

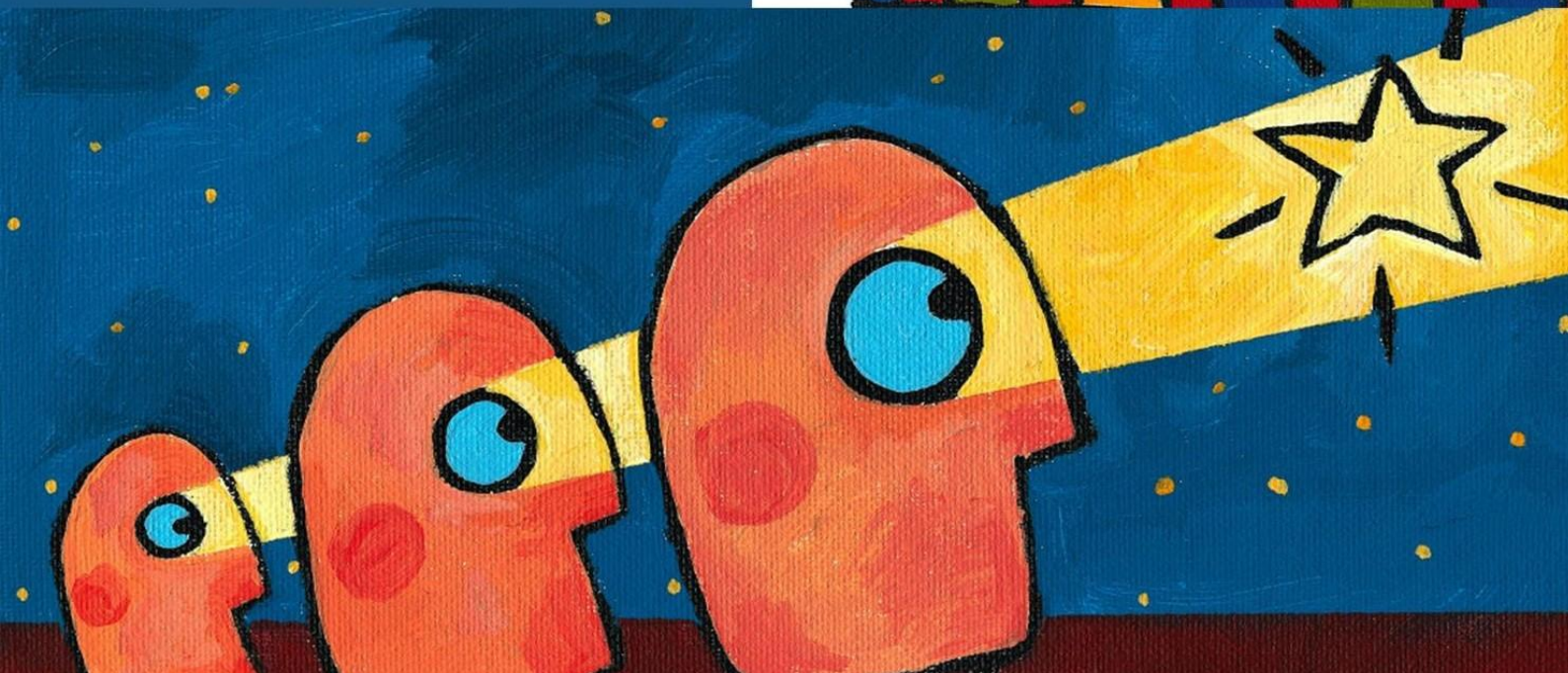


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Competition & Markets Authority orders Unwinding of the Acquisition of Suez by Veolia

The Competition & Markets Authority ('CMA'), United Kingdom ('UK'), conducted a Phase 2 investigation to assess the impact of the acquisition of Suez S.A. ('Suez') by Veolia Environnement S.A. ('Veolia') and concluded that the acquisition would give rise to a Substantial Lessening of Competition ('SLC') in several markets related to the supply of waste management and water treatment services in the UK. Based on the findings of the investigation, the CMA concluded that the most appropriate remedy was to direct the unwinding of the acquisition deal.

