Hogan Lovells

TRADEBE/SITA

INITIAL SUBMISSION TO THE COMPETITION COMMISSION

1. INTRODUCTION AND SUMMARY

1.1 This document is the initial submission of Tradebe Environmental Services Limited (**Tradebe**) to the Competition Commission (**CC**) in its merger investigation into Tradebe's joint venture with Sita UK Limited (**Sita**) (the **Transaction**) following the referral decision of the Office of Fair Trading (**OFT**) on 29 October 2013 (the **OFT Decision**).

1.2 The Transaction affects the collection, treatment and disposal of healthcare risk waste (**HRW**) in Great Britain, a sector which is already well known to the CC.[1] As the CC has noted in its previous decisions, HRW is a category of healthcare waste that requires treatment prior to disposal. Treatment is carried out either by high temperature (**HT**) plants, which incinerate the HRW, or alternative technology (**AT**) plants, which use a number of different methods to make the waste safe prior to disposal. Tradebe has three AT plants; Sita has three AT plants, two HT plants, and one plant with both AT and HT capacity.[2]

1.3 The CC has in previous cases assessed competition for HRW treatment services in detail, but it is notable that:

(a) the sector has recently experienced some material developments, which need to be borne in mind when looking back at the CC's previous decisions; and

(b) the nature of this Transaction, in terms of its rationale, the activities of the Parties involved, and the context in which it takes place, differs substantially from HRW transactions previously considered by the CC.

1.4 Tradebe and Sita (the **Parties**) do not believe any competition concerns arise from this Transaction.

The focus of this submission

1.5 The OFT found a realistic prospect of a substantial lessening of competition in only two segments of the HRW sector:

(a) large quantity generator (**LQG**) customers in the Birmingham area; and

(b) LQG customers in the Gloucester area.

1.6 This submission does not repeat all of the arguments made, and information supplied, by the Parties to the OFT. Instead, it concentrates on key points relating to the impact of the

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[1] See, for example, the CC's report dated 12 December 2006 on the completed acquisition of Sterile Technologies Group Limited by Stericycle International LLC (the **STG Decision**), and the CC's report dated 21 March 2012 on the completed acquisition of Ecowaste Southwest Limited by Stericycle, Inc. (the **Ecowaste Decision**). See also the OFT's decision in the anticipated acquisition by SRCL Limited of Cliniserve Holdings Limited, 21 November 2008.

[2] Sita also has a collections depot at Platt in Kent.

Transaction on the supply of HRW treatment services to LQG customers as it was in the supply of HRW services to this customer group that the OFT raised potential competition concerns.[3]

1.7 Where regional conditions are relevant, this submission will focus its discussion on the Birmingham and Gloucester areas, and why competition concerns cannot be expected to arise for customers in these areas.[4] However, the Parties do not agree with the OFT's characterisation of local markets and do not consider that simple catchment area analysis is sufficient to assess the competitive dynamics in this industry at the current time.

1.8 The key points raised in this submission are summarised briefly below.

Market context – the current market is very competitive

1.9 It is important to understand that recent developments in the market have dramatically altered the competitive landscape. Specifically, while SRCL remains the largest player in the HRW sector, new players such as Healthcare Environmental Services (**HES**) have entered the market and grown quickly. The large buying consortiums have sponsored new entry, and continue to do so. For example, tenders such as the Yorkshire consortium (which sponsored HES' entry in early 2011), the Merseyside consortium (which SRCL won from Sita in April 2013[5]), and the imminent all-Wales and Northern consortiums are explicitly structured to encourage new entry or expansion – they are long term contracts, which guarantee a return on capital, and give a sufficient lead time to build the necessary HRW treatment plants. The opportunities created by the CC's interventions in past transactions have also played a part in boosting competition.

1.10 There is now substantial excess capacity in the market, and prices and profit margins have been falling rapidly. In short, the sector has become extremely competitive, and will continue to remain so post-Transaction. These market developments are discussed in Sections 2 and 3 below.

Transaction will create a more efficient and effective competitor

1.11 In this context, the Parties fundamentally believe – and believe that customers also recognise – that the present Transaction is pro-competitive, and allows Tradebe and Sita to benefit from efficiency gains and combine their complementary activities, to become a more effective competitor to SRCL.

