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Suez-Veolia: AMF's press release

The Autorité des Marchés Financiers (AMF) considers that the changes to the Dutch foundation announced by Suez, combined with the proposal by the Ardian-GIP consortium negotiated and supported by the Suez Board of Directors, affect the rules and guidelines applicable to public offers.

The AMF's missions include the protection of savings, the provision of information to investors and the supervision of the orderly operation of markets. In its General Regulation, the AMF defines the rules on takeover bids in order to ensure shareholder equality and market transparency.

Article L. 233-32 of the Commercial Code allows the Board of Directors, during the offer period, to take any decisions, the implementation of which might make the offer fail, subject to the powers expressly granted by the general meetings within the limits of the company's corporate interest. The measures taken must be in line with the rules and principles governing public offers, as defined in particular by the European Union Directive dated 21 April 2004, the Monetary and Financial Code and the AMF General Regulation. These texts, as specified by case law, require that public offers be conducted in an orderly fashion and define, in particular, the principle of the free interplay of offers and counter-offers, equal treatment and information for all holders of the securities involved, market transparency and integrity, and fair trading and competition.

The Autorité des Marchés Financiers (AMF), the competent national authority under the above-mentioned directive on takeover bids, has been notified by Veolia of its proposed public takeover bid for Suez shares at €18 per share, for which Suez must submit a draft reply document to the AMF in order to enable the latter to rule on the planned takeover.

In this respect, the AMF has examined the press release entitled *"Suez offers a negotiated solution to Veolia supported by a binding offer from Ardian-GIP"* published by Suez on 21 March 2021, as well as the press release published by Ardian on the same day entitled *"Ardian and GIP submit firm investment proposal to support the creation of a new Suez under a negotiated solution"*.

The Suez press release announced that the *"safeguarding mechanism for retaining the 'Water France' activity within the group"* via the Dutch foundation has been amended and is now irreversible until September 2024. It may be dissolved either if *"an agreement on the main principles of a transaction comprising a potential tender offer for Suez's shares is reached no later than 20 April 2021"*, or *"automatically, if a public cash tender offer equal to at least €22.50 per share"* is announced before 5 May 2021, with or without the recommendation of the Suez Board of Directors.

Ardian's press release stated that, at the invitation of Suez, and in order to facilitate a negotiated solution following Veolia's takeover bid, the Ardian-GIP consortium had submitted a firm and fully-financed offer for all of Suez's activities, representing revenues of around €9.1 billion and EBITDA of €1.7 billion. This €11.9 billion offer sets the enterprise value of the new entity at €15.8 billion.

Suez's press release confirms this and declares that *"the proposal made by the Ardian-GIP consortium has been unanimously approved by the Suez Board of Directors"* and this offer *"amounts to an enterprise value of €15.8 billion, equivalent to a value of €20 per share"*. The Suez Board of Directors adds that it *"is prepared to recommend an agreement that (i) incorporates a solution based on that contemplated with the consortium, as described above, (ii) would enable Veolia to confirm its 4-year corporate commitments and (iii) would increase Veolia's offer price to a minimum of €20 per share (cum dividend)"*.

Lastly, the Ardian-GIP consortium announced in its press release that *"in the event that Veolia withdraws its offer within six months, the consortium could consider making a public offer for the entire share capital of Suez"*, subject to conditions including due diligence on the rest of the Suez group. The Ardian-GIP consortium added that *"the implicit price of this public offer [...] would be €20 per share (coupon attached)"*.

The AMF notes that these press releases of 21 March 2021 refer to a firm offer by the Ardian-GIP consortium and put forward, without any real details on the scope of the assets involved, a value of €20 per share that does not, in reality, amount to a price or value that Suez shareholders would be in a position to receive; that such information published at a time when Suez is subject to an offer, does not contribute to the proper information of investors.

In this context, the AMF notes that:

- On the one hand, the *"solution negotiated with the consortium"* supported by the Suez Board of Directors, for which the consortium has submitted a *"firm offer"*, covers assets representing more than half the Suez group's current revenues and includes, in particular, the *"Suez Water France"* assets and, on the other hand, the consortium indicates that it *"could consider the filing of a tender offer on the whole share capital of Suez"* at a price of €20 per Suez share, if Veolia were to withdraw its current public offer, subject to certain reservations including *"due diligence on the rest of the group"*. As a result, with the support of the offeree company, which has granted exclusivity to the consortium, the consortium is de facto in a position of competition with Veolia, which has initiated a public offer for Suez shares. Finally, Suez has modified the inalienability of the foundation, which has the effect of allowing the above-mentioned transfer to the benefit of the Ardian-GIP consortium;
- Moreover - although the foundation could be dissolved should an agreement be reached with the Suez Board of Directors before 20 April 2021, or automatically before 5 May 2021 should an offer be made at a price that is at least equal to €22.50 per Suez share - such conditions laid down by Suez are liable to enable the dissolution of the foundation only in restrictive and mandatory cases, that require in particular that Veolia either joins the scheme promoted jointly by Suez and the Ardian-GIP consortium, which provides, in addition to raising the price of Veolia's offer, for a significant transfer of assets to the consortium, in the context of a de facto competing project, or to file a public offer at the minimum price of €22.50 per share decided by the Suez Board of Directors before the independent expert commissioned to carry out the offer has submitted its report.

The search for a negotiated solution between the parties is perfectly legitimate. Nevertheless, it must comply with principles of market transparency and integrity, fair trading and competition, as well as the free interplay of offers and counter-offers. In the light of the foregoing, the AMF considers that the changes that Suez has made to the Dutch foundation arrangement, combined with the support for the proposal by the Ardian-GIP consortium negotiated by the Board of Directors, affect the rules and guiding principles that the AMF has a duty to enforce.

About the AMF

The AMF is an independent public authority responsible for ensuring that savings invested in financial products are protected and that investors are provided with adequate information. The AMF also supervises the orderly operations of markets. Visit our website <https://www.amf-france.org>. URL = [https://www.amf-france.org/]

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