

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

Directions issued on 10 August 2022 pursuant to paragraph 12 of the Initial Enforcement Order made by the Competition and Markets Authority on 2 August 2021 pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- a) Bouygues S.A. (**Bouygues**) has agreed to acquire Equans S.A.S. (**Equans**) from Engie S.A. (the **Merger**). Bouygues and Equans are together referred to as the Parties.
- b) On 19 July 2022, the Competition and Markets Authority (**CMA**) decided under the Act that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom as a result of horizontal unilateral effects in relation to the supply of high-speed overhead catenary systems (**OCS**).
- c) On 26 July 2022, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
- d) On 2 August 2022, pursuant to section 73A(2)(b) of the Act, the CMA gave notice to the Parties that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act, and that it was considering the Parties' offer.
- e) On 2 August 2022, the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order (the **Order**) addressed to Bouygues and Equans in accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action. The Order is still in force.
- f) The CMA now issues written directions under paragraph 12 of the Order that, for the purpose of securing compliance with the Order, Bouygues and Equans must appoint a monitoring trustee (**MT**) in accordance with the terms provided for in this Annex and must comply with the obligations set out in the Annex.

Shantanu Kafle

Assistant Director, Mergers

Competition and Markets Authority

10 August 2022

Annex

Directions to appoint a monitoring trustee

Interpretation

In these directions:

‘the Act’	means the Enterprise Act 2002;
‘an affiliate’	of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;
‘Bouygues’	means Bouygues S.A;
‘the Bouygues business’	means the business of Bouygues and its subsidiaries carried on as at the commencement date;
‘business’	has the meaning, unless otherwise stated, given by section 129(1) and (3) of the Act;
‘Colas Rail Belgium’	means Colas Rail Belgium, a company incorporated under the laws of Belgium having its registered office at 3, Rue des Ateliers, B-7850 Enghien, Belgium, and registered in the Crossroads Bank for Enterprises under number 0460.627.462 (Register of Legal Entities Hainaut, section Tournai);
‘CMA’	means the Competition and Markets Authority;
‘Commencement date’	means 10 August 2022;
‘Derogations’	means any derogations granted whether before or after the appointment of the MT by the CMA by which Bouygues or Equans may undertake certain actions that derogate from the Order;
‘Equans’	means Equans S.A.S.;
‘the Equans business’	means the business of Equans and its subsidiaries carried on as at the commencement date;

‘MT’	means the monitoring trustee appointed in accordance with this Annex;
‘Order’	means the initial enforcement order made by the CMA on 2 August 2022 and addressed to Bouygues and Equans;
‘the Merger’	means the transaction by which Bouygues and Equans will cease to be distinct within the meaning of section 23 of the Act;
‘subsidiary’ ,	has the meaning, unless otherwise stated, given by section 1159 of the Companies Act 2006 (and ‘subsidiaries’ shall be construed accordingly).

Terms and expressions defined in the Order have the same meaning in these directions, unless the context requires otherwise.

Appointment

1. Bouygues and Equans must appoint a MT in order to ensure compliance with the Order, in particular to:
 - a. monitor and report to the CMA on compliance by Bouygues and Equans with the Order, including with their obligation not to:
 - i. complete any agreement or arrangement which transfers to Bouygues or any of Bouygues’ subsidiaries the ownership or control of the Equans business or any of Equans’ subsidiaries, including any business of Equans as at the commencement date of the Order;
 - ii. transfer ownership or control of the Equans business (as a whole) or the Bouygues business (as a whole), or any of their subsidiaries which are active, directly or indirectly, in supplying OCS products and / or services in Europe (except for Colas Rail Belgium);
 - iii. remove either of their bids for the HS2 high-speed OCS tender prior to final acceptance of the Proposed UILs, or final determination of any reference under sections 22 or 33 of the Act; and
 - iv. engage in interim action that could result in the loss of the competitive potential of either of the OCS Businesses; and
 - b. support the CMA taking any action to ensure compliance with the Order and maintain the OCS Businesses as going concerns.

2. The MT must act on behalf of the CMA and be under an obligation and duty of care to the CMA to carry out its functions to the best of its abilities.
3. Bouygues and Equans must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Bouygues and Equans as set out in these directions.

