

COMPLETED JOINT VENTURE BETWEEN TRADEBE ENVIRONMENTAL SERVICES LIMITED AND SITA UK LIMITED – TRADEBE HEALTHCARE (HOLDINGS) LIMITED

Statement of issues

5 December 2013

The reference

1. On 29 October 2013, the Office of Fair Trading (OFT) referred the completed joint venture between Tradebe Environmental Services Limited (Tradebe) and SITA UK Limited (Sita) to the Competition Commission (CC) for investigation and report.
2. The CC must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted in or may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.

Background

3. Tradebe and Sita each provided healthcare risk waste (HRW) services prior to this transaction and have both contributed their HRW businesses to a new joint venture company, Tradebe Healthcare (Holdings) Limited (JV).
4. Tradebe contributed all the shares of Tradebe Healthcare (Southwest) Ltd and Tradebe Healthcare Ltd and three HRW plants (at Birmingham, Avonmouth and Doncaster) into the JV. It will continue to own a further plant which has the potential to process HRW, in Fawley, outside of the JV. Sita contributed all the shares of Sita Healthcare Ltd and six HRW plants (at Rochester, Enfield, Redditch, Salford and two plants in Wrexham) into the JV. The JV has nine plants and owns the HRW business of Sita and the HRW business of Tradebe apart from its Fawley plant. The JV is 75 per cent owned by Tradebe and 25 per cent owned by Sita. It is run by a management committee appointed by Tradebe.

The markets in which the parties operate

5. HRW is waste produced in the healthcare and related industries that requires treatment prior to disposal at a landfill. HRW is generally treated either via high-temperature incineration (HT), which is suitable for any HRW, or via alternative technology (AT) such as dry heat augers, steam augers, autoclaves, microwaves, chemical treatment and irradiation. AT treatment is not appropriate for certain waste types. Other waste can be treated using HT or AT.
6. At this stage, we are not proposing to distinguish product markets based on the type of waste treated or the manner of treatment, because the collection and treatment of different types of HRW waste is generally procured jointly by waste producers. We will consider the extent to which a supplier is constrained in competing for particular customers based on the type of plant it owns in our competitive assessment.

7. Producers of HRW include, but are not limited to, hospitals, GPs, dentists, vets, pharmacies and nursing homes. Producers can be described as either large quantity generators (LQGs) or small quantity generators (SQGs). NHS organizations form the majority of LQGs.
8. An HRW service supplier may provide collection services only, treatment services only, or an integrated service in which it both collects and treats the waste. Tradebe and Sita both provide integrated collection and treatment services. HRW producers typically have a single contract with an HRW service supplier for collection and treatment services, although the treatment may be subcontracted to another HRW service supplier.
9. In our initial view, it is appropriate to distinguish between LQG and SQG customers because:
 - (a) SQGs can be serviced by collection-only companies as well as by integrated companies, whereas LQGs, due to the volume of waste they generate, are typically only serviced by integrated companies; and
 - (b) the methods of collection are different for SQGs and LQGs (small vans compared with large trucks), such that the distances over which waste can economically be transported may differ.
10. We do not propose to distinguish separate markets for collection and treatment of HRW. However, we will examine in our competitive effects analysis the extent to which being able to provide both services affects competition for supply of HRW services.
11. The CC's initial view is that the collection and treatment of HRW to (a) LQG and (b) SQG customers are the appropriate product markets within which to consider the transaction. We note that the definition of these markets is consistent with that used by the CC in its most recent inquiry into the HRW industry (Stericycle/Ecowaste 2012).
12. To analyse the geographic scope of the markets affected by the JV, we propose to focus on local areas where the parties overlap. Given the location of the parties' plants, we propose to focus our assessment on centres of demand in the geographic areas around Birmingham, Gloucester, Sheffield/Leeds and Surrey. However, we will also consider if some customers require national level provision.

Counterfactual

13. The CC will consider the likely competitive situation without the JV (the counterfactual). In doing so, the CC will consider whether there are reasons to believe that that the pre-JV situation may not be the appropriate counterfactual to the JV situation.

