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## Completed acquisition by Cholet Acquisitions 2 Limited of the UK landfill and energy business of Shanks Group plc

The OFT's decision on reference under section 22 given on 17 September 2004

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### PARTIES

1. **Cholet Acquisitions 2 Ltd** (Cholet) is a special purpose vehicle formed at the direction of Terra Firma Investments (GP) 2 Ltd, for and on behalf of the Terra Firma Capital Partners II Fund (Terra Firma). Terra Firma manages a number of private equity funds and is the ultimate shareholder of Waste Recycling Group. (WRG) is active in the UK waste management services industry.
2. **Shanks Group plc** (Shanks) is a UK company listed on the London Stock Exchange. It is active in waste management with operations in the UK, Belgium and the Netherlands. Shanks' wholly-owned UK landfill waste disposal business comprises 15 operational landfill sites and contracts to operate seven local authority owned transfer stations. In addition it includes 'waste to energy' (WTE) operations generating electricity from landfill gas. The UK turnover (excluding landfill tax) for Shanks' landfill and energy business was approximately £[ ] million (see note 1) for the year ending 31 March 2004.

### TRANSACTION

3. Cholet acquired Shanks' landfill and energy business on 1 July 2004. Shanks has retained all its other waste management interests, including its UK waste collection business and two joint venture landfill sites: Peckfield in West Yorkshire and Avondale in Scotland. The administrative deadline for review of this transaction is 17 September 2004 and the statutory deadline is 31 October 2004.

### JURISDICTION

4. As a result of this transaction, Cholet and Shanks have ceased to be distinct. The UK turnover of Shanks' landfill and energy business exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

## RELEVANT MARKET

5. The parties overlap in the UK in the supply of the following services:

- *Landfill* – is the main form of waste disposal in the UK. The parties overlap in the provision of landfill services in two non-rail linked local areas and in the provision of rail linked landfill sites in the UK. This overlap is discussed below.
- *Recycling and composting* – involves the separation and processing of recyclable and biodegradable waste. This process is aimed at recovering value from waste and reducing the total amount of waste that needs to be disposed of. The parties have submitted that this overlap is minimal, represents a very small proportion of turnover, and that recycling and composting is merely provided as an ancillary service to their landfill operations. Given this, and the absence of third party concerns, it is not expected that this element of the transaction will raise competition concerns and therefore it is not considered further.
- *Transfer stations* – receive and ‘bulk up’ waste for onward transfer to landfill sites and, to varying degrees, sort waste for recycling. As noted above, the business being acquired has contracts to operate seven local authority-owned transfer stations whose function is to facilitate the transfer of municipal waste to landfill sites. The merged entity will have no or minimal commercial discretion over the use of these transfer stations facilities and cannot use them for waste from other customers. No third parties raised concerns in relation to the operation of transfer stations and, given the limited control the parties will have following the merger, it is not expected that this element of the transaction will raise competition concerns and therefore it is not considered further.
- *Waste-to-energy (WTE)* – involves the generation of electricity from landfill gases. Post merger, the parties will account for less than 1 per cent of electricity generation in the UK. On the narrower frame of reference of renewable energy,<sup>1</sup> the parties would account for only 7.6 per cent of total capacity for renewable energy generation in the UK. Given the relatively small share of supply, the transaction is not expected to give rise to competition concerns and therefore will not be considered further.

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<sup>1</sup> Government legislation in recent years has imposed obligations on electricity suppliers to purchase a set percentage of their total electricity requirements from renewable sources. Given the parties’ relatively small shares of supply, it was not necessary to reach a conclusion on whether renewable energy constitutes a separate segment within the electricity generation sector.

