



Public Competition Assessment

29 November 2023

Veolia - proposed acquisition of Suez

The ACCC's decision

1. On 21 December 2021, the Australian Competition and Consumer Commission announced its decision not to oppose the proposed acquisition by Veolia Environnement S.A (**Veolia**) of Suez S.A (**Suez**) (the **proposed acquisition**) after accepting three section 87B undertakings to divest:
 - Certain commercial and industrial waste assets in Sydney, Perth and Adelaide, and medical waste assets in Adelaide to Remondis Australia Pty Limited (**Remondis**)
 - Suez's municipal water business (**Suez Water**) to a consortium of investors, and
 - Veolia's interest in Integrated Waste Services (**IWS**) in Adelaide to First Sentier Investors (Australia) RE Ltd (**First Sentier Investors**) (the **Undertakings**).
2. The ACCC considered that the proposed acquisition was unlikely to contravene section 50 of the *Competition and Consumer Act 2010* (the **Act**), taking into account the Undertakings. Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
3. The ACCC identified over 60 markets requiring investigation to assess the competitive effect of the proposed acquisition. The ACCC considered the proposed acquisition was unlikely to substantially lessen competition in all but the following six markets:
 - National / multi-regional commercial and industrial waste collection
 - Medical waste collection in South Australia
 - Putrescible waste disposal in the Sydney region
 - Dry waste disposal in Adelaide

- Design and construction of water and wastewater treatment facilities in Australia, and
 - Operation and maintenance of water and wastewater treatment facilities in Australia.
4. The ACCC considered that without the divestments pursuant to the Undertakings, the proposed acquisition was likely to substantially lessen competition in these six markets.
 5. This Public Competition Assessment outlines reasons for the decision by the ACCC not to oppose the proposed acquisition, taking into account the Undertakings.
 6. Please note that this and other public competition assessments are subject to the following qualifications:
 - The ACCC considers each transaction on a case-by-case basis and so the analysis and decision outlined in one assessment will not necessarily reflect the ACCC's view of another transaction.
 - As assessments are relatively brief and do not refer to confidential information, assessments do not necessarily set out all of the issues and information considered by the ACCC.

The parties and the transaction

The acquirer: Veolia

7. Veolia is a public company listed and headquartered in France, with operations in 48 countries. In Australia, Veolia supplies water management, waste management and energy solutions through various wholly owned subsidiaries.

The target: Suez

8. Suez is a listed holding company headquartered in France with global operations. At the time of the ACCC's consideration, Suez supplied water management and technology, and waste management and resource recovery services in Australia.

The transaction

9. On 5 October 2020, Veolia acquired a 29.9% interest in Suez. At this time, Veolia announced its intention to acquire the remaining shares in Suez that it did not already own. After receiving an application for informal review and other information from the parties, the ACCC commenced its public review of the proposed acquisition on 19 February 2021.
10. On 14 May 2021, Veolia advised the ACCC of substantial changes to the Suez assets being acquired. These included:

- A number of Suez’s waste processing facilities in the Sydney region were excluded from the proposed acquisition, and were ultimately acquired by Cleanaway on 18 December 2021.
 - The Suez Water business was also excluded from the proposed acquisition and acquired globally by a consortium of investors known as “new Suez”. Veolia acquired Suez’s Water Technologies and Solutions business.
11. The ACCC commenced its review of the revised transaction on 12 July 2021. The ACCC suspended its timeline again in September to allow Veolia to propose remedies aimed at resolving the ACCC’s competition concerns, and the ACCC recommenced the review in November.

Market inquiries

12. The ACCC conducted market inquiries with a range of industry participants, including competitors, potential competitors, customers, other regulatory agencies and other interested parties. The ACCC sought submissions in relation to the substantive competition issues and the Undertakings. The ACCC conducted inquiries with an extensive number of market participants.

Industry background

Waste management

13. The waste management industry comprises three main categories of activities:
- Collections which involves collecting and transporting the waste to post-collections facilities for processing or landfilling
 - Processing which involves the sorting, processing and recycling of waste, and
 - Disposal of the waste material that remains after recyclable material has been removed, either into landfill or converting waste into a fuel source for use in cement kilns or energy-to-waste facilities.