1.12 The primary sources of efficiency are twofold:

(a) First, the Transaction allows Tradebe and Sita to combine complementary AT and HT plants: by providing Tradebe with a means to access HT facilities in-house, this Transaction has an important vertical or complementary aspect.

(b) Second, the Transaction allows Tradebe and Sita to combine complementary geographic facilities. By better allocating their customer requirements across their joint sites, the Parties believe they can substantially lower their overall costs, and

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3 The OFT did not find a realistic prospect of a substantial lessening of competition for small quantity generator (**SQG**) customers, which face a large choice of suppliers. The Parties agree with this conclusion (though not necessarily with the entirety of the analysis). This submission does not discuss SQG customers.

4 For ease of reference, a map showing the Parties' sites and those of certain competitors is attached as Annex 1. This map shows only the locations of the facilities of the integrated HRW collection, treatment and disposal companies in England and Wales (the Parties have no operations in Scotland or Northern Ireland). The circles which are half yellow indicate that the relevant company (according to the colour coding of the remainder of the circle) has an HT incinerator at that location and the circles which are solid colour are AT plants of the relevant company.

5 SRCL is building a new plant in Speke (in Merseyside) to service this contract.

thereby become a more efficient market competitor. This relates, for example, to the inter-plant transporting of HT waste from AT plants to HT plants for processing, the re-allocation of waste between plants when HT plants are closed for maintenance (around two or three times per year), and to the allocating of customer collections between plants.

1.13 In relation to the first of these considerations, as the CC will understand from previous cases in this sector, LQG customers that contract with a supplier of HRW services generally purchase an integrated service that encompasses the collection of waste and appropriate treatment. These customers also require the supplier to collect and dispose of all of their HRW regardless of whether it is suitable for AT processing or needs to be incinerated (in an HT plant).

1.14 While waste that is suitable for AT processes can and is processed in HT plants (which are built to process all clinical waste), HT waste cannot legally be processed in an AT plant. Around 80-85% of HRW (not including offensive waste[6]) can be processed in AT plants; the remainder is higher risk and must by law be processed using incinerators in HT plants.[7]

1.15 While the Parties agree that the ability of HT capacity to swing between treating AT and HT waste fundamentally creates an important competitive relationship between HT plants and AT plants – which might imply that defining separate product markets for AT and HT waste would not be appropriate – there is also a clear complementarity between the two plant types because HT plants are indispensable for a certain proportion of waste.[8]

1.16 In order to compete in the HRW market, a company needs access to an HT plant – Tradebe does not own an HT plant, so it purchases HT services from a competitor.[9] The prices which Tradebe pays for HT treatment can be substantially in excess of the prices required to win LQG tenders and they are subject to change at short notice.

1.17 There is therefore a key efficiency arising from the Transaction in terms of providing Tradebe with in-house HT capability, through Sita's HT plants in Redditch, Wrexham and Salford. Through this and through a range of other rivalry-enhancing efficiencies, the Transaction will enable Tradebe to become a better competitor in the market.

1.18 In addition, the Transaction allows efficient integration of the Parties' existing plants, to minimise the cost of transporting waste, and to better use the available capacity.

1.19 Further, the HRW business was not a core business for the wider Sita group and it was not performing well. The relevant counterfactual is that the business would have been sold to a different buyer if Tradebe had not bought it. If another buyer could not have been found, Sita would have continued to decline.

1.20 These points are further developed in section 4 below.

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6 Offensive waste is other healthcare waste that does not require treatment prior to disposal (see paragraph 2.2 of the STG Decision), such as soiled nappies, sanitary waste, incontinence pads and so on that have not been derived from a clinically infected patient. This category of waste is collected by the HRW supplier and sent to landfill or to a municipal incinerator or to an energy plant.

7 Generally speaking, as HT plants process waste from their own direct customers and third parties' HT-only waste, around 60-70% of waste in an HT plant could be processed in an AT plant.

8 OFT Decision, paragraph 15. See also the STG Decision, paragraphs 4.81 - 4.82.

9 Tradebe has hitherto processed a negligible amount ([50-200] tonnes in 2012) of HT waste at its Fawley plant in Hampshire, which is primarily used for hazardous non-healthcare waste. The Fawley plant is discussed in more detail in section 4 below.

