



COMPETITION COMMISSION OF INDIA
(Combination Registration No.C-2021/07/852)

Public Version

23.11.2021

Notice jointly given by Veolia Environnement S.A., Meridiam, Global Infrastructure Management, LLC, Caisse des Dépôts et Consignations and CNP Assurances pursuant to an inquiry under Section 20(1) of the Competition Act, 2002.

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Order under Section 31(1) of the Competition Act, 2002

1. On 15.07.2021¹, the Competition Commission of India (**Commission**) received a notice filed by Veolia Environnement S.A. (**Veolia**) in relation to the proposed acquisition of at least 50% + 1 of the share capital of Suez S.A. (**Target/Suez**). The notice was filed pursuant to the initiation of inquiry by the Commission under Section 20(1) of the Competition Act, 2002 (**Act**), *vide* letter dated 03.02.2021. Initially, the notice was given only by Veolia. Subsequently, other acquirers, namely, Meridiam, Global Infrastructure Management, LLC (**GIP**), Caisse des dépôts et consignations (**CDC**) and

¹ The filing fees was paid on 04.08.2021, accordingly, the notice was treated as filed on 04.08.2021.



CNP Assurances (**CNP**) (a CDC subsidiary), became notifying parties by furnishing relevant documents (Hereinafter, Meridiam, GIP, and CDC including CNP are collectively referred to as the **Consortium** and Veolia and the Consortium are together called the **Acquirers**).

Background

- 2 The Commission had received an application/email dated 17.09.2020 from Suez filed under Section 20(1) and Section 33 of the Act in relation to the proposed hostile takeover of Suez by Veolia (**Proposed Takeover**). In its application, Suez had, *inter alia*, stated that Veolia proposed to carry out the said takeover by (i) acquiring 29.9% shareholding in Suez from an existing shareholder, viz. Engie S.A (**Engie/Seller**); and (ii) launching a public bid for the remaining Suez shares. Suez in its application also intimated that Veolia is proposing to acquire control by way of acquisition of 29.9% shareholding (i.e., by partially closing the proposed takeover without seeking approval of the Commission).
- 3 The Commission considered the application of Suez, including its subsequent submission(s)/information(s) and the response(s) of Veolia in relation to the said submission(s)/information(s). Based on the material on record, the Commission, *vide* an order dated 11.01.2021, concluded that the proposed transaction was notifiable under the provisions of the Act. Accordingly, the Commission decided to initiate an inquiry in terms of Section 20(1) of the Act read with Regulation 8 of the Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011 (**Combination Regulations**). Further, the Commission was of the opinion that by partially consummating the proposed transaction before notifying the Commission, Veolia had contravened the provisions of Section 6(2) and 6(2A) of the Act. Accordingly, the Commission also decided to initiate proceedings and issue a Show Cause Notice (**SCN**) to Veolia under Section 43A of the Act read with Regulation 48 of the Competition Commission of India (General) Regulations, 2009 (**General Regulations**).



- 4 The above directions were communicated to Veolia *vide* the Commission's letter dated 03.02.2021, and Veolia was directed to submit a notification in Form II within 30 days from the date of receipt of communication from the Commission. Additionally, a letter informing the decision of the Commission was issued to Suez on 03.02.2021.
- 5 On 05.03.2021, a notice in Form-II (**Merger Notification I**) was received from Veolia. Subsequently, on 31.03.2021, the Commission, *vide* its letter issued in terms of Regulation 14 of the Combination Regulation (**RFI**), directed Veolia to furnish certain information/clarification(s) in relation to the notice by 07.04.2021. Veolia, after seeking extension of time, submitted its response to the RFI on 08.06.2021. In its response, Veolia, *inter alia*, submitted that the respective boards of directors of Suez and Veolia had reached an agreement in principle on the key terms and conditions to revise the contours of the proposed transaction, which would, *inter alia*, provide for the creation of a new Suez (**New Suez**).
- 6 Based on the submissions of Veolia, the Commission, *inter alia*, noted that the nature and contours of the transaction and the scope of the business of Suez being acquired by Veolia had changed pursuant to the revised agreement. Therefore the Merger Notification I was not complete and in conformity with the Combination Regulations. Consequently, the notice was invalidated and Veolia was directed to submit a fresh notice in Form II.
- 7 On 15.07.2021, Veolia submitted the merger notification in Form-I. However, since the Commission had directed Veolia to file the notice in Form-II and also allowed for adjustment of fees already paid, as Veolia on its own filed the notice in Form-I, it was directed to file fresh filing fees. The same was paid on 04.08.2021. The notice was therefore treated as received on that date (**Merger Notification II**).



