appointed only in relation to the specific Divestment Business in respect of which the CMA has identified a material change under this paragraph 12.2.

## **13. Variations to these Final Undertakings**

13.1 The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.

13.2 Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.

13.3 The consent of the CMA shall not be unreasonably withheld or delayed.

#### **14. General obligations to provide information to the CMA**

- 14.1 The Parties each undertake to cooperate with the CMA in good faith and to promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections 82, 83, 92, 93(6) and 94 of the Act.
- 14.2 Each Party undertakes that should it at any time be in breach of any provision of these Final Undertakings, the relevant Party will notify the CMA within two Working Days, starting with the date it becomes aware of the breach or relevant circumstances of that breach.
- 14.3 Each Party undertakes that should it be aware of any circumstances which may materially impact its ability to comply with its obligations under these Final Undertakings, it will notify the CMA within two Working Days starting with the date it becomes aware of the relevant circumstances.
- 14.4 Where any person, including a Monitoring Trustee or a Divestiture Trustee, must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, each Party undertakes to take reasonable steps within its respective powers to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of the Parties to any person other than to the CMA, without the prior written consent of both the CMA and the Parties.

#### **15. Acceptance of service**

- 15.1 Veolia hereby authorises its legal representatives, Jackie Holland, Paul Gilbert and John Messent of Cleary Gottlieb Steen & Hamilton LLP, 2 London Wall Place, London, EC2Y 5AU to accept service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to Veolia or its Subsidiaries or Affiliates in connection with proceedings in court in the UK).
- 15.2 Vigie hereby authorises its legal representatives, Mark Jephcott and David Trapp of Simmons & Simmons LLP, CityPoint, 1 Ropemaker Street, London, EC27 9SS to accept service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to Vigie or its Subsidiaries or Affiliates in connection with proceedings in court in the UK).
- 15.3 Unless Veolia or Vigie informs the CMA that their legal representatives have ceased to have authority and have informed the CMA of an alternative to accept and acknowledge service on their behalf, any document, written directions, order, request, notification or other communication connected with these Final

Undertakings shall be deemed to have been validly served, as applicable, on Veolia or Vigie, if it is served on their applicable respective legal representatives, and service or receipt shall be deemed to be acknowledged by email from Veolia's and Vigie's legal representatives to the CMA.

- 15.4 Paragraph 15.1 has effect irrespective of whether, as between Veolia and its legal representatives, or Vigie and its legal representatives, their respective legal representatives have or continue to have any authority to accept and acknowledge service on their behalf (unless they inform the CMA that Veolia's or Vigie's legal representatives have ceased to have authority to accept and acknowledge service on their behalf), and no failure or mistake by Veolia's or Vigie's legal representatives (including a failure to notify, as applicable, Veolia or Vigie, of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

## **16. Effect of invalidity**

- 16.1 The Parties undertake that should any provision of these Final Undertakings be contrary to law or invalid for any reason, they shall continue to observe the remaining provisions.

## **17. Extension of time**

- 17.1 The Parties recognise and acknowledge that the CMA may, where it considers it appropriate, in response to a written request from either of the Parties showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which the Parties, the Monitoring Trustee and the Divestiture Trustee (as the case may be) must take action. The grant of any such extension shall not be unreasonably withheld or delayed.

## **18. Undertakings given jointly and severally**

- 18.1 Where undertakings in these Final Undertakings are given by Veolia and Vigie, they are given jointly and severally.

## **19. Governing law**

- 19.1 These Final Undertakings shall be governed by and construed in all respects in accordance with English law.
- 19.2 Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

FOR AND ON BEHALF OF VEOLIA ENVIRONNEMENT S.A.

.....

Signed

.....

Name

.....

Title

.....

Date

FOR AND ON BEHALF OF VIGIE GROUPE SAS

.....

Signed

.....

Name

.....

Title

.....