Customers will continue to enjoy strong competition

1.21 LQG customers are sophisticated purchasers of HRW services with buyer power. Tradebe believes that when the CC talks to the Parties' customers, it will find that they are in favour of the Transaction. Tradebe believes that the CC will also hear that different customers value different features of HRW suppliers and use different mechanisms in purchasing HRW services. Depending on those preferences, different customers may prefer the offering of different HRW suppliers (whether the Parties or their competitors).

(a) **Economies of scale vs. independence**: Some LQG customers believe that large consortiums serve their needs best because they deliver economies of scale. However, some LQG customers believe that operating alone serves their needs best because their waste represents the critical marginal volumes that HRW suppliers chase.

(b) **New capacity vs. existing capacity**: All LQG customers are skilled in designing tenders to minimise the price they pay. Some structure their tender documents so as to enable new entry because they believe that a new entrant can tailor its offering more efficiently to the customer's needs. Others prefer to rely on suppliers' existing spare capacity (a by-product in part by the first type of tender) to spur low prices.

(c) **New supplier vs. incumbent**: Some LQG customers (such as the Wales consortium) run formal tender processes encouraging a new supplier to undercut their current supplier at the keenest price possible. Others (such as the Birmingham consortium) use the tender process to extract price reductions from the incumbent supplier (usually SRCL), thus retaining a well-performing supplier and saving the costs of running a formal tender process.

(d) **Facilities management (FM) and total waste management (TWM) vs. direct relationships**: Some LQG customers prefer to contract with a single supplier who can offer services covering that customer's entire FM needs; for these customers, FM companies such as Sodexho, Mitie, ISS and Serco are a strong competitive constraint. Other customers prefer to contract with a single supplier for that customer's entire waste disposal needs (known as TWM contracts); for these customers, the dry waste companies such as Biffa, Bywaters and Veolia are a strong competitive constraint. Other customers prefer to deal directly with their HRW supplier; for these customers, a supplier's need to subcontract HRW services (or an element of these services, eg HT treatment) is a disadvantage.

(e) **Price vs. quality criteria**: Some LQG customers simply want the lowest price (subject to meeting the core criteria of an HRW service). Others place more importance on other factors, such as security of supply, environmental concerns, and IT facilities such an online invoicing and bin tracking.

(f) **National presence vs. local presence**: Some customers prefer a national presence with the resulting brand awareness and trust (and therefore are predominantly served by SRCL at present). For example, the FM companies often prefer to contract on at least a regional basis. Other customers do not rate this as an important issue.

1.22 Tradebe's ability to meet some of these customer preferences will be improved as a result of the Transaction.

1.23 All customers will face sufficient choice post-Transaction from a range of other suppliers, even though the factors above mean that the ranking of those suppliers may vary between customers. The various purchasing strategies allow customers to get the best out of these suppliers, influencing suppliers' offers on price and non-price factors to match their preference.

1.24 Consequently, the Transaction will not result in rising prices or a reduction in service quality. Considering this with the efficiencies noted above, the Transaction is pro-competitive.

Key points to note:

- This Transaction, by enabling Tradebe to access in-house HT capacity, has an important vertical aspect; it also allows the parties to benefit from geographic complementarities. As a result of the Transaction, Tradebe and Sita will form a more coherent and effective competitor to other HRW suppliers.
- Competition in the HRW sector is spurred by excess capacity and stable customer demand.
- All LQG customers will continue to have a strong bargaining position post-merger and a range of buyer power levers at their disposal.
- A catchment area analysis does not accurately represent the way existing HRW suppliers and new entrants compete for large tenders or smaller marginal volumes.
- The merged firm will continue to face strong competition from the market leader, SRCL, as well as from numerous other integrated HRW competitors (HES, GW Butler, Grundons) and non-integrated competitors (Veolia, collection-only firms).

1.25 The remainder of this submission is structured as follows:

(a) **Section 2**: The HRW sector is very competitive: This section describes recent market developments and the strong competitive environment that currently exists.