## LANDFILL

### Product market

6. The parties overlap in the disposal of non-hazardous waste via landfill in the UK. In addition to being deposited at a landfill site, waste may also be recycled, composted or incinerated. Not all types of waste are suitable for recycling or composting, so these forms of waste disposal can only reduce but not eliminate the amount of waste which ultimately needs to be landfilled. Similarly, while waste can be incinerated, the resulting ash will still need to be disposed of at a landfill site.<sup>2</sup> Currently, the cost of disposal of waste via landfill is significantly cheaper than other forms of waste disposal. Both the EU and UK government are encouraging both local authorities and industrial/commercial customers to move away from landfill towards other forms of waste disposal, primarily through increases in landfill tax and the introduction of restrictions on local authorities use of landfill.<sup>3</sup> The parties have submitted that these mechanisms will lead to other forms of waste disposal becoming price competitive within the next 2-5 years.
7. Overall, it would appear that, given current government objectives, recycling, composting and incineration may become competitive with landfill at some point in the future. However, at this stage, these forms of waste disposal are not considered sufficiently substitutable with landfill to render a hypothetical price increase in landfill unprofitable.
8. The Landfill (England and Wales) Regulations 2002<sup>4</sup> require that each landfill site hold one of three possible classifications which dictate the types of waste that the site may accept:
  - a. hazardous – can only accept hazardous waste that satisfies certain acceptance criteria which generally relate the presence of toxicity, flammability or a number of other characteristics;
  - b. non-hazardous – may accept municipal waste, other non-hazardous waste,<sup>5</sup> including inert waste. Non-hazardous waste includes a broad range of waste including paper, plastic and biodegradables; and
  - c. inert – may only accept inert wastes. Inert wastes are defined as insoluble, inorganic materials which will not undergo any significant physical, chemical

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<sup>2</sup> However, this residual ash could be used as 'capping' for the landfill site instead of being directly dumped into the landfill.

<sup>3</sup> From April 2005, the Waste and Emissions Trading Act 2003 will impose very substantial penalties (£200 per tonne) on waste disposal authorities which fail to limit their dependence on landfill to within set allowances.

<sup>4</sup> SI 2002 No.1559

or biological transformations over time. Most inert waste arises from the construction and demolition industry.

9. In previous cases the European Commission has found that the disposal of hazardous waste constitutes a separate market due to the more burdensome regulatory framework and the high costs of treatment and disposal.<sup>6</sup> Evidence available in this case also supports this view.
10. Turning to the treatment of non-hazardous waste, a number of possible views emerge. First, given inert waste may also be disposed of in a non-hazardous site, but not the reverse, it would appear that for some customers these two types of sites may be substitutes. However, it is not clear what proportion of customers would be able to switch between inert and non-hazardous waste sites. Statistics prepared by DEFRA indicate that the construction and demolition industry accounts for 24 per cent of total waste arisings. However, only a small proportion of this waste is actually disposed of at landfill sites.
11. Second, it may be possible to distinguish among different types of non-hazardous waste. The parties submit that this level of segmentation is not appropriate, and that they are not aware of any examples of companies with landfill businesses which specialise in a particular kind of non-hazardous waste. Even if such a specialisation did exist, they argue that there would appear to be no barriers to a landfill site switching between the disposal of various types of non-hazardous waste given that the same infrastructure and landfill licence could be used.
12. Third, segmentation among different customer types, e.g. municipal or industrial/commercial, may also be possible. Certain features of the industry, such as contract negotiation and the use of transfer stations, do differ among customer types. Municipal customers tend to run competitive tender processes before awarding long term contracts ranging from 5 years to up 20 years or longer. On the other hand, industrial/commercial customers can generally be divided between those which use a site on a 'casual' basis paying the published gate list price or regular customers which individually negotiate an off-list price. In addition, municipal customers frequently have their own transfer station facilities, while industrial/commercial waste producers will generally contract with a collection service provider which has access to a transfer station. The parties submit that segmentation by customer type is not appropriate given that non-hazardous waste is handled and landfilled in materially the same way regardless of the type of customer. The parties were unaware of any sites which specialised in servicing a particular customer type.

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<sup>5</sup> Non-hazardous waste is defined as 'waste which is not hazardous waste' under Regulation 7(3) of the Landfill (England and Wales) Regulations 2002.

<sup>6</sup> Case No IV/M.283 – Waste Management International/S.A.E, [21 December 1992].