Types of waste

14. The major waste types relevant to the proposed acquisition are the following:
- Putrescible waste contains organics such as food waste.
 - Dry waste, or non-putrescible waste, is primarily non-organic waste that is composed of materials such as paper, cardboard, plastics and metals. Non-putrescible waste may be recyclable or non-recyclable.
 - Commercial and industrial waste is mainly generated from commercial buildings and businesses, government facilities, educational institutions and industrial sites. Commercial and industrial waste is generally a mix of putrescible and non-putrescible materials.

- Medical waste is generally treated by incineration / thermal destruction, or autoclaving (i.e. sterilisation) and landfill after treatment.

Other waste industry participants

15. Cleanaway Pty Ltd (**Cleanaway**) is an Australian ASX listed company. Cleanaway is a large, vertically integrated waste management company in Australia, supplying recycling, waste management and industrial services. It does not have operations in water management.
16. Remondis is a multinational group that supplies waste and water management services, and, at the time of the ACCC's consideration, a smaller waste management competitor in Australia when compared with Cleanaway, Veolia and Suez. At the time of the ACCC's consideration, it had operations in New South Wales, Victoria, Queensland and Western Australia.
17. There are various other waste management companies around Australia considered "tier 2" and "tier 3" due to their size and geographic presence. JJ Richards & Sons Pty Ltd and Bingo Industries Limited are the largest of these companies.
18. First Sentier Investors is a global asset management business with various investments in waste globally, including energy-from-waste.

Water management

19. Water management services include services to municipal and industrial customers. There are different categories that comprise water management services relevant to the ACCC's competition concerns:
 - Design and construction of water and wastewater treatment facilities involves the design and build of one or more parts of a water treatment, recycling or desalination facility.
 - Operation and maintenance of water and wastewater treatment facilities refers to managing and monitoring the day-to-day activities, and upgrades or repairs.
20. At the time of the ACCC's consideration, the Suez Water business supplied design and construction, and operation and maintenance services mainly to large scale (mostly municipal) customers in Australia. The Suez Australian Water Technologies and Solutions business, which Veolia acquired, supplied design and construction, and operation and maintenance services to industrial customers, as well as other water management services. These other water management services include:
 - Technological solutions, equipment and components used in water treatment facilities
 - Water and wastewater network maintenance services
 - Mobile water services, and
 - Chemicals used in water treatment facilities.

Market definition and competition analysis

21. The ACCC's starting point for considering which markets will be affected by the proposed acquisition is to identify the areas of overlap between the products and services actually or potentially supplied by the merger parties. The ACCC then considers other actual or potential suppliers of those products and services, as well as what other products and services constitute sufficiently close substitutes to provide a significant source of constraint on the merged entity.
22. The ACCC's approach to defining each of the six markets of focus is outlined below.
23. The ACCC's competition assessment was informed by a range of information provided by Veolia and Suez, including internal documents. The ACCC also conducted extensive market inquiries with, and collected information from, interested third parties.

National / multi-regional commercial and industrial waste collection

Market definition

24. At the time of the ACCC's consideration, Veolia and Suez both provided commercial and industrial waste collections in most regions across Australia. They competed for national or multi region commercial and industrial customers, typically through tender processes, utilising subcontracting arrangements with local collections companies to service contracts in the areas where they did not have physical operations.
25. The ACCC considered that there was a distinct market for national or multi regional commercial and industrial waste collection services, in addition to local and/or regional collections markets. In defining the relevant market, the ACCC had regard to market feedback indicating that large customers that require waste collection services nationally, or across a number of regions of Australia, will conduct one procurement process for all of their sites even if they disaggregate their contracts by state.
26. While customer contracts will also include disposal of the collected waste, the ACCC's view was that collections are a separate market to processing as firms do not have to be vertically integrated to compete for collections contracts, although each of Veolia, Suez and Cleanaway had their own disposal facilities in different regions of Australia at the time of the ACCC's consideration.

Competition analysis

27. The ACCC was concerned that the proposed acquisition was likely to remove Suez as a key competitor for national / multi regional commercial and industrial waste collection tenders, and substantially lessen the competitive constraint on Veolia and Cleanaway.
28. Veolia and Suez were two of three large, vertically integrated tier 1 suppliers of waste management services in Australia. Competition between these tier 1 suppliers was likely to lead to price and service benefits for customers, particularly for national or multi regional customers who generate large volumes of waste and have complex service requirements. The ACCC considered that

tier 2 and 3 competitors do not impose a sufficient competitive constraint as they are at a material competitive disadvantage due to a range of factors when competing for national / multi regional customers.

