

TRADEBE / SITA

RESPONSE TO ISSUES STATEMENT

1. INTRODUCTION

- 1.1 This document is the response of Tradebe Environmental Services Limited (**Tradebe**) to the issues statement published by the Competition Commission (**CC**) on 5 December 2013 (the **Issues Statement**) in its merger investigation into Tradebe's joint venture with Sita UK Limited (the **Transaction**) following the referral decision of the Office of Fair Trading (**OFT**) on 29 October 2013 (the **OFT Decision**).
- 1.2 This document does not seek to repeat the arguments made by Tradebe and Sita Healthcare (**Sita**, together, the **Parties**) in the initial submission of 19 November 2013 (the **Initial Submission**), which are relevant to many of the issues listed in the Issues Statement. It remains the Parties' view that the Transaction will not result in a substantial lessening of competition (**SLC**) in any aspect of the HRW industry.
- 1.3 The Issues Statement raises some additional geographic regions in relation to unilateral effects for large quantity generating (**LQG**) customers that were not discussed in the Initial Submission; these regions are therefore discussed below in paragraphs 4.5 to 4.11 (Surrey) and paragraphs 4.12 to 4.23 (Sheffield and Leeds). The Initial Submission discussed the Birmingham and Gloucester region, so this region is discussed only briefly.
- 1.4 The Issues Statement also raises some points that were not discussed in the Initial Submission; these points are therefore discussed in section 5 (unilateral effects for small quantity generating (**SQG**) customers), section 6 (coordinated effects), and section 7 (vertical effects).
- 1.5 Tradebe is confident that the available market data – including data on competitors' transport costs and spare capacity and the identities of bidders for contracts, where the CC is in a better position to collect the necessary information than the Parties – will support this conclusion. To the extent that the CC is able to obtain data not available to the parties, Tradebe requests that the CC shares its findings and analysis and allows the Parties sufficient opportunity to comment on it.

2. FACTUAL DESCRIPTION (ISSUES STATEMENT PARAGRAPHS 3-12)

- 2.1 Tradebe broadly agrees with the CC's factual description of the HRW industry and the CC's proposed definition of the relevant product markets (save as highlighted below).

3. COUNTERFACTUAL (ISSUES STATEMENT PARAGRAPH 13)

- 3.1 As the CC is aware, the Sita business is in a poor financial state and would not have remained an independent force in the industry. The Parties are not arguing that Sita is a failing firm, but do believe it is important to recognise its current weakness.
- 3.2 As stated in paragraph 1.19 of the Initial Submission, the relevant counterfactual is that the Sita business would have been sold to a different buyer if Tradebe had not bought it.

If another buyer could not have been found, the Sita business would have continued to decline.

4. **UNILATERAL EFFECTS FOR LQG CUSTOMERS (ISSUES STATEMENT PARAGRAPH 14(A))**

4.1 Unilateral effects for LQG customers are discussed in the Initial Submission, which covered many of the issues set out in paragraph 18 of the Issues Statement.

- (a) **Degree of overlap.** The Parties' geographic overlaps are relatively limited. Sita has a presence in South-East England, Birmingham and North-West England (although the loss of the Merseyside consortium contract has adversely affected its presence in that region), and Tradebe has a presence in South-West England, Birmingham and North-East England. The Parties' geographic coverage therefore overlaps predominantly in the region around Birmingham. The overlap in the HRW disposal services they offer is also limited because Sita operates HT plants whereas Tradebe does not. Therefore, even in Birmingham, the Parties' competitive offerings are quite different.
- (b) **Volume, revenue, capacity.** The Parties have supplied information on these issues to the CC and have argued strongly that spare capacity is an important issue in this industry.¹ In the case of the Parties' competitors, the CC is in a better position to gather the relevant information than the Parties.
- (c) **Closeness of competition.** The Initial Submission makes it clear that Sita is not currently a strong competitor: it is losing important existing contracts, it is not winning new contracts, and its plants need investment (which Tradebe plans to undertake).² The extent of competition lost as a result of the Transaction is therefore limited.
- (d) **Customer portfolios and bidding data.** The Parties have supplied the information available to them to the CC.³ As the CC will be aware, however, the information available to the Parties on competing bidders, or on contract terms where they did not win the contracts, is by its nature limited, and the CC is likely to be in a better position to assess the market-wide data in more detail. Nevertheless, the data provided by the Parties already highlights the fact that: (a) HRW suppliers will bid on contracts outside strict 50-mile catchment areas; (b) SRCL is a highly important competitive constraint in all bids; and (c) the bidding data do not indicate that Tradebe and Sita were particularly close competitors.
- (e) **Competitors' treatment and transport costs.** The Parties have submitted information on these issues to the CC.⁴ While the Parties do not have data on competitors' costs of treatment or transport, Tradebe would reiterate that the preparation of tender documents involves a significant amount of work and an HRW disposal company would not do it if there was no realistic chance of winning the contract: as a result, evidence of competitor bidding on a contract in a given local area provides a useful indicator of their ability and competitiveness in serving

¹ See, in particular, the Initial Submission, paragraphs 3.3-3.17.