13. While there may be some level of substitutability between landfill and other forms of waste disposal this, along with the substantial differences in price, is not considered sufficient to warrant extending the product frame of reference to include all forms of waste disposal. There does appear to be potential for some demand side substitution between non-hazardous and inert landfill sites, however, given that the parties only overlap in the provision of non-hazardous landfill sites a cautious view has been taken and the appropriate product frame of reference is considered to be the disposal of non-hazardous waste via landfill.

### **Geographic market**

14. The majority of waste is transported by road. However, there are a small number of sites which also accept waste via rail. The relative economics of rail transportation suggest that the geographic scope for waste disposal via rail may be different to that of road. Therefore, these two forms of transportation are examined separately below.

#### **Road**

15. A number of factors suggest that the supply of landfill services by road is local. Although there are a number of national, regional and local players in the industry, customers appear to contract on a local basis. Furthermore, the costs of transporting waste by road are significant relative to the value of the product.
16. In general, waste can be delivered direct to a landfill site by Mobile Compaction Vehicle (MCV), skips or rollonoffs (referred to as direct delivered waste). Alternatively, waste can be taken to a transfer station and bulked up onto articulated lorries allowing the waste to be transported much further before disposal at a landfill site (referred to as ex-transfer station waste).
17. The parties provided evidence to show that around 90 per cent of direct delivered waste customers were located within a 10 mile radius of the site being used. The parties further submitted that substitution between direct delivery and ex-transfer was feasible and cited a number of examples of customers which had switched from direct delivery to either an existing transfer station, or in some instances, setting up their own transfer station. If the parties raised price post-merger, customers could either go to another local site or to a transfer station that takes the collected waste out of the 10 mile radius of the parties' sites, thus the feasibility of articulated vehicles travelling further distances could constrain the parties' price increase.
18. While third parties generally confirmed the view that competition occurred on a local basis, estimates of how far they currently travelled or would be willing to travel to use a landfill site or a transfer station varied greatly. In addition, a number of direct delivery customers indicated that they used alternative sites

which were located greater than 20 miles apart, suggesting that competition may occur on a wider basis than the 10 miles submitted by the parties.

19. Overall, it would appear that the appropriate geographic frame of reference for road based landfill sites is a local one. However, the exact distance within that local area that customers are willing to travel to access a landfill site or transfer station is likely to vary depending on local circumstances. The application of a broad rule of thumb, such as the 10 mile radius suggested by the parties, would be, at best, a good starting point for examining local competition. This suggests that while the 10 mile radius may be a good starting point for identifying potential local overlap concerns, it should be recognised that local competition dynamics may extend outside this relatively narrow radius.

#### Rail

20. For rail-connected sites the radius for disposal appears to be much wider. The parties submitted that the incremental cost of travelling extra miles by train is small (about 2 pence per tonne mile over a long journey). However, maximum train journeys do not currently appear to exceed about 100 miles.
21. The parties submit that road is price competitive with rail, and submitted detailed cost estimates comparing a number of existing road and rail sites to support their case. Customer views, however, were more mixed on the feasibility of substituting road for rail. One customer submitted that there was a significant price difference, with road being approximately 35 per cent more expensive. On the other hand, another customer supported the parties' view that the two forms of transport were substitutable. Given the conflicting evidence on this point and in light of the competitive assessment below, a cautious view has been taken and the frame of reference limited to rail-linked sites for this assessment.

### **HORIZONTAL ISSUES**

#### **Landfill (non-rail connected sites)**

22. There are two local overlaps at issue involving the parties' non-rail connected sites: Chirk/Rossett and Dogsthorpe/Corby/Weldon.

#### **Chirk**

23. Cholet has acquired two Shanks sites at Chirk and Rossett. Cholet (via WRG) has three sites in the region:
  - WRG (Llanddulas) – situated 20-25 miles north west of Chirk;