- 8 In terms of Regulation 14 of the Combination Regulations, the Commission, *vide* its communication dated 24.08.2021, sought certain information(s)/clarification(s), *inter alia*, relating to Suez Target Business; the response to the same was received on 13.09.21, after seeking an extension (**Response-1**). Subsequently, further clarifications in relation to Response-1 were sought *vide* the Commission's letter dated 20.09.2021, issued in terms of Regulation 14 of the Combination Regulations. The responses to the same were received on 28.09.2021 and 26.10.2021 (**Response-II**). As certain information(s)/clarification(s) relating to overlap identification and competition assessment provided in Response-II were required another letter, dated 08.11.2021, in continuation to the letter dated 20.09.2021, was issued. The response to the same was received on 11.11.2021. Subsequently, the Acquirers provided further information(s)/clarification(s) necessary for the purpose of competition assessment of the proposed combination *vide* submissions on 12.11.2021, 15.11.2021 and 16.11.2021.

PROPOSED COMBINATION

- 9 It is stated in the Merger Notification II that Veolia is seeking an approval in relation to the proposed acquisition of at least 50% + 1 of the share capital of Suez. The Acquirer and Target are collectively referred to as **Parties**. It also submitted in the notice that, on 14.05.2021, the definite Combination Agreement (**Combination Agreement**) for the purposes of the Proposed Transaction was entered into. As a result of the execution of the Combination Agreement:
- a. Veolia and Suez confirmed their intention to merge, clarifying the conditions of the merger and structuring the next steps of the transaction. The Combination Agreement has been entered into following approval by their respective boards of directors; and
 - b. Veolia, Suez and a consortium of investors (**Consortium**) composed of Meridiam, GIP and CDC (including CNP Assurances) have signed a Memorandum of Understanding (**MoU**) for the creation of New Suez, which



will combine a wide range of activities and services currently provided by Suez.

(Hereinafter referred to as the **Proposed Combination**).

PARTIES TO THE COMBINATION

Veolia

- 10 Veolia is a company headquartered in France and listed on the Euronext Stock Exchange in Paris. Veolia is stated to be active in optimized resource management and provides water, waste, and energy management solutions to both industrial and municipal clients. Through its three business activities, Veolia helps develop access to resources, preserve available resources and replenish them.
- 11 In India, Veolia operates through its subsidiary, Veolia India Private Limited (**Veolia India**). It offers the entire range of water solutions, including engineering and construction services, operations and maintenance services, performance contracts and major maintenance and refurbishment, tailored to the specific needs of municipality and industry across India and, more widely, South Asia.
- 12 It is also mentioned that Veolia India is present in the water management space in India, i.e., the production and distribution of water as well as the treatment of wastewater, including ancillary services connected with these activities.

Suez

- 13 Suez is a company headquartered in France and listed on the Euronext Stock Exchange in Paris. It is stated to provide water and waste management solutions to industrial and municipal clients. It is stated that Suez has been active in India for over 30 years and has



been helping local authorities and industry develop resource management solutions, particularly through contracts to build and operate facilities and improve drinking water distribution services, and developing alternative resources, such as by reusing wastewater.

- 14 Further, it is submitted that Suez operates in India *inter alia*, under the brand name “Suez” and “Suez Water Technologies and Solutions” or “Suez WTS” (in relation to Suez WTS Entities).

New Suez

- 15 On 12.04.2021, the boards of directors of Veolia and Suez reached an agreement which would provide for the creation of New Suez. Veolia submitted that New Suez would include certain activities of Suez globally, including the identified activities of Suez in India. New Suez would be owned by a group of shareholders, including an infrastructure fund, other financial institutions and employees.
- 16 It was submitted that New Suez will encompass: (a) all municipal water activities of Suez in India, including both drinking water management and wastewater management services; and (b) the waste management business of Suez in India (i.e., recycling of ferrous and non-ferrous metals (from scrap) in India). It was also mentioned that the Consortium will acquire a certain stake in New Suez, and Veolia will not hold any shareholding in New Suez.
- 17 Further, the formation of New Suez is slated to occur contemporaneously with the closing of the Public Offer. It is also mentioned that, as a result of the Combination Agreement and Final Agreement², Veolia will only be acquiring the Suez Target Business, i.e., the operations of Suez pertaining to the provision of water technology solutions (**WTS**) services in India.

²[The share and asset purchase agreement (Final Agreement) between SUEZ, Veolia and the Consortium Acquisition vehicle dated 29.06.21]



Meridiam

- 18 Meridiam is incorporated in France, specializing in the development, financing and long-term management of infrastructure. It is stated that Meridiam has made long-term investments in infrastructure focusing on three key sectors: mobility, energy transition and environmental and social infrastructure. Meridiam develops, finances, builds and manages various types of projects, including transport infrastructure (high-speed railways, motorways, tunnels, ports, tramways, etc.), social infrastructure (schools, universities, healthcare centers, stadiums, etc.), public buildings (courthouses, government offices, ministries, etc.), networks and public services (water, waste management, energy, etc.).