Both the companies are multinational waste and water management companies and are two of the three largest waste management companies in the UK. Their activities in the sector are unmatched. During the Phase 2 investigation, it was noticed that the activities of the two companies overlap in the non-hazardous waste sector and water treatment services.

A. Non-hazardous waste sector:

The CMA, upon investigating several areas within non-hazardous waste management sector where the companies compete, observed that:

i) Veolia and Suez are close competitors in the waste management contracts for local authorities. The waste management contracts of the local authorities can be complex which in turn affect competition as less market players participate in these contracts. Further, Veolia and Suez, when compared to their other rivals, due to the advantages of their track record, infrastructural strength and full portfolio of services have a competitive advantage. Therefore, customers with complex needs may see less competition for their contracts.

ii) Veolia and Suez collectively serve 30-40% of the households that outsource non-hazardous municipal waste collection, holding a materially larger market position as compared to any other supplier. There are only a few other suppliers generally considered by the local authorities for contracts and the companies rarely bid for the same contract. Therefore, it is likely that only one competitor will bid against the entity post-transaction for tenders floated by the local authorities.

iii) Veolia and Suez, combined, have the largest market position of 40-50% in the Operation and Maintenance ('O&M') and Material Recovery Facilities ('MRF') that sort non-hazardous waste before the recyclable waste is sold. The acquisition will give an increment of 10-20% in market share to the parties. Only one competitor has a share of more than 5% and post the transaction, the combined market share of this competitor and the parties to the transaction will be 80-90% leading to very high concentration in the O&M and MRF service.

iv) The CMA also found competition concerns in the Energy Recovery Facilities ('ERF') services area. ERF is used to incinerate residual waste to generate heat that can be used or sold. It was found that the current O&M contracts for ERFs will end in a few years and it was predicted that Veolia and Suez will be strong contenders based on criteria that is likely to be applied by the local authorities due to the experience of the parties, their technical expertise and their advantage of scale. The parties were considered to be close competitors in the area and would face only limited competition if Suez was acquired by Veolia.

v) The parties also face limited competition in the supply of incineration services in two local areas as their combined market shares are 40-50% and 50-60%, in the two areas, and they are close competitors there.

vi) In the market for supply of non-hazardous commercial and industrial waste collection services, there is only one competitor with a large market share of 50-60%. The market is concentrated and if Veolia, having the second largest share, acquires Suez, the market will be further consolidated and the parties will control significantly more ERF capacity than other suppliers. Suez has access to disposal infrastructure and is a more significant competitor than the other small suppliers.

B. Water Treatment Services:

In the O&M of water and wastewater facilities for industrial consumers, the parties are the largest suppliers in the market and are close competitors.

In the Mobile Water Services ('MWS') in the UK, it was found that Veolia and Suez, together, have a market share of 80-90% with only one competitor having market share above 10%. The parties have the largest overall capacity and are close competitors who will face only limited competition after the acquisition. Further, there was no other alternative technology available for the consumers to switch to.

Therefore, the CMA found that the acquisition is likely to cause a SLC due to the horizontal unilateral effects in the supply of non-hazardous waste collection services, in the O&M of water and wastewater facilities for industrial consumers and in MWS in the UK.

To address the competition concerns raised in the areas of waste and water management sector, the CMA decided that the most effective and proportional remedy was to direct Veolia to sell substantial parts of the business – i) Suez's entire UK waste management services business, ii) Suez's UK industrial water O&M service business and, iii) Veolia's European MWS business.

[\(Decision dated 25.08.22\)](#)



Market Study Published on the Distribution of Hotel Accommodation in the EU

The European Commission ('EC') published a market study on the distribution of hotel accommodation in the European Union ('EU') which focuses on the sales and marketing practices of independent hotels, hotel chains, Online Travel Agents ('OTAs') and metasearch/price comparison websites in various EU Member States ('MS').