(b) **Section 3**: The nature of competition: This section describes two important aspects of the HRW sector – excess spare capacity and buyer power.

(c) **Section 4**: The Transaction will create a more effective competitor: This section describes the weakness of the Sita business and the significant benefits that will arise from the Transaction.

(d) **Section 5**: The competitive landscape: This section describes the various different types of competitor in this sector and the Parties' competitive positions.

(e) **Section 6**: Local area analysis: This section criticises the OFT's approach to local area analysis and describes competition in the Birmingham and Gloucester areas.

(f) **Section 7**: Conclusion.

2. HRW SECTOR IS VERY COMPETITIVE

2.1 The Transaction must be viewed in the context of the fundamental changes in the HRW industry in recent years, stemming from several key competitive developments which have altered the nature of supply of HRW collection, treatment and disposal services, including:

(a) First, the consolidation of SRCL from 2005 onwards with the acquisitions of White Rose, Cliniserve, and STG (and the blocked acquisition of Ecowaste) led to the emergence of SRCL as the only HRW service provider with both a national footprint and scale density of operations. SRCL is by far the largest provider in England and Wales of the collection, treatment and disposal of HRW (HES is the largest supplier in Scotland).

(b) Second, in part following from the pro-competitive effects of the CC interventions, as well as from customers encouraging/sponsoring entry, in the past 2-3 years, there has been substantial development of additional treatment plants. These include:

(i) HES, which has built new AT plants in Scotland and Yorkshire (capacity of 19,000 tonnes per year), and the Parties believe also has planning permission for a new HT plant in Scotland.

(ii) SRCL is building a new plant in Merseyside (capacity of 8,000 tonnes per year) and has doubled the capacity at Four Ashes by installing a new line (additional capacity of 8,000 tonnes per year).

(iii) Clinipower has refurbished a plant in Avonmouth to compete for HRW customers (HT capacity estimated by the Parties to be around 5,000-6,000 tonnes per year), and have said that they will add AT processing at the same location (capacity estimated by the Parties to be at least 3,000-3,500 tonnes per year). Their website says it is due to launch in December 2013.[10]

(iv) Augean now operates an HT plant in Kent (capacity of 13,140 tonnes per year), which opened in the last 18 months.[11] This plant was previously owned by the pharmaceutical company Pfizer and used only for its own in-house requirements.

(c) Third, the consolidation of customer purchases following the proliferation of commissioning consortia and other networks and associations among LQGs has led to a strengthening of customer purchasing power. See the discussion of buyer power in Section 3 below.

2.2 Notwithstanding these developments, SRCL remains by far the largest competitor in this sector. Indeed, the Parties believe that large contract losses such as the loss of the Yorkshire consortium to HES (contract awarded in August 2010) have made SRCL aggressive in bidding for other contracts across the UK, to replace those lost volumes. As is discussed in more detail in Section 5 below, SRCL has the largest total annual AT

[10] See www.clinipower.com.

[11] The Parties are not certain exactly when the plant opened, but it was certainly after April 2012: http://www.augeanplc.com/hti/default.aspx.

operational capacity and more than twice as many plants as any other market participant; it also continues to account for almost two-thirds of all HT capacity, and owns 10 of the 18 plants in operation. Further, the Parties submit that, on the basis of number of contracts and current contracted volumes, SRCL share is higher still.

2.3 However, even with SRCL's continuing high share, increases in spare capacity and increasing use by customers of their buyer power, have led to intense competition for (the relatively static quantity of) available HRW volumes, as evidenced by declining prices and margins in the sector.

2.4 For example, Tradebe's HT prices have declined on average by [✂]% from £[✂] per tonne in 2010 to £[✂] per tonne in 2012 and AT prices have declined [✂]% from £[✂] per tonne in 2010 to £[✂] per tonne in 2012.

2.5 The Transaction must thus be evaluated in light of these market realities, all of which will continue to place pressure on the Parties post-merger.

3. NATURE OF COMPETITION

3.1 In addition to the strong competition described above, there are two key characteristics of the HRW industry substantially intensify the competition between waste collection and treatment suppliers.

(a) **Spare capacity**: The existence of substantial spare capacity in an industry characterised by increasing returns to scale spurs competition between HRW service providers for available HRW volumes.

