

Autorité des Marchés Financiers  
Mr Robert Ophèle  
President  
17 place de la Bourse  
75002 Paris

Paris La Défense, 6 April 2021

Mr President,

AMF issued a “press release” on 2 April 2021, according to which “*the changes that Suez has made [on 20 March 2021] 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 “*principles of market transparency and integrity, fair trading and competition, as well as the free interplay of offers and counter-offers*”.

We ask you to reconsider this “press release”, which is based on obvious errors of fact and law, is clearly prejudicial to Suez, and oversteps the AMF’s authority.

**The AMF’s “press release” oversteps its authority and is contrary to the Florange Act:**

- The powers granted by the Florange Act to the Board of Directors of a company targeted by a takeover bid, in accordance with the Takeover Directive, are governed solely by **company law**<sup>1</sup> and are therefore not subject to any scrutiny by the AMF. Article L233-32 of the French Commercial Code provides that the Board of Directors “*may take any decision whose implementation is likely to result in the failure of the bid, subject to the powers expressly assigned to the general shareholders’ meetings, within the limits of the company’s corporate interest*”.
- In addition, the AMF cannot rely on guiding principles derived from its General Regulation and which have exclusively regulatory value – **without, moreover, explaining how these principles have been infringed by Suez, nor the specific principles in question** – to reduce the scope of the Florange Act by adding conditions not provided for in that Act. The curb on the full effect of this Act created by your “press release” of 2 April 2021 is all the more unfounded given that in 2014 the AMF itself observed that this Act is “*unequivocal on the capacity of companies targeted by a takeover bid to implement defensive measures*”.

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<sup>1</sup> It is settled case law that the AMF does not have jurisdiction to rule on questions of corporate law (CA Paris, 16 September 2003, n°2003/6260 and n°2003/6255; ADAM et al. v. S.A. Legrand and S.A.S. FIMAF; CA Paris 27 June 2013, n°2012/08324; ADAM and SMA Vie BTP v. AMF, Silic, and Icade; CA Paris, 13 March 2020, n°19/189347; ADAM v. Altran Technologies and Capgemini).

- The powers conferred by the Florange Act on the Board of Directors thus authorize the Board to take, under the exclusive oversight of the judicial judge, any measure likely to thwart a public offer, subject to only two limitations: to act in accordance with its corporate interest; and to respect the authority of the general shareholders' meetings.
- As Suez's aim is simply to avoid its outright dismantling by its main competitor, its decisions are not under criticism by the AMF, as Suez's decisions are dictated by the pursuit of its corporate interest and do not in any way encroach on the authority of its general shareholders' meetings. Furthermore, the assessment of these conditions is, in all circumstances, a matter for the judicial judge.
- In addition, Suez has remained well within the scope of the defensive measures permitted by the Florange Act for companies targeted by a hostile takeover bid. The decisions taken by Suez do not, in fact, impede Veolia's bid in any way. Veolia not only can, but must, use its own assets, and not those of Suez, to settle its own merger control obligations, in accordance with standard practices for hostile bids.
- Over and above Suez' particular case, the AMF's position leaves all French groups exposed to the risk of a hostile takeover, be it French or foreign. French groups could also be tempted to relocate to neighboring European countries, such as the Netherlands, where the Board of Directors would be able to defend itself, in accordance with their corporate interest, under the exclusive authority of the courts.

**This “press release” is also based on several serious factual errors previously circulated by Veolia:**

- Suez did not force Veolia to “*join the scheme promoted jointly by Suez and the Ardian–GIP consortium*”, since, as Suez stated on 21 March, this scheme is a “basis for negotiation”, and furthermore, **Suez's Board of Directors remains free to recommend any offer** that may be presented to it before 20 April 2021, irrespective of the terms of that offer. **Suez cannot be criticized for having left the door open for negotiations with Veolia, which it was not obliged to do.**
- The Ardian–GIP Consortium is not “*in a position of competition with Veolia*”. Consistent with the friendly attitude it has always displayed and respected, the solutions proposed by the Consortium **depend on Veolia's position**:
  - the proposed acquisition by the Consortium of a set of activities including Suez Water France can only take place with Veolia's agreement, followed by the agreement of the majority of Suez's shareholders;
  - the public offer that the Consortium could consider making for 100% of the share capital of Suez, subject to certain conditions, could only be made if Veolia's offer is withdrawn or is unsuccessful.
- The original creation and operation of the Foundation, which are not under criticism, remain unchanged, and **the adjustment made on 20 March has neither the purpose nor “the effect of allowing the above-mentioned transfer to the benefit of the Ardian–GIP Consortium”**. On the contrary:
  - the Suez Board of Directors could quite easily have made the arrangement wholly irrevocable. Instead, it chose to attach two provisos to the arrangement designed to facilitate the search for an agreement with Veolia;

- **the sale of Suez Water France** would only be possible if an agreement is reached with Veolia by 20 April, and, in such context, could be concluded **with any interested buyer**.
- The press releases of 21 March, submitted to the AMF prior to their publication, did not in any way suggest that the acquisition of assets from Suez would enable shareholders to directly receive €20 per share. Suez's shareholders fully understand this, and support the search for a fair valuation of Suez and its assets.

For these reasons, Suez, which, despite its request, was not given the opportunity to comment on your “*press release*” before its publication, invites the AMF to reconsider its position as soon as possible, and is at your disposal to explain the above points and answer any questions you may have. If your position is not revised, Suez will be forced to initiate an appeal process.

In this regard, we attach an opinion by Daniel Labetoulle (Honorary President of the Litigation Division of the Council of State and former President of the AMF's Enforcement Committee concerning the violation of the hierarchy of norms. It should be recalled that Professor France Drummond reached the same conclusions in her opinion of 28 March, attached hereto, in which she noted that even if the guiding principles had been applicable to Suez, which is not the case, the 21 March decision would have been valid.

As the guiding principles for public offers continue to be fully applicable to the initiator of a public offer, Suez also once again invites the AMF to take note of and enforce the consequences of the numerous violations of stock market regulations committed by Veolia, including: the lack of transparency in its agreements (particularly its financial agreements) with Meridiam; the unequal treatment between Engie and the other shareholders through the circumvention of the mandatory bid rules; the circumvention of the timetables for public bids with the unprecedented horizon for the payment of the public bid price of May 2022 at the earliest; the serious and flagrant breach of its commitment to amicability and of its declarations of intent, as well as, more generally, its manifest breaches of loyalty since 1 September 2020.

Suez and its Board of Directors reserve all their rights of recourse and will continue to act to ensure that its corporate interest is respected and to create value for its shareholders and stakeholders.

Yours sincerely,

Philippe Varin

Bertrand Camus

Cc: Benoît de Juvigny; Astrid Milsan; Anne Maréchal; Bertrand Durupt.