The study attempts to answer: **i)** how the hotel accommodation is distributed in the MS; **ii)** whether distribution arrangements differ between different MS and why; **iii)** how the hotel distribution arrangements have changed since 2016 when a similar monitoring exercise was conducted by the European Competition Network ('ECN'); **iv)** whether the laws prohibiting parity clauses by hotel booking platforms has led to changes in hotel distribution?

The study discovered that:

i) Independent hotels and hotel chains use different distribution channels. Most bookings (48%) in independent hotels are done through direct booking (online and offline), while sales through OTAs is 44%. A majority of the independent hotels use more than one OTA, mainly, Booking.com, Expedia, HRS and Airbnb. A large majority believes that OTAs increase their total volume of bookings, while only some believe that they also increase the volume of direct bookings. Meanwhile, for hotel chains booking, OTAs sales constitute only 24%. There were mixed views by hotel chains regarding whether OTAs increase the total volume of bookings or affect their direct sales channels.

ii) 41% of independent hotels and all hotel chains use metasearch engines for advertising their accommodation. It was found that Google Hotel Ads have become the leading metasearch website for hotels followed by TripAdvisor, Trivago and Kayak.

iii) A majority of independent hotels offer lower prices through direct booking (hotel websites and offline channels) as compared to prices offered on OTAs. Hotel chains, generally, do

not differentiate prices or room availability offered through different sales channels, direct or through OTAs.

iv) Hotel chains and OTAs offer consumer loyalty schemes.

The study also highlights that the hotels in different MS studied, have different use of OTAs. The use of OTAs by independent hotels, the share of OTA sales for independent hotels, the use of OTA parity clauses and the commission rates for OTAs all varied from MS to MS. However, there were no significant changes in the competition conditions for OTAs across MS.

The study revealed that there were some small changes in the distribution practices of hotels compared to the results of the ECN monitoring exercise in 2016. However, it is important to note that the objective, geographical scope and the sampling of the two reports are different. It was noted that:

i) there was a slight increase in the sales through OTAs and direct online channels by independent hotels; **ii)** room price and room availability differentiation between sales channels by independent hotels decreased; **iii)** more independent hotels advertise on metasearch websites now, compared to 2016.

In relation to the question regarding the impact of laws prohibiting OTA parity clauses, only two (Belgium and Austria) out of the six MS studied adopted sector-specific laws prohibiting parity clauses by OTAs. The study was unable to reveal a clear impact of the law on the hotels' use of OTAs, or on the use of parity clauses by the OTAs as the percentage of OTA contracts having parity clauses in Belgium and Austria are similar to the average for all the MS studied in the market study.

Moreover, the study revealed that both, the hotels and the OTAs, experienced a sharp reduction in hotel bookings as a result of COVID-19 pandemic. The number of rooms booked, total revenue, net income and cash flow from operations all fell during this period. Hotel chains claimed to be impacted more than the OTAs since



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hotel chains rely more on business customers and the recovery of the travel industry was due to leisure travel rather than corporate travel. The industry has also seen an increase in demand by travellers for flexible booking options from hotels and OTAs.

The design of the market study was discussed by the EC with the EU National Competition Authorities that will consider the results of the market study in their monitoring and enforcement work in the hotel accommodation distribution sector. It is expected that the Digital Markets Act will also impact the competition in the hotel accommodation distribution sector.