(b) **Buyer power**: LQGs are large and sophisticated purchasers who seek to leverage their considerable buyer power to extract favourable terms from suppliers. In addition, the trend towards tendering for high value long term contracts with substantial lead times has raised the potential for new entry into the market to fulfil these contracts.

3.2 These competitive dynamics – which apply with equal force across the country – will continue to ensure effective competition after the Transaction.

Spare capacity

3.3 As discussed above, the introduction of new entrants[12] (and new plants built by existing players[13]), often sponsored by large consortium tenders, has resulted in the development of substantial spare capacity in the HRW sector in recent years.

3.4 As Table 1 below illustrates, there is substantial and growing excess capacity for HT treatment, with only 72% of total permitted capacity being utilised in 2012 compared with 83% in 2009.

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12 As noted above, HES has built new AT plants in Scotland and Yorkshire, and the Parties believe also has planning permission for a new HT plant in Scotland. Clinipower has converted a pyrolysis plant in Avonmouth into an HT plant. Augean now has an HT plant in Kent.

13 As noted above, SRCL is building a new plant in Merseyside and has doubled the capacity at Four Ashes by installing a new line.

Table 1: Licensed HT Capacity Utilisation in England and Wales 2009 - 2012

Year	Capacity (tonnes)	Volumes (tonnes)	Utilisation
2009	145,593	120,180	83%
2010	145,593	112,959	78%
2011	145,593	105,412	72%
2012	145,593	105,063	72%

Source: Environment Agency, 'Waste Management Report 2012'. Notes: the data presented in the table above refer to the capacity treatment plants for clinical waste are granted by permit, not to the operational capacity of the plants in England and Wales. Excludes plants operated by Veolia which, although they accept clinical waste volumes, are classified in these data as processing "Municipal and or/Industrial and Commercial" waste. Excludes London Waste Ltd as this facility treats non-healthcare waste only. Excludes Augean, which only opened its plant in mid-2012 (the plant was previously owned by Pfizer for its in-house processing needs).

3.5 The Parties consider that AT plants are likely to experience even lower rates of utilisation. This is due to the fact that the cost base of AT plants is more flexible than that of HT plants with variable costs accounting for a higher proportion of total costs – accordingly, operators of HT plants have a greater incentive to run to fuller capacity than operators of AT plants. For example, Tradebe's operational capacity utilisation ranged from [✂]% in September 2012 - August 2013 while Sita's capacity utilisation at its AT plants was [✂]%, [✂]% and [✂]% for Chase Farm, Wrexham and Rochester respectively [✂].

3.6 Furthermore, the cost structure of the industry implies that this excess capacity in the market spurs competition between HRW service providers for available HRW volumes.

3.7 Specifically, the nature of the technology utilised to provide HT treatment services implies that the need to utilise spare capacity can drive down pricing. HT plants need to be kept running at all times between their shutdowns for maintenance as they are only capable of operating to their emission limits when at full operating temperature. If they run out of waste it is necessary to turn on the gas burners to keep the kilns up to temperature which can be extremely costly. Therefore an HT incinerator may marginally cost waste into the plant in order to keep it full and so avoid any costs of burning gas.

3.8 This implies that the marginal costs of burning an additional tonne in an HT incinerator may be very low indeed, and may to some extent be offset by the costs that would need to be incurred to keep the plant operating at the requisite high temperature. Thus, where HT incinerators have substantial excess capacity there is a strong incentive to reduce prices to ensure additional volumes are attained – while sales can be an important contributor to covering the high fixed costs of operation. In turn, this spurs strong competition for volumes, between the HT plants and also (given that a large portion of waste can be treated either in an HT or an AT plant) between the HT and AT plants.

3.9 There are many examples of spare capacity driving down prices in practice. For example, in March 2013, Sita lost its contract to supply the Merseyside consortium, which supplied nearly [✂] tonnes of waste in 2012 to its Wrexham plant.[14] This contract represented around [✂] of that plant's capacity and it generated revenues of nearly £[✂] in 2012

[14] SRCL won the five year contract and is building a new plant to service it at Speke in Merseyside. While the new plant is being built, it is using its existing plant in Bolton and its transfer station at Speke.