- WRG (Gowy) - situated approximately 20 miles north of Chirk; and
  - WRG (Maw Green) – situated approximately 20-25miles north east of Chirk.
24. Although WRG (Gowy) overlaps with Shanks (Rossett) with a 10 mile radius, the parties submit that Shanks (Rossett) will close [in the near future] (see note 1) having filled its consented void. The evidence submitted by the parties is compelling on this point.
  25. As regards Shanks (Chirk), using the 10 mile radius as a starting point, there is no direct overlap between WRG and Shanks in this region. However, third party views on distances travelled have been mixed with some stating that they travel further than a 10 mile radius to access landfill sites in the area. Third parties have indicated that Shanks and WRG have made bids for the same contracts in the past and that, prior to the merger, WRG and Shanks (Chirk) provided a competitive constraint on one another. Furthermore third parties have raised concerns that post-merger prices will increase and choice will be reduced.
  26. From the evidence obtained by the OFT, there appears to be overlap between the parties in the Chirk region notwithstanding that the Shanks (Chirk) site lies outside a 10 mile radius of any WRG site.
  27. Other competitors in the region are; Tudor Griffiths (Ellesmere site) approximately 10 miles south east of Chirk; AD Waste (Buckley site) - approximately 10-12 miles north of Chirk; AD Waste (Deeside site) - approximately 15-20 miles north of Chirk; and Biffa (Bromborough) – approximately 20-25 miles from Chirk. The merger therefore appears to reduce competitors from five to four (see note 2).

## Shares of Supply

Table 1: Pre-merger shares of supply in the Chirk region for 2004 by estimated remaining consented void.

Company/Site	Estimated total consented void remaining (Mm3)	Share
Shanks/Chirk	[ ]	20.5 %
WRG/Gowy	[ ]	25.2 %
WRG/Llanddulas	[ ]	25.2 %
Combined share (Merged entity)	[ ]	70.9 %
AD Waste/Buckley <sup>7</sup>	[ ]	7.9 %
Biffa/Bromborough	[ ]	5.5 %
Tudor Griffith/Ellesmere	[ ]	15.7 %
Total	[ ]	100 %

Source: Parties' estimates (see note 1)

28. The merged entity's estimated combined share of supply is around 70.9 per cent (increment 20.5 per cent). Given the imminent exit of AD Waste Buckley (unconfirmed), this leaves Tudor Griffith (Ellesmere) as the most likely effective competitor in the region with a 15.7 per cent share. It is not clear whether Tudor Griffith will provide a sufficient competitive constraint on the parties post-merger given its relatively modest share of supply. In addition, evidence of how far customers are prepared to travel to get to a landfill site is mixed. Tudor Griffith (Ellesmere) is situated approximately 10 miles south east of Shanks (Chirk) and could represent a competitive constraint on the merged entity so far as Chirk and the south east region is concerned.

### Barriers to entry and expansion

29. Barriers to entry for establishing a new landfill site are generally considered to be high. New landfill sites need to obtain planning permission and a Pollution Prevention and Control (PPC) permit. Before granting planning permission, a planning authority must be satisfied that the new void space is necessary to meet demand for waste disposal within the next ten years and is generally compatible with national, regional and local waste management strategies. In order to gain a PPC permit, a prospective landfill operator has to demonstrate to the appropriate

environment agency that the prospective site in question would satisfy the required environmental and operational standards. This can be a time-consuming and costly exercise, and only sites with preferable characteristics (for example as to location and hydro-geology) are likely to be approved.

30. When deciding whether to set up a new landfill site an operator would also need to take into account the future risks and costs associated with closing a landfill site. The landfill operator remains responsible for the post-closure management of a landfill site, in particular, environmental monitoring and ongoing leachate and landfill gas production. In addition, landfill operators are under a statutory obligation to make financial provisions during the life of the landfill to cover the costs of its closure and future aftercare.
31. Overall, the regulatory restrictions on the development of new landfill sites, especially those related to meeting future demand, and the associated costs of aftercare represent significant barriers to new entry. This view was generally supported by third parties. The parties submitted that while barriers to entry are high, they are not prohibitive and provided evidence of a number of new sites that had been opened or redeveloped in the last 2-3 years.
32. However, evidence received by the OFT shows that that there is a realistic prospect of new entry to the region in the near future. Mersey Waste has recently received planning permission to operate a landfill site at Hafod. The proposed site at Hafod is 3 miles away from Shanks (Chirk) and is centrally based in terms of regional competition thus providing customers from around the region greater choice. In addition, the proposed Hafod site will be large with an estimated consented void of [ ] Mm<sup>3</sup> (see note 1) compared to Chirk's estimated remaining void of [ ] Mm<sup>3</sup> (see note 1). Table 2 below shows the estimated shares of supply, post-merger, with new entry from Mersey Waste (Hafod).