² See the Initial Submission, paragraphs 4.3-4.8.

³ Notably in response to Questions 37 and 38 of the Market Questionnaire and Questions 23 and 25 of Annex C to the CC's First Day Letter, and in respect of Sita, Question 27 of the Market Questionnaire and Question 23 of Annex C to the CC's First Day Letter.

⁴ See, in particular, the responses to Questions 9-12, 23-24 and 37 of the Market Questionnaire, Questions 14-20 of the Financial Questionnaire and Question 25 of Annex C to the CC's First Day Letter.

those customers.⁵ Tradebe would also note that the shape of the industry is changing, with new contracts being awarded frequently. The CC should therefore assess tender processes that are currently taking place during the course of its investigation. For example, the Gloucester NHS Trust will know the identity of the bidders for its contract (the tender for which is currently at the Pre-Qualification Questionnaire (**PQQ**) stage), so the CC will be able to find out the credible bidders that consider themselves able to supply an LQG customer in the middle of the Gloucester catchment area.

- (f) **Costs.** As the Parties have made clear, their current costs – and potential for cost synergies – are a key reason for the Transaction.⁶ For example, Tradebe currently incurs significant costs in sending its HT waste to competitors' plants. More generally in the industry, the high fixed costs and relatively low variable costs, especially for HT plants, combined with excess spare capacity, leads suppliers to offer low prices to win contracts. Further, some of the largest LQG contracts are designed so that high fixed costs do not deter new entry.
- (g) **Competitive constraints.** As stated in the Initial Submission, the Parties are subject to strong actual and potential competition in all areas of the country.

Actual competition includes:

- (i) integrated HRW disposal companies such as SRCL, HES, GW Butler, Grundon, and Medisort;
- (ii) collection-only companies such as PHS, Initial, and Cannon;
- (iii) operators of HRW plants such as Veolia and Auegan, which help AT-only competitors (such as Tradebe) and collection-only companies to compete; and
- (iv) dry waste companies such as Bywaters and Biffa, and facilities management (**FM**) companies such as Mitie and Sodexo, both of whom compete against the HRW disposal companies for total waste management and FM contracts and then subcontract the HRW part of the contract to the HRW disposal companies.

Potential competition includes:

- (i) new entry;
- (ii) the expansion of existing competitors' operations; and
- (iii) self-supply by hospitals, which may be in the form of building a plant on its land (e.g. New Cross in Birmingham), or may stem from innovation in the industry (e.g. PyroPure is a new system recently installed at hospitals including Frenchay Hospital in Bristol, which enables customers to dispose of clinical waste at their premises, thus avoiding the need for storing, collecting and transporting the waste to an HRW plant).⁷

⁵ Tradebe believes that SRCL may be the only competitor with a dedicated central bid team. All other suppliers use their operational staff to prepare their bids and so any bid impacts directly on management costs for the business.

⁶ See, in particular, the Initial Submission, paragraphs 4.10-4.17.

⁷ See <http://www.pyropure.co.uk/>. This product has been on sale since March 2013.

- 4.2 As set out in the Initial Submission, many important issues in this case apply equally for all customers, regardless of their geographic location. These include:
- (a) the way in which large consortiums and other LQG customers structure their tender processes to stimulate competition and minimise prices;
 - (b) the proven potential for entry and expansion;
 - (c) the large amounts of spare capacity;
 - (d) the pro-competitive efficiencies resulting from the Transaction; and
 - (e) the strong presence of SRCL.
- 4.3 These issues have significant knock-on effects throughout the country – for example, the large consortium contracts are so significant that a new plant built to service one of these contracts will result in excess spare capacity in that region, which leads suppliers to reduce their prices in that region and neighbouring regions in order to attract more volume of waste, which then leads to the effects rippling across the country. The effects of SRCL losing the Yorkshire Consortium contract, for example, were felt strongly throughout the country.
- 4.4 Nevertheless, the remainder of this section will discuss the specific regions listed in paragraph 12 of the Issues Statement (Surrey, Sheffield/Leeds, Birmingham and Gloucester).

Surrey

- 4.5 There was no mention of Surrey (or indeed any of the Home Counties) in the OFT's Issues Paper or in the OFT Decision, and Tradebe considers that that there is indeed no realistic prospect of a SLC in Surrey.
- 4.6 Prior to the Transaction, the Parties were not competitors in the Surrey area.
- (a) Tradebe currently has no customers in Surrey. Before the Transaction, were it to serve HRW customers in the Surrey area, the closest AT plant which Tradebe could have used is its AT plant in Avonmouth, which is a two hour drive from, for example, the Royal Surrey Hospital in Guildford.⁸ Tradebe would have had to outsource its HT waste to a third party such as Grundon in Colnbrook or SRCL in Hillingdon.
 - (b) Tradebe's Fawley plant (in Hampshire) has never competed for HRW customers and does not have its own trucks to collect HRW from customers' premises.⁹ Further, the Fawley plant would not be used for HRW generally – it would only conceivably be used for HT-only waste, which is more valuable than other types of HRW. Even HT-only waste is less attractive for the Fawley plant than the hazardous waste it is predominantly used for. As the CC is aware, Tradebe is currently assessing to what extent (if at all) the Fawley plant will be used for [X] in the future. It is unlikely that a full assessment of this will be possible until the hold

⁸ The Royal Surrey Hospital is a large hospital in Guildford, which is the country town of Surrey and is located roughly in the middle of the county, so it seems a reasonable LQG to use as a reference point. According to Google Maps, Tradebe's Avonmouth plant is just over 2 hours' drive away.