Date

## **Annex 1: Appointment and Functions of Divestiture Trustee**

1. Veolia undertakes that within the period of five Working Days following the day on which the CMA issues a direction pursuant to clause 11 of the Final Undertakings, Veolia shall submit to the CMA for approval a list of persons from which it proposes to appoint a Divestiture Trustee with sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in clause 2 below and shall include among other things:
  - a. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to perform its duties; and
  - b. a schedule of the steps to be taken to give effect to the mandate.
2. Each person on the list referred to in clause 1 of this Annex shall possess the qualifications necessary for the performance of the mandate, shall be independent of and unconnected to the Parties and free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration, on appointment or thereafter.
3. The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld or delayed) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. If only one name is approved, Veolia shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, Veolia shall be free to choose among the approved names the Divestiture Trustee to be appointed. Veolia undertakes to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
4. If all the proposed Divestiture Trustees are rejected by the CMA, Veolia shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in clauses 1 to 3 of this Annex above.
5. The provisions of clause 6 below shall apply only if:
  - (a) Veolia fails to nominate persons in accordance with clause 1 of this Annex above;
  - (b) those further persons nominated by Veolia in accordance with clause 4 of this Annex above are rejected by the CMA;

(c) Veolia is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.

6. The CMA shall nominate one or more persons to act as a Divestiture Trustee, and Veolia shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

### **Divestiture Trustee – Functions**

7. The Parties undertake to enable the Divestiture Trustee to carry out its duties and to provide such co-operation and resources as the Divestiture Trustee may reasonably require.
8. The Parties recognise and acknowledge that:
  - a. the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty to implement the Trustee Obligation;
  - b. in order to implement the Trustee Obligation, the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee to amend the scope of the relevant Divestiture Business, where the CMA has reasonable grounds for believing that the divestiture of the relevant Divestment Business cannot be achieved within the Divestiture Period;
  - c. the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary to implement the Trustee Obligation and such terms and conditions as the CMA considers appropriate; and
  - d. the Divestiture Trustee shall protect the legitimate financial interests of Veolia subject to the Divestiture Trustee's overriding obligation to implement the Trustee Obligation which may include the Final Disposal of the relevant Divestment Business [X].
9. The Parties recognise and acknowledge that the Divestiture Trustee shall take such steps and measures as it considers necessary to implement the Trustee Obligation and to that end, the Divestiture Trustee may give written directions to the Parties. The Parties undertake to comply with such directions or to procure compliance with such directions as are within their respective powers and to take such steps within their respective competence as the Divestiture Trustee may specify.



10. The Parties recognise and acknowledge that in the performance of the Trustee Obligation, the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of the Parties. The Parties undertake that they shall not seek to revise the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.
11. The Divestiture Trustee shall every two weeks until the date on which Final Disposal takes place, report to the CMA on its progress towards Final Disposal, compliance with paragraph 6 and any other matter specified by the CMA.

#### **Divestiture Trustee – duties and obligations of Veolia and Vigie**

12. The Parties undertake to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request that is relevant to the divestiture, excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the performance of the Trustee Obligation.
13. The Parties recognise and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege). The Parties also undertake to provide the Divestiture Trustee upon reasonable request with copies of any such items. Upon the reasonable request of the Divestiture Trustee, the Parties undertake to make available to the Divestiture Trustee one or more offices on their respective premises and ensure that the necessary Veolia and/or Suez personnel are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary to discharge the Trustee Obligation, subject in each case to the Divestiture Trustee's compliance with the Parties' respective internal policies.
14. The Parties undertake to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation, including by the appointment of advisers to assist with the disposal process. The Parties undertake that upon the reasonable request of the Divestiture Trustee, they shall execute the documents required to give effect to the Trustee Obligation.
15. The Parties undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the duty to divest the Divestment Businesses and the Parties recognise and acknowledge that the Divestiture Trustee, its employees, agents or advisers shall have no liability to the Parties or any of its Subsidiaries or Affiliates for any

liabilities arising out of the proper performance of the duty to divest the relevant Divestment Business, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.

16. Veolia shall be entitled to a monthly statement from the Divestiture Trustee of all professional fees and expenses properly incurred by the Divestiture Trustee and its advisers, appointed in accordance with clause 16. Any individual items of costs or expenses in excess of an amount at a level set in advance by the CMA in consultation with the Divestiture Trustee shall not be properly incurred unless with the prior written consent of the CMA, Veolia having had prior opportunity to comment to the CMA on both the level to be set in advance and any individual items of cost or expense that exceed that amount, on the condition that Veolia shall provide such comments to the CMA within a timescale specified by the CMA that shall be reasonable in all the circumstances.
17. Veolia shall remunerate and reimburse the Divestiture Trustee for all professional fees, expenses and reasonable costs properly incurred in accordance with the terms and conditions of its appointment. This may include all costs, expenses and professional fees of financial or legal advisers appointed to assist with the fulfilment of the Divestiture Trustee Obligation if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by Veolia. Should Veolia refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Veolia, approve and direct the appointment of such advisers.
18. The Parties undertake to make no objection to the Final Disposal save on the grounds of bad faith, wilful default, recklessness or negligence by the Divestiture Trustee or subject to clause 8.d, failure of the Divestiture Trustee reasonably to protect the legitimate financial and business interests of Veolia.