29. As such, the ACCC was concerned that the proposed acquisition would remove Suez as a key source of competitive constraint in the market for national or multi regional commercial and industrial waste collections services, and result in a substantial lessening of competition absent a divestment.

Medical waste collection in South Australia

Market definition

30. The ACCC's view was that medical waste collection is likely to be distinct from the collection of other types of waste, as the collections equipment is generally distinct from other waste collections equipment and assigned to specifically collect medical waste from customers. Medical waste licences are also required to collect medical waste.
31. As collections companies require physical operations in the state and licences from the South Australian Environmental Protection Agency are required for all medical waste collectors, the ACCC considered that the geographic dimension of the market was likely to be limited to South Australia.
32. The ACCC considered that medical waste collection is a separate market from treatment or disposal of medical waste as vertical integration is not necessary to compete for collections contracts.

Competition analysis

33. At the time of the ACCC's consideration, Veolia and Suez were two of three medical waste collectors operating within South Australia with their own medical waste processing facilities. The other, Cleanaway, owns a medical waste processing facility in Victoria.
34. The ACCC's review indicated that other medical waste collectors were unlikely to constrain a combined Veolia-Suez and Cleanaway. Such that the proposed acquisition would lead to increased prices and/or reduced service levels for medical waste collection in South Australia, and result in a substantial lessening of competition absent a divestment.

Putrescible waste disposal in the Sydney region

Market definition

35. Veolia owned two putrescible transfer stations and the Woodlawn putrescible landfill servicing the Sydney region. At the time of the ACCC's consideration, Suez owned eight putrescible transfer stations and the Lucas Heights landfill in Sydney.
36. The ACCC considered that putrescible waste disposal is in a separate market to non-putrescible waste disposal due to the licensing requirements from the NSW Environmental Protection Agency. While putrescible waste disposal facilities are capable of accepting non-putrescible waste, putrescible waste can only be disposed of at facilities that are licensed to take putrescible waste.

37. The ACCC did not reach a concluded view on the precise definition or scope of these markets, for example whether transfer stations and landfills are separate markets or part of a single waste disposal market.
38. Both Veolia's Woodlawn and Suez's Lucas Heights landfills service the Sydney region, and account for a large amount of Sydney putrescible waste disposal. As such, the ACCC considered that the geographic dimension of the market was likely to be in the Sydney region.

Competition analysis

39. The ACCC was concerned that the proposed acquisition would remove Suez as Veolia's closest competitor for the supply of putrescible waste disposal in Sydney, and reduce the number of putrescible waste disposal operators from three to two.
40. As such, the ACCC was concerned that the proposed acquisition would substantially lessen competition, as Veolia would have the ability and incentive to increase waste disposal prices post-acquisition, which may also affect the ability of competing waste collectors to compete for collections customers, without the exclusion of Suez's Lucas Heights putrescible landfill and five putrescible transfer stations in Sydney from the transaction.

Dry waste disposal in Adelaide

Market definition

41. At the time of the ACCC's consideration, Veolia owned a 50.1% interest in IWS, with a transfer station and landfill licensed to accept both dry and putrescible waste, located in Adelaide. Suez had a joint venture in the ResourceCo facility, licensed to accept dry waste only.
42. Further to paragraphs 35 and 36 above, the ACCC considered that there was likely to be a market for dry, or non-putrescible, waste disposal which includes both non-putrescible and putrescible transfer stations and landfills.
43. The ACCC did not consider it necessary to arrive at a concluded view on the geographic dimension of the market, but considered it was likely to be in Adelaide.

Competition analysis

44. The ACCC considered the proposed acquisition would be likely to substantially lessen competition in the market for dry waste disposal servicing Adelaide.
45. Through their joint ventures, Veolia and Suez operated two of the three main dry waste disposal facilities in the Adelaide region used by commercial and industrial collections companies.
46. The ACCC was concerned that the proposed acquisition would remove Suez ResourceCo as a key source of competitive constraint on IWS and the other landfills servicing the Adelaide region, resulting in a substantial lessening of competition and potentially leading to increased prices for dry waste disposal post-acquisition, absent a divestment.