⁹ Using the Royal Surrey Hospital as a reference point, according to Google Maps, Tradebe's Fawley plant is 1 hour 22 minutes' drive away.

separate undertakings are lifted and Tradebe has access to more detailed data from Sita.¹⁰

- (c) Sita serves its Surrey customers from either its plant at Chase Farm (North London) or Rochester (Kent), both of which are slightly over an hour's drive from, for example, the Royal Surrey Hospital.¹¹
- 4.7 SRCL and Grundon both have HRW plants that are materially closer to Surrey than Tradebe or Sita's plants.¹² GW Butler and Medisort both have plants that are around the same distance from Surrey as Sita's plants (and therefore closer than Tradebe's plants).¹³
- 4.8 Post-Transaction, any customer in Surrey will therefore have a choice of at least five notable suppliers (SRCL, Grundon, GW Butler, Medisort and the Parties).
- 4.9 These five suppliers would also arguably face competition from Novus and Addenbrookes (both in Cambridgeshire), Augean (in Kent) and Clinipower (in Avonmouth), which would give a total of nine possible HRW disposal companies located within a similar range of Surrey as the Parties (not including the collection-only companies, the FM companies and the dry waste companies).¹⁴
- 4.10 There will be no change at all to the level of competition as a result of the Transaction. Tradebe submits that the Transaction gives rise to no possible detriment for customers in the area around Surrey.
- 4.11 Furthermore, to the extent that the CC has considered Surrey as a potential area of interest on the basis of Tradebe's plant at Fawley in Hampshire being a potential competitor,¹⁵ it should be noted that both Veolia and New Cross (both located in Birmingham) are more plausible competitors in the HRW disposal industry than Tradebe's Fawley plant. The Fawley plant does not have trucks available to collect HRW from customers' premises, which is the same situation as Veolia and New Cross. However, Fawley currently only processes a negligible amount of HRW ([50-200] tonnes in 2012), whereas Veolia and New Cross both currently process large amounts of HRW. Furthermore, the opportunity cost of using the capacity at Fawley (which is licenced to incinerate different waste types to Veolia or New Cross) for HRW is substantially higher, and Tradebe considers that it is simply not conceivable that – unlike at Veolia and New Cross – Fawley would be used to incinerate AT waste.

Sheffield / Leeds¹⁶

- 4.12 The OFT's conclusion regarding the area around Sheffield was as follows:

"In the Sheffield area, the OFT has found that the merger will lead to a five to four reduction in the number of integrated collection and treatment providers for LQG

¹⁰ See also paragraphs 4.11(b) and 4.14(b) of the Initial Submission.

¹¹ According to Google Maps, Chase Farm is 1 hour and 4 minutes' drive and Rochester is 1 hour and 12 minutes' drive.

¹² Using the Royal Surrey Hospital as a reference point, according to Google Maps, Grundon's plants are 33 minutes' and 52 minutes' drive. SRCL's nearest HT plant (Hillingdon) is 37 minutes' drive.

¹³ Using the Royal Surrey Hospital as a reference point, according to Google Maps, GW Butler's plant is 1 hour 12 minutes' drive and Medisort's plant is 1 hour 6 minutes' drive.

¹⁴ Using the Royal Surrey Hospital as a reference point, according to Google Maps, Novus' plant is 1 hour 35 minutes' drive, Addenbrookes' is 1 hour 48 minutes' drive, Augean is just under 2 hours' drive, and Clinipower is just over 2 hours' drive.

¹⁵ Issues Statement, paragraphs 4 and 12.

¹⁶ It is not clear why Sheffield and Leeds are treated as a single geographic area, whereas Birmingham and Gloucester are treated as two separate areas. Both pairs of cities are located close to each other and are served by similar plants. Tradebe does not believe this distinction materially alters the competitive analysis, but requests that the CC informs it if this is a point that should be addressed.

*customers. Given the parties have a low combined share of capacity, given the fact that they do not appear to be close competitors in the area, and given the constraint imposed by other integrated providers, the OFT does not consider there is a realistic prospect of an SLC as a result of the Transaction in the supply of HRW services to LQG customers in Sheffield.*¹⁷