#### **Divestiture Trustee – replacement, discharge and reappointment**

19. The Parties acknowledge that if the Divestiture Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require Veolia to replace the Divestiture Trustee.
20. If the Divestiture Trustee is removed under clause 19 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee will have effected a full handover of

all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in clauses 1 to 6 above.

21. The Parties recognise and acknowledge that, other than in accordance with clause 19 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

## **Annex 2: Purchaser Approval Criteria**

These Purchaser Approval Criteria summarise the guidance at paragraphs 5.20 to 5.27 of the [CMA's guidance on Merger Remedies \(CMA87\)](#) and are to be construed in a manner that is consistent with, and for the purpose of giving effect to, the Remedies as set out in the Report.

The CMA shall on reasonable request give Veolia guidance on the interpretation of specific aspects of these Purchaser Approval Criteria, so as to enable Veolia to ensure that its selected purchasers for the Divestment Businesses will meet the requirements of this Annex 2 and CMA87.

### **1. Independence**

1.1 An Approved Purchaser should have no significant connection (for example an equity interest, common significant shareholders, shared directors, reciprocal trading relationships or continuing financial assistance) to Veolia and/or Vigie that may compromise the Approved Purchaser's ability or incentives to compete with Veolia and/or Vigie after the completion of the divestiture of the relevant Divestment Business.

### **2. Capability**

2.1 An Approved Purchaser should have access to or be able to secure appropriate financial resources, expertise (including managerial, operational and technical capability) and assets to enable the relevant Divestment Business to be an effective competitor. This access should be sufficient to enable the relevant Divestment Business to continue to develop as an effective competitor.

### **3. Commitment to the relevant market**

3.1 An Approved Purchaser should demonstrate to the satisfaction of the CMA that it is committed to and has credible and appropriate plans for competing in the relevant market of the relevant Divestment Business so as to remedy the relevant SLCs and the adverse effects that are expected to result from them, as set out in the Report.

### **4. Absence of competitive concern**

4.1 In considering whether to give consent to an Approved Purchaser, the CMA shall consider whether the terms of any of the Transaction Agreements would give rise to a material risk that the sale of the relevant Divestment Business would not remedy the relevant SLCs and the adverse effects that may be expected to result from them. In addition, the CMA shall require that the divestiture of the relevant Divestment Business to the Approved Purchaser must not raise further competition or regulatory concerns in the relevant markets.

### **Annex 3: Compliance Statement for Veolia**

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

#### *Compliance in the Relevant Period*

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Veolia has complied with the Final Undertakings made by the CMA in relation to the divestiture of [relevant Divestment Business] on [insert date] (the Final Undertakings ); and
  - (b) Veolia's subsidiaries have also complied with these Final Undertakings .
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by Veolia that might prejudice the Final Disposal, the CMA's decisions in the Final Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating and preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC finding, including any action which might:
    - (i) Lead to the integration of any of the Suez Divestment Businesses and the Veolia Business;
    - (ii) Transfer the ownership or control of all or any part of the Divestment Businesses or any of their Subsidiaries except where strictly necessary to comply with the Final Undertakings; or
    - (iii) Otherwise impair the ability of each Divestment Business and the Veolia Business to compete independently in any of the markets affected by the Merger;
  - (b) Each Divestment Business has been carried on separately from the Veolia Business (subject to any necessary transitional arrangements required in the period up to divestment) and each Divestment Business's existing sales or brand identity has been maintained;
  - (c) Each Divestment Business has been maintained as a going concerns and sufficient resources have been made available for the development of each Divestment Business to enable it to continue to compete independently in any of the markets affected by the Merger;