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<sup>7</sup> Some customers have stated that although AD Waste (Buckley) is an effective competitor, its remaining consented void is due to be filled by 2004-2005. The OFT have not been able to confirm

*Table 2: Post-merger shares of supply in the Chirk region for 2004 by estimated remaining consented void, including new entry.*

<b>Company/Site</b>	<b>Estimated total consented void remaining Mm3</b>	<b>Share</b>
<b>Shanks/Chirk</b>	[ ]	<b>13.9 %</b>
<b>WRG/Gowy</b>	[ ]	<b>17.1 %</b>
<b>WRG/Llanddulas</b>	[ ]	<b>17.1 %</b>
<b>Combined share (Merged entity)</b>	[ ]	<b>48.1 %</b>
<b>Mersey Waste (Hafod)</b>	[ ]	<b>32.1 %</b>
<b>AD Waste/Buckley</b>	[ ]	<b>5.3 %</b>
<b>Biffa/Bromborough</b>	[ ]	<b>3.8 %</b>
<b>Tudor Griffith/Ellesmere</b>	[ ]	<b>10.7 %</b>
<b>Total</b>	[ ]	<b>100 %</b>

*Source: Parties estimates (see note 1)*

33. Mersey Waste has already received planning permission and, on the evidence available to the OFT, it is likely to receive the necessary PPC permit.
34. Share data indicate that Mersey Waste will also be a robust competitor. It could have consented void of [ ]Mm3 (see note 1) giving it a potential share of 32.1 per cent. Entry by Mersey Waste (Hafod) will also restore the number of competitors to the pre-merger level of five. This will increase the options for consumers particularly given the central location of Hafod. Moreover, there is no reason to expect that, in the event of new entry, customers would not switch to the new entrant to defeat a post-merger price increase.
35. Finally, all the evidence suggests that Mersey Waste (Hafod) will become operational by mid 2005 and could be a strong competitor for WRG and Shanks.
36. In light of the above, the OFT considers that the prospect of entry by Mersey Waste is expected, will be of sufficient scope to act as an important competitive constraint on the merged entity, and will be timely such that any prospect of a substantial lessening of competition as a result of this merger is unrealistic.

### **Dogsthorpe**

37. The transaction involves the acquisition by WRG of the Shanks (Dogsthorpe) and (Corby/Weldon) sites. WRG has three sites in the region:

- WRG (March) – situated approximately 15 miles south east of Dogsthorpe;
  - WRG (Buckden) – situated approximately 20 miles south of Dogsthorpe; and
  - WRG (Colsterworth) – situated approximately 20 miles north west of Dogsthorpe.
38. Other competitors in the region are: Biffa (Eye) situated approximately 2-3 miles from Dogsthorpe; SITA (Somersham) situated approximately 15-20 miles south east of Dogsthorpe; CSG (Rushden) approximately 25 miles south west of Dogsthorpe; and SITA (Kettering) also approximately 25 miles south west of Dogsthorpe. There is also a transfer station at Bullimores situated approximately 12 miles west of Dogsthorpe.
39. Given a 10 mile radius as a starting point, there appears to be significant overlap between Shanks (Dogsthorpe) and WRG (March). Third parties have indicated that the parties have bid for the same contracts and the sites are direct competitors. Some third parties raised concerns about the loss of competition in the area. However, other customers said that they were not concerned with the merger. Generally customers did not indicate that other sites such as CSG (Rushton) and SITA (Kettering) were effective competitors. The parties further submit that out of the 97 commercial customers only 8 use both Shanks (Dogsthorpe) and WRG (March). These are almost exclusively WRG (March) customers with only small amounts of waste going to Shanks (Dogsthorpe). The parties also contend that WRG (March) is a small site taking no more than 20,000 tonnes of waste per annum.
40. Given the overlap between the parties, this results in an estimated combined share of supply of 25 per cent compared to Biffa's share of 69.4 per cent. It is clear that Biffa is the largest player in this region with the parties being the second largest. The remaining competitor has a relatively small share of supply. It should be noted that these data do not include any figures for waste delivered to the Bullimores transfer station.