- 4.13 Tradebe argued strongly in the Initial Submission (see paragraphs 6.11 to 6.16) that shares of capacity are not an appropriate measure in the HRW disposal industry, and does not agree with the OFT on its use of that measure.¹⁸ However, it is undoubtedly correct that the Parties will continue to face strong competition from three established and strong competitors (SRCL, HES and GW Butler) in the region around Sheffield and Leeds.
- (a) SRCL is a strong competitor in the region, as in all regions of the country, with a large and well-established customer base. It has more plants in the region than Tradebe has in the whole country (its nearest plants are in Bolton, Oldham, Leeds and Nottingham).
 - (b) HES is a strong competitor in the region – as shown by the internal strategy documents shared with both the OFT and CC.¹⁹ As the CC is aware, HES won the large Yorkshire consortium contract in 2011 and built a new plant to service this contract. LQG customers in the Sheffield and Leeds areas are part of this contract and additional LQG customers in the region continue to be added to the contract. For example, the Parties believe that Sheffield Children's Hospital was added in April 2012. The Parties request that the CC asks HES for details.
 - (c) GW Butler is also a strong competitor in the region, with plants in Nottingham and Yorkshire. The Parties noted in the Initial Submission (paragraphs 5.6 to 5.7) that GW Butler won the contract to serve the Rotherham NHS Foundation Trust from the incumbent SRCL in June 2013.
- 4.14 Tradebe submitted to the OFT a list of LQG customers that it had identified which are located within 50 miles of Sheffield, and provided for [redacted] of these customers its best knowledge as to the identity of their HRW disposal supplier.²⁰ This information is summarised in the table below, and highlights the fact that the Parties face strong competition in the region.

¹⁷ OFT Decision, paragraph 124.

¹⁸ As shown in OFT Decision, paragraph 76 and Table 4.

¹⁹ Tradebe's Strategic Plan 2013-2016, which was provided to the OFT as Appendix 6 of the Informal Submission. Tradebe assumes this is the document referred to in paragraph 77 of the OFT Decision.

²⁰ See Appendix 5 of Tradebe's response to the OFT's Issues Paper. Tradebe only knows the identity of the supplier for 70 of the 80 customers.

Table 1: HRW disposal suppliers to LQG customers in the Sheffield area

Supplier	Number of LQG customers within 50 miles of Sheffield	Tonnage (assuming 0.8 tonnes per bed) ²¹
HES	28	5,986
SRCL	24	7,618
GW Butler	8	2,505
Tradebe	[<]	[<]
Sita	[<]	[<]
Others	3	664
TOTAL	[<]	[<]

4.15 Leeds is less than one hour's drive from Sheffield (and well within the 50 mile radius used by the OFT). Many of the customers in the table above are in the Leeds area. The competitive situation around Leeds and to the north of Leeds is similar to the competitive situation around Sheffield with the following exceptions.

- (a) Tradebe's Doncaster plant is less conveniently located for customers near Leeds than customers near Sheffield.
- (b) SRCL has an HT plant in Leeds itself, and HES and GW Butler have plants in the area immediately surrounding the city. These three competitors' plants are therefore more conveniently located for customers near Leeds, and to the north of Leeds, than customers near Sheffield.
- (c) As a result of the Yorkshire consortium contract, Tradebe would expect HES to have a strong position in the area to the north of Leeds.

Northern Consortium tender process

4.16 The CC should bear in mind in any competitive assessment of the north of England that the imminent Northern Consortium tender process will greatly affect the competitive positions of the major HRW disposal players for the foreseeable future.

4.17 The Northern Consortium contract is expected to be awarded in mid-2014 and it is expected to last for between 7 and 15 years. Tradebe understands that the winning bidder will need to build a new plant (even if the winner is SRCL), so the CC should be aware that new entry (or the expansion of an existing player) is likely and that the available capacity in the wider region will be increased.

4.18 The contract will cover most (if not all) LQG customers in the area to the north of the Sheffield/Leeds region – for example, in Middlesbrough, which is just over an hour's drive away from Leeds. Therefore, all customers, including those not covered by the contract, will be likely to benefit from the lower prices resulting from the increased spare capacity in

²¹ The Parties are only able to estimate tonnage for 26 of HES' customers and six of GW Butler's customers, so the total tonnage for these two competitors is likely to be higher than the figures shown in Table 1.

the wider region. It is also common for additional customers to have the ability to join the consortium at a later date if the terms of the consortium contract are more favourable than they could otherwise negotiate.

- 4.19 The annual value of the contract is expected to be around £3 million – to put this amount in context, it is equivalent to around [redacted] of Tradebe's 2012 turnover from HRW activities.

The Pennines

- 4.20 The OFT Decision correctly notes that the Parties' plants in the region are located on opposite sides of the Pennines.²² Tradebe agrees with the OFT that the Pennines are a barrier for HRW trucks and that they limit the ability of the Parties to bid for the same contracts. Transport from one side of the Pennines to the other is challenging throughout the year and there are periods in the winter when it is simply not possible to drive HRW trucks across the Pennines, so lengthy alternative routes would be needed. The need to cross the Pennines would significantly reduce an HRW disposal company's score in the evaluation of security of supply and other service provision issues in any LQG tender.

- 4.21 The Transaction does not result in a reduction in competitors on either side of the Pennines.

(a) On the eastern side of the Pennines, Tradebe, SRCL, GW Butler and HES are all present. Sita is not present and has no customers located east of the Pennines.