[\(Market study dated 26.08.22\)](#)

The Australian Federal Court Penalizes CFMEU and Hutchinson for Boycotting Conduct

The trade union, Construction, Forestry, Maritime, Mining and Energy Union ('CFMEU') and J Hutchinson Pty Ltd ('Hutchinson'), Australia's biggest privately owned construction company, were penalized 750,000 and 600,000 Australian Dollars, respectively for boycotting Waterproofing Industries Qld Pty Ltd ('WPI'), a waterproofing subcontractor at a Brisbane building site, in breach of competition laws. Hutchinson engaged WPI on a construction project in Brisbane. After WPI began supplying services, CFMEU informed Hutchinson that it would

(Continued on the next page)

not allow WPI to work on the project since it did not have an Enterprise Bargaining Agreement ('EBA') with CFMEU. Hutchinson and CFMEU agreed to not acquire WPI's services and that Hutchinson would terminate WPI's services to avoid conflict with, or industrial action by, the CFMEU on the site. Another waterproofing contractor that had an EBA with the CFMEU was later engaged on the site. The Australian Federal Court found that Hutchinson contravened sections 45E and 45EA of the Competition and Consumer Act, 2010 which prohibits agreements or understanding between parties that prevent or hinder the acquisition, or supply, of goods or services from, or to, another person. The CFMEU induced the contravention by Hutchinson by threatening conflict with Hutchinson or resorting to industrial action if WPI's services were not terminated. The Federal Court penalized CFMEU with the maximum penalty that could be imposed for their conduct as their actions impacted WPI, as well as, the competition in the industry more generally.

[\(Press release dated 30.08.22\)](#)

China International Marine Containers Group's Acquisition of MCI Abandoned after Competition Concerns Raised by Germany's Bundeskartellamt and the DoJ in the US

China International Marine Containers (Group) Co. Ltd. ('CIMC'), a China based company involved in the manufacture of shipping containers, abandoned its plan of acquiring Maersk Container Industry A/S and Maersk Container Industry Qingdao Ltd. (collectively, 'MCI'), producers of shipping containers, due to competition concerns raised by Germany's competition authority, Bundeskartellamt, and the Antitrust Division of the Department of Justice ('DoJ'), United States ('US'). The target companies, belonging to A.P. Møller-Mærsk A/S, specialise in manufacturing reefer containers, reefer boxes and reefer units. CIMC, *inter alia*, manufactures and sells reefer boxes.

Bundeskartellamt was concerned that the companies operate in a very narrowly defined market environment and are two of the only four manufacturers worldwide. CIMC's acquisition of MCI would give it an even stronger market position and expand its portfolio with reefer units, which is a complementary product to the reefer boxes. The Bundeskartellamt observed that the remaining two competitors would be unable to exert effective competitive pressure on CIMC as one competitor has low capacity and a minor market position, whereas, the other competitor is linked to CIMC under corporate law. The Chinese State holds shares in both, CIMC and the competitor, and therefore, the Bundeskartellamt opined that there would not be effective competition between the two companies. Further, CIMC has high production capacities, is financially strong and the acquisition will result in the loss of MCI, an important alternative supplier. Post-acquisition, the supplier side will be much more concentrated than the buyers' side of the market and there will be a lack of countervailing buying power. Further, it predicted that market entry by new suppliers is unlikely. Based on these observations, the Bundeskartellamt, in its preliminary view, concluded that the acquisition is likely to significantly impede effective competition. The parties made several suggestions of structural changes to the acquisition, however, they were unable to resolve these competition concerns.

Similarly, in the US, the DoJ was concerned that the proposed acquisition will result in combining two of the four world suppliers of insulated container boxes and refrigerated shipping containers, resulting in the consolidation of control over 90% of the worldwide production of these containers by Chinese State-owned entities. The transaction would have harmed the global cold supply chain and possibly resulted in higher prices, lower quality, and less resiliency in the supply chain. The DoJ also stated that the acquisition would further strengthen the strong position of CIMC in the market, eliminate MCI, an innovative competitor, and increase the risk of coordination among the suppliers in the market.


CIMC decided to abandon the acquisition of MCI due to these competition concerns of the DoJ and the Bundeskartellamt before a final decision regarding the acquisition deal could be made by the authorities.

[\(Justice Department press release dated 25.08.22\)](#)

[\(Bundeskartellamt press release dated 26.08.22\)](#)

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