(around [✂]% of Sita's total revenues). In order to try to replace some of these volumes, Sita recently [✂].

3.10 Further, Sita has only been able to retain a number of contracts with key customers by [✂] as illustrated in Table 2 below.

Table 2: Recent significant Sita contract rate changes

	Clinical Waste			Sharps			Low Grade Waste		
Customer	**Former Rate £/tonne**	**Current Rate £/tonne**	**[✂]**	**Former Rate £/tonne**	**Current Rate £/tonne**	**[✂]**	**Former Rate £/tonne**	**Current Rate £/tonne**	**[✂]**
[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: Sita's disclosure letter to Tradebe dated 19 September 2013, which [✂].

Bidding nature of market intensifies competition resulting from spare capacity

3.11 As noted by the OFT[15], the aggressive competition is made even stronger by the fact that the contracts are "lumpy". Limited numbers of LQG contracts are available and these contracts tend to be long term and individually of a high value.

3.12 LQG customers may account for a high proportion of HRW volumes in a given area and therefore winning a single contract can make a substantial contribution to capacity utilisation. As stated above, the Merseyside contract lost by Sita accounted for around one-third of its Wrexham plant's capacity.

3.13 As Table 3 indicates, the top 3 LQG customers at each of Tradebe's plants account for a sizeable proportion (up to almost [✂]%) of total volumes.

[15] See paragraph 98 of the OFT Decision.

Table 3 – Contribution of Tradebe's highest volume LQG customers to total volume and capacity at each treatment plant 2012

	Highest Volume Customer 2012			Three Highest Volume Customers 2012		
Plant	**Tonnes**	**% of Total Capacity**	**% of Total Volumes**	**Tonnes**	**% of Total Capacity**	**% of Total Volumes**
Birmingham	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Avonmouth	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Doncaster	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: Parties' estimates. Total and customer volumes refer to combined AT, HT and landfill volumes. Capacity is measured as total operational capacity. Customers are ranked by volume.

3.14 Table 4 below indicates that Sita's top 3 customers also accounted for a sizeable proportion (varying from [✂]% up to [✂]%) of total volumes.

Table 4 – Contribution of Sita's highest volume customers to total volume and capacity at each treatment plant 2012

	Highest Volume Customer			Three Highest Volume Customers 2012		
Plant	**Tonnes**	**% of Total Capacity**	**% of Total Volumes**	**Tonnes**	**% of Total Capacity**	**% of Total Volumes**
Rochester	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Redditch	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Salford	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Chase Farm	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Wrexham	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: Parties' estimates. Total and customer volumes refer to combined AT, HT and landfill volumes. Capacity is measured as total operational capacity. Customers are ranked by volume.

3.15 This characteristic of the industry has intensified in recent years following the trend towards combined tenders for multiple LQG customers, or "consortium" contracts, implying that the attainment of a single LQG contract can have a significant effect on plant utilisation.

3.16 The importance of even a single customer to the profitability of an HRW plant is illustrated in Table 5 below which compares actual operating profit (i.e. revenues over fixed and variable costs) against the same measure, estimated absent having the largest customer contract, for a range of Tradebe and Sita plants. The Table shows that the impact of losing a single customer may be sufficient to [✂].

Table 5 - The impact of the loss of the most valuable customer on plant profitability

Operator	Plant	Considered Time Period in 2013	Operating Profit (£)	Operating Profit (£) Excluding Most Valuable Customer	Difference (£)
Tradebe	**[✂]**	[✂]	[✂]	[✂]	[✂]
Tradebe	**[✂]**	[✂]	[✂]	[✂]	[✂]
Tradebe	**[✂]**	[✂]	[✂]	[✂]	[✂]
Sita	**[✂]**	[✂]	[✂]	[✂]	[✂]
Sita	**[✂]**	[✂]	[✂]	[✂]	[✂]

Source: Parties' estimates based financial data covering January-December 2013 for Tradebe (including forecast figures from September) and January-June 2013 for Sita. Data available on customer tonnage and revenues is for the period January-September (Tradebe) or January-October (Sita) and has therefore been scaled to meet the 12 month or 6 month time period considered. Operating profit is defined as revenues net of treatment and transport costs. It is assumed that the mix of waste (between AT, HT and landfill) for the customer accounting for the highest annual revenues (i.e. the most valuable customer) is the same as the mix for the plant on average as a whole.