(b) On the western side of the Pennines, Sita and SRCL are present. Tradebe is not present and has [redacted], whose waste is disposed of by Tradebe at [redacted] in preference to transporting it to [redacted].²³ Tradebe bid for this contract in the knowledge that the processing of the waste would be outsourced to a third party.

- 4.22 The fact that the Pennines serves as a barrier is supported by the behaviour of competitors. Neither HES nor GW Butler has any plants to the west of the Pennines and, as far as the Parties are aware, neither has any customers, though the CC will be in a better position to confirm this.

Conclusion

- 4.23 Tradebe submits that the Transaction gives rise to no possible detriment for customers in the region around Sheffield and Leeds. Tradebe submits that the Pennines are a significant natural barrier in this region, but there is no SLC on either basis.

Birmingham / Gloucester

- 4.24 Tradebe's views on the Birmingham and Gloucester region are set out in detail in the Initial Submission (particularly in section 6).

- 4.25 Paragraphs 6.17 to 6.19 of the Initial Submission discuss Birmingham-specific issues. Relevant issues include:

(a) LQG customers in Birmingham have significant buyer power, whether they are part of a consortium (the largest of which is the Birmingham Consortium, which is served by SRCL) or as a valuable source of marginal volumes;

²² OFT Decision, paragraph 77.

²³ [redacted]

- (b) SRCL is the strongest competitor, holding three-quarters of the LQG contracts and winning additional contracts in the last 18 months;
- (c) GW Butler is also present in the Birmingham area (competing from its plant located in Nottingham, around one hour's drive from Birmingham city centre);
- (d) Veolia is a significant presence despite not currently having its own transport capability;²⁴
- (e) New Cross provides a competitive constraint to some extent because it processes HRW for collection-only companies; and
- (f) In recent years, Tradebe and Sita have only won LQG contracts where they were the incumbent.

4.26 Paragraphs 6.20 to 6.29 of the Initial Submission discuss Gloucester-specific issues. Relevant issues include:

- (a) SRCL is again the strongest competitor, with plants in Frome, Cannock and Bridgend and a share of volumes of 56%;
- (b) Grundon serves customers from its Thames Valley plants;
- (c) the imminent all-Wales Consortium tender will affect the competitive structure in the region for the foreseeable future (and may result in new entry);
- (d) the area immediately around Gloucester itself will be a particularly attractive source of marginal volumes for plants including SRCL's Frome plant, Grundon's Thames Valley plant and Sita's Redditch plant;
- (e) there is evidence of new entry in the Avonmouth area (Clinipower); and
- (f) the non-integrated competitors in Birmingham exert a competitive constraint.

4.27 Tradebe submits that the Transaction gives rise to no possible detriment for customers in the region around Birmingham and Gloucester.

5. UNILATERAL EFFECTS FOR SQG CUSTOMERS (ISSUES STATEMENT PARAGRAPH 14(B))

5.1 The Transaction will also not result in any lessening of competition in relation to SQG customers, who will continue to face a large choice of suppliers in all regions where the Parties operate.

5.2 In this respect, Tradebe broadly agrees with the OFT's conclusion regarding SQG customers, which was as follows:

"In relation to SQG customers, the OFT found that Tradebe and Sita may be close competitors for SQG customers in Birmingham and Gloucester. However, the OFT also found that other integrated providers and collection-only companies will be able to exert a strong constraint on the JV in the area post-Transaction. As such, the OFT does not consider that there is a realistic prospect of a SLC as a

²⁴ As stated above in paragraph 4.11, it is inconsistent to regard Fawley as a potential competitor (c.f. paragraph 4 of the Issues Statement) without regarding Veolia and New Cross as current competitors. If, as Tradebe submits, these two HT plants are current competitors, it is difficult to see how the Transaction could result in a SLC in the region around Birmingham and Gloucester.

result of the Transaction in the supply of HRW services to SQG customers in and around Birmingham and Gloucester."²⁵

- 5.3 The analysis in the Initial Submission and in section 4 above on LQG customers generally applies for SQG customers, with some important exceptions.
- (a) **Collection-only companies.** As recognised in the OFT Decision and the CC's SRCL/Ecowaste decision, SQG customers also have the option of procuring their HRW disposal from a collection-only company which subcontracts the treatment and disposal of HRW.²⁶ This is an alternative to using one of the integrated collection, treatment and disposal companies.
 - (b) **Larger catchment areas.** Notwithstanding Tradebe's view that defined catchment areas are not a sufficient approach to assessing competition in the HRW industry, the OFT was correct to believe that catchment areas for SQG customers may be larger than those for LQG customers.²⁷ The OFT also correctly noted that national customers such as Initial and PHS may be able to access third party treatment plants which are a long distance away through using waste transfer stations²⁸ and that it may also be possible to transport waste economically over longer distances by bulking it up.²⁹
 - (c) **Direct delivered.** Many SQG customers deliver their HRW to plants themselves, without the need for a collection service. This means that non-integrated suppliers such as Veolia and New Cross compete directly against the integrated suppliers without the need for their own trucks. The ability to choose between collection and delivery gives SQG customers an added element of flexibility in choosing the service that suits them best.
 - (d) **New entry:** SQG customers cannot sponsor new entry in the way that LQG customers can, although this does not adversely affect competition for SQG customers.
- 5.4 On this basis, Tradebe submits that the Transaction gives rise to no possible detriment for SQG customers in any geographic region.³⁰ Indeed, in relation to those SQG customers which value a national HRW disposal service (e.g. FM companies), the Transaction will have a pro-competitive effect, creating a more effective competitor. However, set out below is a summary of some specific considerations in relation to the Birmingham and Gloucester region, which is the only region that raised sufficient concerns in relation to SQG customers to be included in the OFT's Issues Paper (and the OFT Decision).