Design and construction of water and wastewater treatment facilities in Australia

Market definition

47. At the time of the ACCC's consideration, Veolia and Suez overlapped in the provision of design and construction services for water and wastewater treatment facilities in Australia. While neither Veolia nor Suez were active in the construction aspect of these services, they would typically partner with construction firms to tender for projects.
48. The ACCC's view is that design and construction of water treatment facilities is separate to the operation and maintenance of water treatment facilities as:
 - Design and construction contracts are short term in length, whereas some operation and maintenance contracts are up to 15 years in duration.
 - The skills required to deliver the services differ.
 - Customers have a greater ability to insource operation and maintenance requirements.
49. The ACCC also considered whether there were separate markets for the supply of design and construction services to large scale municipal projects, as opposed to smaller scale industrial projects, however did not reach a concluded view on the precise definition or scope of these markets.
50. The ACCC considered that the geographic dimension of the market is likely to be national.

Competition analysis

51. The ACCC considered that Veolia and Suez were two of the largest suppliers of design and construction services for large scale projects, and likely to be each other's closest competitors.
52. The ACCC considered that there were few competitors able to replace the competition lost as a result of the proposed acquisition, and barriers to those competitors expanding their presence included demonstrated technical capability on large scale projects. In comparison, the ACCC considered there are a sufficient number of design and construction competitors for industrial projects and barriers to entry or expansion are lower.
53. As such, the ACCC was concerned that the proposed acquisition would remove Suez as a close competitor to Veolia, and be likely to result in a substantial lessening of competition, absent a divestment.

Operation and maintenance of water and wastewater treatment facilities in Australia

Market definition

54. At the time of the ACCC's consideration, Veolia and Suez overlapped in the provision of operation and maintenance of water and wastewater treatment facilities in Australia.

55. The ACCC considered there was a national market for the supply of operation and maintenance services. Similar to design and construction services, the ACCC considered whether there may be separate markets for the supply of services to large scale projects (typically municipal), as opposed to industrial projects that are typically smaller scale but did not arrive at a concluded view.

Competition analysis

56. The ACCC considered that Veolia and Suez were the two market leaders for operation and maintenance services for large scale water and wastewater treatment facilities by a large margin, and likely to be each other's closest competitors.
57. Market feedback indicated that other operation and maintenance providers did not have the demonstrated technical capability and expertise, local experience and ability to secure large capital in order to compete effectively with Veolia and Suez.
58. Absent a divestment, the ACCC was concerned that the proposed acquisition would result in a substantial lessening of competition, and allow Veolia to increase prices and/or reduce service levels for large scale operation and maintenance projects.

Undertakings

59. In order to address the ACCC's competition concerns in relation to the proposed acquisition, Veolia offered three Undertakings pursuant to section 87B of the Act:
- Commercial and industrial and Medical Waste Undertaking: Veolia divested a collection of Veolia's and Suez's commercial and industrial waste collection and medical waste assets in Sydney, Perth and Adelaide, and some national commercial and industrial waste customer contracts to Remondis.
 - IWS Undertaking: Veolia divested its 50.01 per cent interest in IWS in Adelaide to Pelican Asset Co Pty Ltd, Pelican Land Co Pty Ltd and First Sentier Investors.¹
 - Water Services Undertaking: Veolia divested Suez's municipal water business, which supplies design and construction, and operation and maintenance services for large scale water projects for local authorities and municipal customers to a consortium of investors, which is now known as 'new Suez'. The consortium is comprised of Meridiam S.A.S., Global Infrastructure Management, LLC, Caisse des Dépôts et Consignations and CNP Assurances S.A.
60. The ACCC engaged with a range of market participants for feedback on the Undertakings.

¹ Given the transaction between Veolia and FSI closed prior to completion of the proposed acquisition, Veolia was not required to divest its interest in IWS in accordance with the IWS Undertaking

61. The ACCC concluded that the divestiture commitments set out in the Undertakings addressed its competition concerns with the proposed acquisition. Copies of the Undertakings are available on the ACCC mergers register and undertakings register.
62. Veolia also offered the ACCC a proposed undertaking relating to the divestment of Sydney waste assets to Cleanaway to resolve the ACCC's competition concerns in the market for putrescible waste disposal in the Sydney region. This was ultimately not required by the ACCC as the transaction between Cleanaway and Suez completed on 18 December 2021, prior to the ACCC's decision.

Conclusion

63. Based on the above analysis, the ACCC concluded that the proposed acquisition of Suez by Veolia, taking into account the Undertakings, was unlikely to have the effect of substantially lessening competition in any market.