3.17 The importance of the tendering process on prices is discussed in further detail in the section on buyer power below.

Buyer power

3.18 LQG customers (who were the subject of the concerns expressed by the OFT, and therefore the focus of this submission) are large and sophisticated purchasers who seek to design their tender processes to drive down prices from HRW suppliers. However, different customers exercise their buyer power in different ways, and the Parties believe it is important that the CC recognises this. For example:

(a) some customers prefer using FM companies for all their waste needs as part of a wider FM contract (which include services covering many of the customer's facilities, not just its waste disposal requirements);[16]

(b) some customers prefer using a single waste provider as part of a TWM contract (whereby the dry waste companies compete against HRW companies);[17]

(c) some customers believe a direct relationship with suppliers is preferable and therefore deal directly with HRW suppliers.

3.19 LQG customers will all seek to extract the most favourable terms possible for their HRW services by setting service providers against one another in tender processes for high value contracts to engender intense competition among suppliers with existing capacity,

16 For example, ISS won the HRW contract for Walsgrave Hospital in Coventry.

17 For example, Bywaters won the Royal Marsden Hospital TWM contract this year and the Parties believe that Veolia currently holds the TWM contract for Southampton Hospital. Procurement hubs such as Health Trust Europe include the dry waste companies in their tender list.

and corresponding price reductions/quality improvements. Customers may also, through contract design, effectively sponsor (or credibly threaten to sponsor) the entry or expansion of suppliers to obtain better terms than currently offered by an incumbent (or to obtain improved terms from an incumbent or other supplier with existing capacity).

3.20 Customers have available different levers of buyer power, many of which can at the same time enhance competition between existing suppliers and provide additional competitive constraints through the threat of new entry. These include:

(a) First, the use of long term contracts for the supply of HRW services by the NHS. The NHS will typically award a 3 year contract with a 2 year extension for contracts where the treatment plant is off site. The common length of contract where the treatment plant is on site is 10 years.

(b) Second, as discussed above, the aggregation of contracts through the development of customer associations and procurement consortia or the use of FM companies results in an increase in demand-side concentration which intensifies competition among suppliers.

These two factors can both make competition between existing suppliers stronger (since they have more to gain/lose) and can incentivise entry. This is especially the case where customers offer contracts with long lead times which enable potential entrants to build the requisite capacity to serve LQGs.

For example, when the Yorkshire consortium went to tender in 2010, HES was permitted 12 to 14 months in which to set up its facilities in the region. The Parties further understand that two imminent large tenders, those for the Northern consortium and the Wales consortium, are likely to provide scope for the introduction of new entrants to the market.

(c) Third, the provision of contracts for on-site treatment plants. Many HRW treatment plants (including Tradebe's Birmingham plant) are at a hospital site where the buildings and land are owned by the hospital. Often the treatment plant will be owned by the integrated company which has been awarded the tender and there will be a lease by the hospital to the integrated company to enable the treatment plant to be situated at the hospital site. This results in much less security for the integrated company if on a re-tender of the contract it is not awarded to the integrated company which owns the equipment in the treatment plant.

3.21 As a consequence, LQGs are in a position to leverage their considerable buyer power to extract favourable terms from suppliers.

3.22 Other LQG customers prefer to operate separately from the large consortiums. This may be because they recognise that they represent important marginal volumes for which HRW suppliers (with spare capacity and high fixed costs) would compete vigorously. This approach is often risk-free because consortium tenders often leave open the possibility of additional customers joining the consortium at a later date and therefore benefit from the consortium's low prices. This was the case, for example in the Yorkshire tender won by HES. The Sheffield teaching hospitals and the Doncaster Royal Infirmary have each recently gone to tender as independent customers in the belief that this will yield a better deal than the consortium price. However, if they do not succeed in getting the better deal, they have the right to join the consortium and benefit from the consortium's price.