Birmingham and Gloucester

- 5.5 As stated in the OFT Decision, collection-only companies compete against integrated companies for SQG customers. There are a number of collection-only companies in the Birmingham and Gloucester region and this competitive dynamic was confirmed to the OFT by some of the larger SQG customers who indicated that collection-only companies

²⁵ OFT Decision, paragraph 125.

²⁶ OFT Decision, paragraphs 80 and 84. SRCL/Ecowaste decision, paragraphs 5.11 and 5.13.

²⁷ OFT Decision, paragraph 25. For Tradebe's views on the OFT's use of catchment areas, please see paragraphs 6.3 to 6.10 of the Initial Submission.

²⁸ OFT Decision, paragraph 86.

²⁹ OFT Decision, paragraph 24.

³⁰ As stated in paragraphs 4.12 to 4.15 and 4.6 above, Tradebe and Sita Healthcare were not close competitors and/or faced strong competition in Sheffield/Leeds or Surrey prior to the Transaction.

bid for the contracts they tendered.³¹ In addition, non-integrated competitors such as Veolia and New Cross provide treatment services to the collection-only companies (as well as to SQG customers directly).³²

5.6 The appropriate catchment area for SQG customers is dependent on collection routes because it is the distance between customers that is important rather than the distance from the supplier's plant. For example, a cluster of customers a long distance from a supplier's plant would often be efficient to serve, and even a single customer a long distance from the plant would often be efficient to serve if there are other customers located on the way. In any case, as noted in the OFT Decision, catchment areas for SQG customers could be considerably wider than 50 miles.³³ Therefore, there are many alternative suppliers providing a competitive constraint in the Birmingham and Gloucester region. These include:

- (a) **SRCL** has AT plants in Four Ashes, Frome and Bridgend, and an HT plant in Nottingham.
- (b) **GW Butler** has an AT plant in Nottingham.
- (c) **Grundon** has an AT and an HT plant in the Thames Valley.
- (d) **Clinipower** is a new entrant with an HT plant in Avonmouth.
- (e) **Veolia** has an HT plant in Tyseley on the same site as its large household waste incinerator. The diversion of Tradebe's HT waste from Veolia's plant to Sita's Redditch plant will free up capacity for Veolia; Tradebe anticipates that this will cause Veolia to compete more fiercely for volumes to fill its plant from collection-only companies and new and existing SQG customers (as well as from other integrated providers).³⁴
- (f) **New Cross** has an HT plant in Wolverhampton.
- (g) Collection-only companies include **Vetspeed**³⁵, **PHS**, **Cannon**, **Initial**, and the **FM companies**.

5.7 In light of the constraint posed by collection-only companies and potentially large catchment areas for SQG customers, the OFT Decision found that there will be a sufficient competitive constraint on the Parties in the Birmingham and Gloucester areas post-Transaction. Tradebe agrees with this conclusion. There is no realistic prospect of an SLC in the supply of HRW disposal services to SQG customers.

³¹ OFT Decision, paragraph 80.

³² See the Initial Submission, paragraph 5.15.

³³ The OFT found that waste can be bulked up in order to transport it over greater distances and plants' SQG catchment area could be considerably more than 50 miles (for example, data from Sita's Redditch plant indicated a catchment area of 88 miles for SQG customers). See OFT Decision, paragraph 82.

³⁴ This was recognised in the OFT Decision, paragraph 81.

³⁵ Despite its name, Vetspeed processes all types of HRW, not just waste from veterinary surgeries. It belongs to the same corporate group as Novus. It has a transfer station in Tewkesbury, which is approximately 12 miles north of Gloucester, at which it stores the waste collected from SQGs in the Gloucester area before transferring it to the Novus plant in Thriplow, Cambridgeshire. See <http://www.vetspeed-uk.com/background-to-the-company.htm>.

6. **COORDINATED EFFECTS (ISSUES STATEMENT PARAGRAPH 15(A))**

6.1 The CC and OFT's Joint Merger Assessment Guidelines (the **Merger Assessment Guidelines**) state that coordination will only be possible where: (i) firms are "able to reach and monitor the terms of coordination"; (ii) coordination is "internally sustainable among the coordinating group—ie firms have to find it in their individual interests to adhere to the coordinated outcome"; and (iii) coordination is "externally sustainable, in that there is little likelihood of coordination being undermined by competition from outside the coordinating group."³⁶

6.2 Tradebe's view is that the HRW disposal sector is highly competitive and market conditions are not conducive to coordination.