Theories of harm

14. The CC's initial view is that there are two principal ways in which the JV could give rise to an SLC (referred to as 'theories of harm'):
 - (a) *Unilateral effects in relation to the supply of HRW services to LQG customers in certain geographical areas affected by the JV.* The CC will assess whether the creation of the JV would be likely to give rise to unilateral effects in the provision

of certain HRW services, resulting in an increase in price, reduction in quality or innovation, restriction of supply or affecting other aspects of provision of services.

(b) *Unilateral effects in relation to the supply of HRW services to SQG customers in certain geographical areas affected by the JV.* The CC will assess whether the creation of the JV would be likely to give rise to unilateral effects in the provision of certain HRW services, resulting in an increase in price, reduction in quality or innovation, restriction of supply or affecting other aspects of provision of services.

15. The CC has also identified two further potential theories of harm in relation to this JV:

(a) *Coordinated effects.* We will consider whether the JV makes it more likely that firms in the market will coordinate, given the characteristics of the market.

(b) *Vertical effects.* A further theory of harm is that the JV could result in harm to rivals via an increase in price of inputs (such as HT or AT prices charged to competing collection-only and integrated collection companies) or a complete foreclosure of supply of HT or AT capacity from competitors. The CC will consider whether the JV would have the ability and incentive fully or partially to foreclose services from collection-only companies in the context of its unilateral effects analysis. It will separately consider whether the JV would result in vertical effects in relation to other integrated competitors.

16. The CC's initial view is that the unilateral effects theories of harm outlined in paragraph 14 above are the most likely theories of harm which could give rise to an SLC or the expectation of an SLC. Accordingly, our analysis will focus on these theories of harm. We are seeking further information to understand whether the theories of harm outlined in paragraph 15 will also require in-depth investigation.

17. The CC may revise its theories of harm as its assessment of the JV progresses. The identification of these theories of harm does not preclude an SLC being identified on another basis following further work by us or the receipt of additional evidence.

Assessment of theories of harm

18. To assess the unilateral effects theories of harm, the CC may consider various factors including:

(a) the degree of overlap between the parties in provision of services to customers (by area and customer type);

(b) information on volume, revenue and capacity of the parties and their competitors;

(c) the extent to which the parties are close competitors for customers, compared with other suppliers, including the extent of differentiation between the parties and their competitors and their history of competitive interaction;

(d) the customer portfolios of the parties' competitors as well as their recent bidding activity in order to identify the suppliers which compete with the merging parties in these centres of demand;

(e) the treatment and transport costs of the parties' competitors to assess whether they could compete against the JV even if they do not currently operate in this area. Location might affect the extent to which different suppliers can compete within each area, and this may vary for different types of customers;

- (f) the costs of providing HRW services; and
- (g) the constraint provided by other suppliers of HRW services.

Countervailing factors

19. The CC will consider whether the following countervailing factors would prevent or reduce an SLC:
 - (a) *Entry and expansion.* The CC will consider whether entry and/or expansion would be likely to constrain the market power of the JV. The CC will explore the recent history of entry and/or expansion in this industry.
 - (b) *Buyer power.* The CC will assess the extent to which the bargaining power of the JV's customers would protect customers from the effects of an SLC.
 - (c) *Efficiencies.* Depending on likely size of efficiencies, the CC may examine arguments made and evidence put forward as to efficiency gains from the JV and whether such efficiencies may be rivalry-enhancing.
20. The CC is not currently aware of any other countervailing factors.

Possible remedies and relevant customer benefits

21. Should the CC conclude that the transaction may be expected to result in an SLC, we will consider whether and, if so, what remedies might be appropriate and will issue a further statement.
22. In any consideration of possible remedies, the CC will take into account whether any relevant customer benefits might be expected to arise as a result of the transaction and, if so, what these benefits are likely to be and which customers would benefit.

Responses to the issues statement

23. Any party wishing to respond to this issues statement should do so in writing, by no later than 5pm on 19 December 2013. Please email tradebe-sita@cc.gsi.gov.uk or write to:

Inquiry Manager
Tradebe/Sita merger inquiry
Competition Commission
Victoria House
Southampton Row
LONDON
WC1B 4AD