- (d) No substantive changes have been made to the organisational structure of any Divestment Business, except in the ordinary course of business and except where strictly necessary to comply with the Final Undertakings;
- (e) No changes have been made to the organisational structure of any Divestment Business which would alter, impede or frustrate the implementation, carrying out or enforcement of the Final Undertakings except where strictly necessary to comply with the Final Undertakings;
- (f) No substantive changes are made to the management responsibilities within any Divestment Business except in the ordinary course of business and where strictly necessary to comply with the Final Undertakings;
- (g) The nature, description, range and quality of goods and/or services supplied by each Divestment Business have been maintained and preserved;
- (h) Except in the ordinary course of business for the separate operation of the Divestment Businesses and the Veolia Business or where strictly necessary to comply with the Final Undertakings :
  - (i) All of the assets of each Divestment Business, including facilities and goodwill, have been maintained and preserved;
  - (ii) None of the assets of any Divestment Business have been disposed of;  
and
  - (iii) No interest in the assets of any Divestment Business has been created or disposed of;
- (i) There has been no integration of the information technology (or no further integration, whichever applies) of each of the Divestment Businesses and the Veolia Business, and the software and hardware platforms of the Divestment Businesses have remained essentially unchanged, except for routine changes and maintenance in the ordinary course of business, except where strictly necessary to comply with the Final Undertakings;
- (j) The customer and supplier lists of the Divestment Businesses and the Veolia Business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Divestment Businesses have been carried out by the respective Divestment Businesses alone and the Veolia Business has not negotiated on behalf of any Divestment Business (and vice versa) or entered into any joint agreements with any Divestment Business (and vice versa);

- (k) All existing contracts of the Divestment Businesses have been serviced by the business to which they were awarded;
- (l) No changes have been made to key staff of the Divestment Businesses except where strictly necessary to comply with the Final Undertakings;
- (m) No key staff have been transferred between, on the one hand, any Divestment Business or its Subsidiaries and, on the other hand, Veolia or its Subsidiaries or Related Parties (except where strictly necessary to comply with the Final Undertakings);
- (n) All reasonable steps have been taken to encourage all key staff to remain with each Divestment Business, including the retention packages currently in place in respect of each Divestment Business;
- (o) Except as permitted by the Final Undertakings, no Confidential Information has passed, directly or indirectly, from any Divestment Business (or any of its employees, directors, agents or Related Persons) to Veolia (or any of its employees, directors, agents or Related Persons), or vice versa except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations);
- (p) Except as listed in paragraph (q) below, there have/has been no:
  - (i) Changes to the key staff of any Divestment Business;
  - (ii) Interruptions to any Divestment Business (including without limitation its procurement, processing, logistics, sales and employee relations arrangements) that have prevented them from operating in the ordinary course of business for any period of time that could be expected to have a material and detrimental impact on the Divestment Businesses and/or their customers;
  - (iii) Substantial customer volumes won or lost for any of the Divestment Businesses including any substantial changes in customers' demand;
  - (iv) Substantial changes in any Divestment Business's contractual arrangements or relationships with key suppliers;
  - (v) substantial adverse changes in any material litigation or regulatory enforcement action relating to any Divestment Business;
  - (vi) initiation, defence, progress or resolution of any material litigation or regulatory enforcement action relating to any Divestment Business;and

- (vii) Substantial adverse changes in the financial position and/or performance of any of the Divestment Businesses.

*(q) [list of material developments]*

- 3. Veolia and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to any Divestment Business in accordance with paragraph 7 of the Final Undertakings.

Interpretation

- 4. Terms defined in the Final Undertakings have the same meaning in this compliance statement.

I understand that:

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

FOR AND ON BEHALF OF Veolia Environnement S.A.

Signature .....

Name .....

Title .....

Date .....



## **Annex 4: Compliance Statement for Vigie**

I [insert name] confirm on behalf of Vigie that:

### *Compliance in the Relevant Period*

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Vigie has complied with the Final Undertakings made by the CMA in relation to the divestiture of the Divestment Businesses on [insert date] (the Final Undertakings); and
  - (b) Vigie's subsidiaries have also complied with the Final Undertakings.
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by Vigie that might prejudice the Final Disposal, the CMA's decisions in the Final Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating and preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC finding, including any action which might:
    - (i) Lead to the integration of any of the Divestment Businesses and the Veolia Business;
    - (ii) Transfer the ownership or control of all or any part of any Divestment Business or any of its Subsidiaries except where strictly necessary to comply with the Final Undertakings; or
    - (iii) Otherwise impair the ability of any Divestment Business to compete independently in any of the markets affected by the Merger;
  - (b) The Suez Divestment Businesses have been carried on separately from the Veolia Business (subject to any necessary transitional arrangements required in the period up to divestment) and each Divestment Business's separate sales or brand identity has been maintained;
  - (c) Each of the Suez Divestment Businesses have been maintained as a going concern and sufficient resources have been made available for the development of each Suez Divestment Business, to continue to compete independently in any of the markets affected by the Merger;
  - (d) No substantive changes have been made to the organisational structure of any Suez Divestment Business, except in the ordinary course of business or where strictly necessary to comply with the Final Undertakings;