- (a) SRCL remains by far the largest player in the market, probably more than twice the size of the merged Parties, with unrivalled geographical scope and resulting economies of scale.
- (b) The market players have differing profiles in terms of geographical spread, levels and ratios of AT and HT capacity, and integrated or non-integrated collection/treatment status.
- (c) All players are incentivised to compete hard to fill spare capacity in their plants and there is substantial (and increasing) spare capacity in the HRW disposal sector.
- (d) New entrants have entered the market and grown quickly in recent years, increasing pressure to win and secure volumes.
- (e) Many customers have significant buyer power through group purchasing, the award of long term contracts, on-site treatment plants, or the knowledge that their custom represents valuable marginal volumes. These customers use this power to demand innovation and lower prices.
- (f) Large contracts are extremely valuable and often make the difference between a plant being profitable and loss making.

6.3 In the STG/Stericycle investigation, the CC received no evidence to suggest a history of coordination in the HRW market in recent years nor any suggestion that the merger would be likely to lead to coordination.³⁷ Similarly, the OFT in this case, having examined the possibility that the Transaction could have coordinated effects, did not consider there to be a realistic prospect of an SLC as a result of the Transaction in the form of coordinated effects. The OFT noted that:

"Some large contracts...are extremely valuable, competition may be considered "lumpy" and firms may find it difficult to either reach or subsequently maintain a co-ordinated outcome where each contract is potentially extremely valuable and the consequences of failing to win a contract (in terms of filling spare capacity) are high. Further, asymmetries remain between the parties in the form of their geographic distribution, their levels of spare capacity, and their respective ratios of

³⁶ See CC2: Merger Assessment Guidelines, paragraph 5.5.9.

³⁷ STG/Stericycle, paragraph 7.22. The issue was not considered in the SRCL/Ecowaste decision – which Tradebe assumes to mean that it was not considered a potential theory of harm.

AT/HT capacity, which may significantly limit their ability to reach a common understanding."³⁸

6.4 Tradebe agrees with this conclusion; HRW disposal companies would not easily be able to reach and monitor the terms of coordination and coordination would not be in the companies' individual interests.

7. **VERTICAL EFFECTS (ISSUES STATEMENT PARAGRAPH 15(B))**

7.1 Tradebe submits that the Transaction cannot be expected to give rise to any vertical concerns, neither in relation to third party access to HT incineration to competitors that have only AT plants, nor to collection-only companies.

HT incineration capacity

7.2 In relation to HT incineration capacity owned by Sita, there is no realistic concern that the merged company would have the ability or the incentive to foreclose its rivals' access to the HT treatment facilities.

7.3 Fundamentally, the merged company would not be able to foreclose competitors, for the following reasons.

(a) Sita holds only a small proportion of total HT capacity in the market and there are numerous alternative HT providers from which rivals can source their treatment services.³⁹ These alternative providers are currently estimated to account for over 80% of HT capacity in Great Britain and own 15 HT plants in comparison to Sita's three⁴⁰, and present significant viable HT supply options to any company requiring a source of HT processing. In turn, this implies that, even were Sita to stop processing competitors' HT waste, the likely impact on AT-only companies' costs would be negligible.

(b) This is particularly the case because there exists substantial spare capacity at HT treatment plants⁴¹, including at plants that are not owned by vertically integrated HRW disposal companies. This would continue to ensure that there is competition for additional HT volumes between all incinerators.

(c) Indeed, the transfer of Tradebe's HT volumes from third party HT plants (especially Veolia's) to those belonging to Sita will result in an increase in spare capacity at third party plants. Thus any reduction in Sita's capacity will be compensated for by a corresponding increase in the capacity available at third party plants and all of this capacity would be expected to be available to customers.⁴²

7.4 Furthermore, the presence of competitors with spare capacity in turn also implies that the merged company would not have any incentive to foreclose competitors: rather, it would have a strong incentive (and indeed plans to continue to) incinerate HT waste for downstream rivals. This is the case for the following reasons.

³⁸ OFT Decision, paragraph 98.

³⁹ Even following the introduction of the wheelie bin hoist system at Fawley, it remains unclear whether Fawley will be able to economically process HT waste (as this will depend on the opportunity costs of incinerating other waste types, which Fawley is licensed to carry out).

⁴⁰ See the Initial Submission, Table 9.

⁴¹ Only 72% of total permitted HT capacity was utilised in 2012. See the Initial Submission, paragraph 3.4 and Table 1.

⁴² Following the withdrawal of the Tradebe volumes from Veolia's Tyseley plant, the Parties predict that Veolia's capacity utilisation would fall from 90% to just [x<]%. See the Initial Submission, Table 12.

- (a) Third party processing provides an important source of revenues for Sita's HT incinerators: for example, in Salford, [X]% of the waste Sita processed in the past year was third party waste, and [X]% of all HT waste processed was third party waste. Choosing not to supply third parties would therefore involve a substantial loss of volumes – and margins. Given the need to cover the high fixed costs of HT capacity, such a loss of volumes would have a profound effect on the profitability of the merged company.
- (b) By contrast, were it to stop supplying third parties, the merged company can only be expected to lose the margins associated with this volume to rival HT incinerators, without incurring any benefit (in terms of higher prices for integrated waste). This is the case not only because companies without HT capacity will continue to have a range of incineration options available to them, but because competition between integrated HRW disposal companies with HT capacity (including notably SRCL) will continue to constrain the prices that the merged entity can charge in the market.