General

4. The MT must possess appropriate qualifications and experience to carry out its functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs its objectivity and independence in discharging its duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. Bouygues and Equans shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out its functions.
7. Bouygues and Equans must appoint the MT as soon as is reasonably practicable and in any event by **5pm on 15 August 2022** (or such longer period as the CMA may reasonably agree in writing) and the MT will continue to act either until final acceptance of the Proposed UILs, or final determination of any reference under sections 22 or 33 of the Act, or until the CMA directs that the MT is no longer required.
8. The appointment of a MT by Bouygues and Equans is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
 - a. the name and contact details of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on 10 August 2022** (or such longer period as the CMA may reasonably agree in writing);
 - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on 10 August 2022** (or such longer period as the CMA may reasonably agree in writing); and
 - c. once the MT has been approved by the CMA and appointed, the Parties must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

9. The functions of the MT will be to:
 - a. ascertain and report to the CMA in relation to the current level of compliance by Bouygues, Equans and their subsidiaries with the Order;
 - b. assess and report to the CMA in relation to the arrangements made by Bouygues and Equans for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
 - c. identify and supervise if necessary the arrangements made by Bouygues and Equans for ensuring compliance with the Order;
 - d. monitor compliance by Bouygues, Equans and their subsidiaries with the Order;
 - e. assist the CMA with the consideration of any derogation requests made by Bouygues and Equans and monitor compliance by Bouygues and Equans with any derogations granted by the CMA; and
 - f. without prejudice to the right of Bouygues and Equans to directly contact the CMA, respond to any questions which Bouygues and Equans may have in relation to compliance with the Order, in consultation with the CMA.
10. The MT must take such steps as it reasonably considers necessary in order to carry out its functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Bouygues business and the Equans business, such as written and electronic communications, and notes of meetings as may be required.
11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by Bouygues and Equans with the Order.

Obligations of Bouygues and Equans

12. Bouygues, Equans, their respective affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge its functions, including but not limited to:
 - a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Bouygues business and the Equans business as the MT may reasonably require; and

- b. the provision of such office and supporting facilities as the MT may reasonably require.
- 13. If Bouygues or Equans are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.
- 14. If Bouygues and/or Equans has any reason to suspect that the Order may have been breached, it must notify the MT and the CMA immediately.

Reporting functions

- 15. The MT is required to provide an initial report to the CMA no later than **5pm on 29 August 2022** (or such longer period as the CMA may reasonably agree in writing), giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
 - a. details of the current extent of compliance with the Order;
 - b. a description of the current arrangements made for the operation of the OCS Businesses and for the preservation of the assets required to operate the OCS Businesses; and
 - c. recommendations as to what changes to those arrangements, if any, are necessary.
- 16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in its view, Bouygues and Equans have complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:
 - a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
 - i. anything has caused it to be concerned as to whether Bouygues and Equans have complied with the Order, and if it has, whether those concerns have been resolved and why;
 - ii. it has any remaining doubts or uncertainties as to whether Bouygues and Equans have complied with the Order; and
 - iii. anything that causes it to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
 - b. details of the performance of the OCS Businesses, including any factors that might indicate asset deterioration;

- c. whether appropriate steps are being taken to maintain the OCS Businesses as a going concern;
 - d. the extent to which Bouygues and Equans have cooperated with the MT in its task of monitoring its compliance with the Order and details of any aspects of the cooperation of Bouygues and/or Equans that it considers could be improved;
 - e. the extent to which the MT considers that it is in an appropriate position to monitor the compliance of Bouygues and Equans with the Order and if there is anything that the MT considers would assist it in monitoring compliance;
 - f. any current or anticipated requests for consent to vary the Order; and
 - g. the information it used to compile the report.
17. At any time, the MT will provide to the CMA, at its request (or on the MT's own initiative), a written or oral report on matters falling within the scope of these directions. If relevant, the MT may also provide information to the CMA on other matters subject to the Parties' consent.
18. When providing reports to the CMA, the MT must ensure that it does not disclose any information or documents to the CMA which Bouygues and/or Equans would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Bouygues and/or Equans to produce any information or documents to the MT which are privileged.
19. The MT must immediately notify the CMA in writing if it forms a reasonable suspicion that the Order has been breached, or if it considers that it is no longer in a position to effectively carry out its functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).
20. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to Bouygues and Equans, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.