- (e) No changes have been made to the organisational structure of any Suez Divestment Business which would alter, impede or frustrate the implementation, carrying out or enforcement of the Final Undertakings, except where strictly necessary to comply with the Final Undertakings;
- (f) No substantive changes are made to the management responsibilities within any Suez Divestment Business except in the ordinary course of business or except where strictly necessary to comply with the Final Undertakings;
- (g) The nature, description, range and quality of goods and/or services supplied by each Suez Divestment Business in the UK have been maintained and preserved;
- (h) Except in the ordinary course of business for the separate operation of the Suez Divestment Businesses and the Veolia Business or except where strictly necessary to comply with the Final Undertakings:
  - (i) All of the assets of each Suez Divestment Business, including facilities and goodwill, have been maintained and preserved;
  - (ii) None of the assets of any Suez Divestment Business have been disposed of; and
  - (iii) No interest in the assets of any Suez Divestment Business has been created or disposed of;
- (i) There has been no integration of the information technology (or no further integration, whichever applies) of any Suez Divestment Business and the Veolia Business, and the software and hardware platforms of the Suez Divestment Businesses have remained essentially unchanged, except for routine changes and maintenance in the ordinary course of business, except where strictly necessary to comply with the Final Undertakings;
- (j) Subject to integration which had occurred prior to 9 June 2020, the customer and supplier lists of the Suez Divestment Businesses and the Veolia Business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Suez Divestment Businesses have been carried out by the Suez Divestment Businesses alone and the Veolia Business has not negotiated on behalf of the Suez Divestment Businesses (and vice versa) or entered into any joint agreements with any of the Suez Divestment Businesses (and vice versa);

- (k) All existing contracts of the Suez Divestment Businesses have been serviced by the business to which they were awarded (and not by Veolia);
- (l) No changes have been made to key staff of any Suez Divestment Business, except where strictly necessary to comply with the Final Undertakings;
- (m) No key staff have been transferred between, on the one hand, any Suez Divestment Business or its Subsidiaries and, on the other hand, Veolia or its Subsidiaries or Related Parties (except where strictly necessary to comply with the Final Undertakings);
- (n) All reasonable steps have been taken to encourage all key staff to remain with each Suez Divestment Businesses including the retention packages currently in place in respect of each Suez Divestment Business;
- (o) Except as permitted by the Final Undertakings, no Confidential Information, has passed, directly or indirectly, from any Suez Divestment Business (or any of its employees, directors, agents or Related Persons) to the Veolia Business (or any of its employees, directors, agents or Related Persons), or vice versa except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations);
- (p) Except as listed in paragraph (q) below, there have/has been no:
  - (i) Changes to the Key Staff of the Suez Divestment Businesses except where strictly necessary to comply with the Final Undertakings;
  - (ii) Interruptions of any Suez Divestment Business (including without limitation its procurement, processing, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for any period of time that could be expected to have a material and detrimental impact on any Suez Divestment Business and/or its customers;
  - (iii) Substantial customer volumes won or lost for any of the Suez Divestment Businesses including any substantial changes in customers' demand; or
  - (iv) Substantial changes in any Suez Divestment Business's contractual arrangements or relationships with key suppliers;
  - (v) substantial adverse changes in any material litigation or regulatory enforcement action relating to any Suez Divestment Business;

(vi) initiation, defence, progress or resolution of any material litigation or regulatory enforcement action relating to any Suez Divestment Business; and

(vii) substantial adverse changes in the financial position and/or performance of any of the Suez Divestment Businesses.

*(q) [list of material developments]*

3. Vigie and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to any Suez Divestment Business in accordance with paragraph 7 of the Final Undertakings.

#### Interpretation

4. Terms defined in the Final Undertakings have the same meaning in this compliance statement.

I understand that:

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

FOR AND ON BEHALF OF Vigie Groupe SAS

Signature .....

Name .....

Title .....

Date .....