7.5 In sum, these dynamics will spur competition among suppliers of HT treatment services ensuring that the Parties' downstream rivals are able to select from a range of competitive options for HT incineration options, while end consumers will benefit from competition, both between companies with both AT and HT capacity, and from companies reliant on third party HT capacity. Indeed, Tradebe in developing plans for operating the merged company post-Transaction has assumed that Sita would [X].

Waste processing for collection-only companies

- 7.6 While it is in theory also possible that the merger may alter the existing incentives of Tradebe and Sita to provide waste processing to collection-only companies, Tradebe considers this not to be a plausible concern.
- 7.7 Essentially, the merger simply does not change the competitive landscape, and the options available to collection companies, to provide any means of recouping the margins that the merged company would lose, were it to stop processing third party waste.
- 7.8 Even at Tradebe's AT-only facilities, the percentage of total volume that is accounted for by collection-only companies can be substantial, accounting in 2013 for close to [X]% of total volumes processed at its Birmingham plant, and over [X]% at its Avonmouth plant. Therefore the loss of these volumes would be a substantial opportunity cost for the merged company.
- 7.9 Incurring such a loss would only make sense were it to translate to a price increase in the integrated market for waste collection, for example by weakening the competitive constraint from the collection-only companies by increasing their treatment costs.
- 7.10 In fact, the Transaction will not give rise to a worsening of the terms of supply of treatment services to collection-only companies: the Parties will continue to face competitive constraints from a wide range of HRW treatment suppliers (both integrated companies, with both AT and HT facilities, and non-integrated incinerators such as Veolia) with substantial spare capacity. Therefore it is implausible that the prices at which collection companies can process their waste would increase.
- 7.11 In any event, it is important to note that the merged company would continue to face competition from a range of integrated HRW collection and processing companies: as a result, even in the unlikely event that the costs to collection companies were to increase if

their access to the merged company's processing facilities were foreclosed, it is extremely unlikely that – given the continued competition between integrated processors – this would be manifested in an rise in the prices available to integrated processors. In turn, and as a result, a decision not to provide processing services to collection-only companies can only be expected to lead to an opportunity cost for the merged company, which would not be recouped by an increase in price in relation to end consumers. In these circumstances, the merged company would have no incentive not to process third party waste.

8. COUNTERVAILING FACTORS (ISSUES STATEMENT PARAGRAPHS 19-20)

8.1 Tradebe considers that countervailing factors are of particular importance in the CC's assessment of the Transaction. However, these issues are covered in more detail in the Initial Submission, so will be discussed briefly here.

Entry and expansion

8.2 The Initial Submission⁴³ explained the importance of new competitors' entry and existing competitors' expansion in the HRW disposal industry. For example, in the past 2-3 years, HES has entered the market and grown quickly, SRCL has won the Merseyside consortium contract and is therefore building new capacity, and Clinipower and Augean have converted existing HT facilities for use in the HRW disposal market.

8.3 The Parties expect this expansion of capacity to continue. For example, there are two large consortium contracts covering the whole of Wales and the north of England which will be awarded in the next 12 months. New capacity will be required to service these contracts.

8.4 As explained in the Initial Submission, new capacity has a significant effect on competition throughout the industry. For example, when a new plant is built to service a large consortium contract, other plants in the region are left with excess spare capacity, which leads them to reduce their prices and compete over larger geographic areas.

8.5 It is also important to note that the HRW disposal industry is subject to frequent innovation (for example, SharpSmart, PyroPure, bin tracking software), which promotes new entry and self-supply.⁴⁴

Buyer power

8.6 The Initial Submission explained the importance of buyer power in the HRW disposal industry.⁴⁵ The largest NHS customers design their tender processes to drive down prices, either as part of a buying consortium or individually. They have the power to sponsor entry (and/or to self-supply). All other customers benefit from the resulting spare capacity and low market prices because they represent vital marginal volumes for HRW plants.

Efficiencies

8.7 As explained in the Initial Submission, the Transaction will create a much more efficient competitor.⁴⁶ in particular by allowing Tradebe access to process HT volumes in-house, and also enabling the Parties to reduce inter-plant processing cost by better reallocating

⁴³ See, in particular, paragraphs 2.1(b) and 3.3 to 3.17.

⁴⁴ See also paragraphs 4.18 to 4.24 of the Initial Submission.

⁴⁵ See, in particular, paragraphs 3.18 to 3.22.

⁴⁶ See, in particular paragraphs 4.1 to 4.26.

volumes across their different processing facilities. In turn, these cost savings will help the Parties to be more effective competitors, and lower cost bidders, in future tenders.

9. **CONCLUSION**

- 9.1 It remains the Parties' view that the Transaction will not result in an SLC in any aspect of the HRW industry.

Hogan Lovells / RBB Economics
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