## Shares of Supply

Table 3: Post-merger shares of supply for 2004 by estimated consented void remaining (assuming Biffa (Eye) obtain all necessary consents).

Company/Site	Estimated total consented void remaining (Mm3)	Share
Shanks/Dogsthorpe	[ ]	16.7 %
WRG/March	[ ]	8.3 %
Combined share (Merged entity)	[ ]	25 %
Biffa/Eye	[ ]	69.4 %
SITA/Somersham	[ ]	5.6 %
Total	[ ]	100 %

*Parties' estimates (see note 1)*

41. The parties submit that there will be effective competitive constraints on the merged entity from Biffa (Eye) and SITA (Somersham). In any event, the Dogsthorpe site will exit (they say) by [ ] (see note 1) when it is expected to fill its consented void. The parties also say that any assessment of the competitive situation in this area must take into account the small size of WRG (March).
42. However, the main issue relating to Dogsthorpe is whether Biffa (Eye) will close. At present, the parties estimate that Biffa has a share of supply of around 30 per cent in terms of waste disposed each year and represents the main competitive constraint to the merged entity. Biffa has submitted that Biffa (Eye) currently has remaining consented void of only 150,000 m<sup>3</sup> of which approximately 70,000 m<sup>3</sup> is available for waste, the remaining balance being the void taken up by 'capping' (filling with fertile soil) and restoring the site. Biffa estimated that this space could be filled in 2005. However, it appears that the Biffa (Eye) site has significant additional consented void for which planning permission has already been obtained.
43. From the evidence available to the OFT, it is likely that Biffa (Eye) will obtain all the necessary consents for an extension to its consented void of around 700,000 m<sup>3</sup>. In addition, Biffa also has planning permission for at least a further 1Mm<sup>3</sup> of consented void to the south side of the site. The parties estimate that Biffa (Eye) could realize a sufficient amount of consented void to give them a share of supply of just under 70 per cent making it the leading competitor with an overall estimate of remaining consented void being in the region of [ ]Mm<sup>3</sup> (see note 1).

44. Biffa (Eye), therefore, has a strong potential to extend its consented void significantly and is likely to continue to exert a significant competitive constraint on the merged entity. Indeed, Biffa's own public statements express a clear expectation that the site will continue to operate for some years to come.
45. SITA (Somersham) will provide a further option for customers, particularly those located in the south and south east of Dogsthorpe and customers to the north west of Dogsthorpe have the option of using the transfer station at Bullimores.
46. Moreover, the Shanks (Dogsthorpe) site is expected to close in [ ] (see note 1), thus removing the overlap between the parties.
47. In conclusion, both Biffa (Eye) and SITA (Somersham) together provide a strong competitive constraint on the merged entity. Customers also have the additional option of using the transfer station at Bullimores, thus providing customers with greater choice and bringing in the possibility of using other landfill sites that are located away from the area. Furthermore, there is strong evidence to suggest that Biffa is expected to obtain additional consented void and will continue to constrain the commercial activities of the merged entity for the foreseeable future. The parties estimate that Biffa (Eye) could realize a sufficient amount of consented void to give them a share of supply of just under 70 per cent making it the leading competitor. On the basis of such evidence it is not considered that the transaction would lead to a substantial lessening of competition in this region.

#### **Buyer power**

48. Customers can and do switch between alternative providers of landfill services in response to changes in service, relative prices, and the volume/location of the waste arisings. Switching costs are low and customers could simply drive in a different direction or re-organise their collection rounds to use an alternative site. Evidence of customers switching to either another landfill provider or transfer station in response to an increase in price was provided.

#### **Rail connected sites**

49. There are currently four existing rail linked landfill sites in England and one in Scotland. Post-merger the parties will own three of the sites in England, namely, Shanks (Stewartby), Shanks (Calvert) and WRG (Sutton Courtenay). The other English site in Humberside is owned by Biffa. The majority (see note 3) of London waste is sent via rail to these three sites with the two main London customers being; West London Waste Authority (WLWA) and North London Waste Authority (NLWA).