GIP

- 19 GIP, an entity incorporated in United States (USA), is an independent infrastructure fund manager investing in the transportation, energy, waste and water sectors. GIP is present in India through Global Infrastructure Partners India LLP, which is engaged in the activities of an infrastructure fund manager. In addition to one regional office in Mumbai, GIP is present in India through its portfolio entities that are primarily engaged in the transport, construction, energy and logistics sectors.

CDC

- 20 CDC incorporated in France is a French public establishment with a special legal status created by law and governed by Articles L. 518-2 and seq of the French Monetary and Financial Code. It is stated that CDC carries out public interest missions in support of public policies conducted by the state and local authorities, focusing on economic, social and sustainable development. Through its subsidiaries, CDC also has activities that are grouped around four divisions: (a) environment and energy, (b) real estate, (c) capital investment, and (d) services. CDC is present in India through portfolio companies.



CNP

- 21 CNP is a company incorporated in France and is solely controlled by CDC. CNP is active in the insurance market in Europe and Latin America. It is mentioned that as an insurance, coinsurance, and reinsurance provider, CNP designs innovative personal risk/protection and savings/retirement solutions. It is stated that CNP does not have any presence in India.

Identification of Overlaps

Between Veolia and Suez (After creation of New Suez)

- 22 It is mentioned in the notice that, under the terms of the Combination Agreement and Final Agreement, Veolia will acquire only the Suez Target Business, i.e., the activities of Suez pertaining to the provision of WTS services in India, undertaken by the Suez WTS Entities. As such, the only market for the purposes of any assessment will be the market for the provision of WTS services. It is also mentioned that Veolia does not provide WTS services in India. Accordingly, it is submitted that the products and services offered by Veolia and Suez in the aforementioned market do not overlap, and hence, there is no horizontal overlap. Further, it is submitted that there are no vertical relationships, existing or potential, between Veolia and Suez in relation to the Proposed Transaction.

Between each of the Consortium Member³ and New Suez

³ It is mentioned that the Consortium Member, have considered only such entities in which they hold: (a) direct or indirect shareholding of 10% or more; or (b) a right or ability to exercise any right (including any advantage of commercial nature) that is not available to an ordinary shareholder; or (c) a right or ability to nominate a director or observer. (**Materiality Thresholds**)



- 23 It is submitted that Meridiam and CNP do not have any presence in India. Further, it is submitted that, although GIP is present in India through its portfolio companies, there are no overlaps between the activities of GIP/portfolio companies and New Suez.
- 24 It is mentioned that CDC (including CNP) (based on the Materiality Thresholds) does not have any shareholding in an enterprise which is engaged in the provision of similar, identical or substitutable products or services as the New Suez India Business, in India; or it is engaged in the activity of provision of products or services which are at different stages or levels of the production chain or complementary to the New Suez India Business, in India. However, it was observed that CDC was holding certain stake alongwith voting rights and representation on Veolia's board; further CDC (including CNP) will be holding a 18-20% stake in New Suez, alongwith nomination rights on the Supervisory Committee of New Suez.
- 25 In relation to CDC's common shareholding in Veolia on the one hand and New Suez on the other hand, CDC has clarified that:
- a. CDC's common shareholding in Veolia and New Suez will not have any impact from a competition law perspective in India. Further, no coordination concerns arise from CDC's common shareholding in Veolia and New Suez. This is because CDC has many internal rules to prevent the exchange of commercially sensitive information amongst its shareholdings, thereby excluding any risk of such shareholdings co-ordinating on the market.
 - b. CDC has internal safeguards to prevent the exchange of any commercially sensitive information (**CSI**) amongst its competing shareholdings, which exclude the risk of such shareholdings coordinating on the market (safeguards set out under the *CDC Code of Ethics* and *Management Manual for CDC directors* (collectively, **CDC Rules**)).



c. REDACTED

- 26 Thus, based on the submissions of the parties, it is noted that there are no overlaps between activities of Veolia and Suez. Also, it is noted that, based on the Materiality Thresholds, there are no overlaps between Meridiam, GIP and CNP on the one hand and New Suez on the other. In relation to CDC, it is noted that CDC (including CNP) has a common stake in Veolia and New Suez; however, CDC has submitted that this raise no competition concerns, as CDC has internal rules to prevent any exchange of commercially sensitive information within all entities in which it holds joint controlling stakes, including clarifications on the presence of Chinese Walls and IT systems clearances. Given the foregoing, it appears that the Proposed Combination is not likely to raise competition concern in India.
- 27 Considering the facts on record including details provided in the Notice given under Section 6(2) of the Act and assessment of the Proposed Combination based on the factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India in any of the relevant market(s).
- 28 This order may stand revoked if, at any time, the information provided by the Acquirers is found to be incorrect.
- 29 This order is, however, issued without prejudice to the proceedings under Section 43A of the Act.
- 30 The information provided by the Acquirers shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.
- 31 The Secretary is directed to communicate to the Acquirers accordingly.