50. Based on previous bidding behaviour, the parties appear to have been close competitors and third parties considered the parties represented a considerable constraint on one another for such long term rail linked landfill contracts.
51. WLWA expressed concerns about the merger. WRG (Sutton Courtenay) and Shanks (Calvert) both have long term contracts to provide waste disposal services for WLWA. These contracts do not expire until 2008 with a possible extension of up to 2 further years for WRG (Sutton Courtenay). Thus, prices were fixed at the outset of the contracts (i.e. pre-merger in 2001) during the competitive tender negotiations. WLWA say that at present 80 per cent of its waste goes to landfill sites, of which, 68 per cent is transported by rail. WLWA submits that only Shanks and WRG, out of a total of five bidders, put forward competitive bids for the last contract.
52. NLWA raised no concerns about the merger. NLWA has a single 20 year contract with London Waste Limited (LWL) to manage the disposal of all waste collected by the North London Boroughs. Shanks (Stewartby) has a contract to provide landfill disposal services to NLWA and LWL on the basis of rail transfer. This contract does not expire until 2009. Bristol City and the Bath and North East Somerset Councils also have contracts with Shanks (Calvert) which expires in 2008 with a possible extension until 2011. However, Bristol City and the Bath and North East Somerset Councils have not raised any concerns.
53. While there is overlap between the parties in rail-linked landfill sites and a limited number of rail-linked competitors, potential competition concerns are weighed against countervailing evidence which, taken as a whole, removes such concern. Two main factors are taken into account:
- New entry; and
  - Existing long term contracts.

#### *New entry*

54. It is considered that existing landfill providers are able to expand into the provision of rail-linked sites with comparatively small investment. The parties submitted that a number of landfill sites currently exist which, although not fully rail equipped at present, could be prepared to service the London waste contracts upon renewal in 2008-2010. The cost of establishing the track and rail head necessary to make a site fully rail connected were estimated by third parties to be in the region of £1 million and £1.85 million. The parties argued that when compared to the revenues associated with a long term, high volume municipal waste contract (around £30 million), this level of expenditure was small.

55. Third parties were mixed in their views regarding expansion into the provision of a rail linked site. While they considered that the costs of setting up a rail head were not prohibitive, the decision to engage in this investment would be substantially influenced by the type of contract being offered. One third party also cited difficulties associated with obtaining planning permission as a barrier to establishing a rail linked site. There is no evidence of recent entry or expansion into the provision of rail linked site in the UK.
56. The parties submit that the prospect of new entry is more than hypothetical. They submit that several other potential rail linked landfill sites could compete with the merged entity for municipal waste contracts. The main potential new entrants are:
- Viridor (Erin) situated in Chesterfield;
  - Viridor (Ardley) situated in Oxfordshire;
  - Biffa (Roxby) situated in Humberside (see note 4); and
  - The Rookery (located close to Stewartby Bedfordshire).
57. [ ] (see note 5). The owner of the Rookery site is actively examining the potential of its site for rail accessed waste disposal and is also keen to enter. The parties submit that Bedfordshire Waste Local Plan actively promoted The Rookery as a rail connected site and as a replacement to the Stewartby site which, the parties submit, will fill its consented void by 2007 without any prospect of an extension.
58. In these circumstances Local Authorities and Waste Authorities are well placed in a tendering situation to encourage bids from sites which have not previously served them. The size and duration of such contracts could justify the necessary expenditure on infrastructure. The parties submit that the cost of constructing a rail head with a 25 year life span and capable of handling around 200,000 tonnes of waste per annum is estimated to be around £2 million. This equates to a cost of approximately 0.37 pence per tonne. In the context of long term municipal contracts worth over £30 million, it becomes an attractive option for potential new entrants.
59. In addition the parties submit that both WRG (Sutton Courtenay) (see note 6) and Shanks (Stewartby) will not be in a position to bid for any further contracts when existing contracts expire. WRG's planning consent for the Sutton Courtenay site is due to expire in 2012. The parties submit that planning consent is unlikely to be renewed or extended (see note 7) due to vociferous complaint from residents in Oxfordshire about receiving waste from London. Shank's Stewartby site will not have sufficient remaining consented void to make a bid for a London municipal waste contract in 2008-2010.

### *Existing long term contracts*

60. Prior to the merger, long term contracts were already in place with the price being fixed. Most existing contracts now conclude around 2008 with the possibility of extensions until 2010. Thus, in the short and medium term no competition concerns arise. With regard to any long term competitive effects of the merger, given the possibility of new entry, the competitive outcome is expected to be different to the current overlap between the parties for the reasons given above.
61. In conclusion, while the merger has resulted in a direct overlap in rail linked landfill sites servicing the London Waste Authorities there will not be any competition concerns in the short to medium term due to pre-existing long term contracts. The competitive situation remains as it was when these contracts were entered prior to the merger and will continue to remain until at least 2008. The situation is expected to change when these contracts come up for tender in 4-6 years by which time new competitors are expected to have entered thus exerting a competitive constraint on the merged entity. In addition the merged entity may have filled its site at Stewartby and not be able to bid for contracts for Sutton Courtenay due to planning problems.

### **VERTICAL ISSUES**

62. There is a trend towards integrated waste management. At present many Local Authorities contract with a number of suppliers but under an integrated waste management contract all these functions are contracted to one party.

### **THIRD PARTY VIEWS**

63. Some third parties expressed concerns in each of the areas of overlap described above but other third parties were equally not concerned. The response from third parties has generally been mixed.

### **ASSESSMENT**

64. In relation to Chirk, the merger will eliminate competition between WRG (Gowy), (Llanddulas) and Shanks (Chirk) which will reduce the number of sites from five to four. However, there is a realistic prospect of new entry by Mersey Waste (Hafod) which will have a large level of consented void and be centrally located to local competition. In addition the merged entity will also face competitive constraints from the remaining competitors which taken together represents strong competition for the merged entity. In these circumstances, a substantial lessening of competition is not a sufficiently realistic prospect.

65. In relation to Dogsthorpe, the merger will eliminate competition between WRG (March) and Shanks (Dogsthorpe) sites, which will nominally reduce the number of available sites for customers from five (including the transfer station) to four. However, WRG (March) is relatively small in size and the merged entity will face competitive constraints from the continued operation of the large Biffa (Eye) site. Furthermore there will be the continued presence of competition from SITA (Somersham) and the Bullimores transfer station. Therefore a substantial lessening of competition is not a realistic prospect.
66. Finally, with regard to the overlap in rail-linked landfill sites there is only one concerned customer and existing fixed term contracts will remain in place until at least 2008. Other customers appear unconcerned because of the prospects of new entry within this time frame and these are strong. At least two firms are actively seeking to enter and progressing their plans. The prospect of one of those sites becoming available by 2008 is sufficiently strong to be considered as a viable alternative for the present customers of rail-linked landfill sites.
67. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

68. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.

## **NOTES**

- 1 Figures or text have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.
- 2 AD Waste (Deeside) is a prospective site which has yet to receive the necessary planning and environmental permissions. Given the associated uncertainties with regards to its likely future as a competitor to Chirk, it has not been included in the assessment of effective competitors.
- 3 Correction: the majority of London waste is transported by road, however, a significant portion of London municipal waste is transported by rail. The parties' three sites are currently the only rail linked sites receiving London waste.
- 4 Biffa (Roxby) is currently already operating as a rail linked site.

- 5 Text deleted at the request of Viridor for reasons of commercial confidentiality. However, Viridor did note that Viridor (Erin) has planning permission and rail sidings but Viridor (Ardley) has no planning permission and no rail sidings.
- 6 While it is not definite that Sutton Courtenay will be unable to bid for future London municipal waste contracts, the parties have submitted that it is unlikely that it will be able to do so.
- 7 The parties have noted that Sutton Courtenay's planning permission is unlikely to be renewed or extended in relation to waste coming from London. Planning permission may still be granted in relation to the disposal of local waste.