4. TRANSACTION WILL CREATE A MORE EFFECTIVE COMPETITOR

4.1 It is critical to observe that at present Tradebe and Sita – as independent entities – are placed at a substantial competitive disadvantage to the market leader SRCL and to other competitors.

(a) First, Tradebe's effectiveness as a competitor is limited by the fact that it does not own an HT plant, and must subcontract the treatment of waste requiring incineration which results in substantial cost and security of supply disadvantages.

(b) Second, Sita's abilty to compete is constrained by multiple organisational inefficiencies including but not limited the long haulage distance from its AT plants in Kent and North London to its Redditch, Wrexham and Salford HT plants, underinvestment in plant infrastructure, and [✂].

4.2 These disadvantages limit both the Parties' competitiveness and their prospects in the market in the next few years and hence the key motivation for the Transaction is that it will lead to a reduction in these disadvantages in the form of a range of rivalry-enhancing efficiencies.

Financial and operational issues at Sita

4.3 Sita in particular is currently a weak competitor.[18] [✂]. For example, in April 2013, Sita's Wrexham plant lost its Merseyside consortium contract to SRCL. The contract was extremely important to Sita because it represented (in 2012):

(a) revenues of nearly £[✂] – [✂]% of Sita's total revenues;

(b) EBITDA of £[✂] – more than [✂] of the plant's EBITDA of £[✂], and more than [✂]% of Sita's total EBITDA of £[✂];

(c) Nearly [✂] tonnes of HRW for the plant – around [✂] of the plant's capacity.

4.4 Sita's other notable contract losses in 2013 include [✂] (revenues of £[✂] in 2012, EBIT £[✂]), [✂] (revenues of £[✂] in 2012, EBIT £[✂]), [✂] clinical commissioning group (**CCG**) (revenues of £[✂] in 2012, profitability not known to Tradebe). A material number of Sita's most important contracts have also been [✂] recently.[19]

4.5 Sita has not won a significant new LQG contract in 2013 – it has only won a single new contract, which was [✂], which is expected to represent around [✂] tonnes per year.[20] Sita has not won a tender from Tradebe in the period since 1 January 2010 (nor has Tradebe won a tender from Sita in that time).[21]

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18 See, for example, the management accounts provided to the OFT at Appendix 1 of the response to the Issues Paper, and further financial information at Appendices 14 and 15 of the same response.

19 For example, there are [✂] material contracts listed Sita's disclosure letter to Tradebe dated 19 September 2013, pages 6 and 7, which have been [✂] in the twelve months to 19 September 2013. Each of these contracts is individually worth [✂] of Sita's total turnover. There may be other smaller contracts (i.e. worth less than [✂]% of turnover) that have [✂], but which were not required to be disclosed against the relevant warranty.

20 Tradebe does not have a presence in the South-East of England and did not bid for this contract.

21 Source: the bidding data requested by the CC in Q37 of the market questionnaire.

4.6 These losses have occurred in the context where the wider Sita Healthcare division as a whole has not been performing well. Rather, as indicated by Sita's Healthcare's management accounts, both gross profits and earning have witnessed substantial declines in recent years (as Table 6 below indicates, Sita Healthcare was [✂] with EBIT of [✂]% and [✂]% respectively).

Table 6: Sita Healthcare Gross Profit and EBIT

Year	Gross Profit (£)	Gross Profit %	EBIT	EBIT (%)
2010	[✂]	[✂]	[✂]	[✂]
2011	[✂]	[✂]	[✂]	[✂]
2012	[✂]	[✂]	[✂]	[✂]

Source: Bundle of Documents – Initial Factual Information Request 5th November 2013, Section B18.

4.7 Accordingly, a key motivation for the Transaction is [✂].

4.8 The wider Sita group had decided to sell its underperforming HRW business. The relevant counterfactual for the Transaction is therefore that Sita would have had an alternative buyer. Tradebe and Sita both believe that Sita would only have been attractive to an existing industry player (or perhaps a company involved in neighbouring waste markets) who could use the resulting synergies to turn Sita around. If no alternative buyer could have been found, Sita would have continued its decline and sooner or later been a failing firm.

Complementarity of Tradebe and Sita's services

4.9 By integrating the Parties' services into a single organisation the Transaction will result in the achievement of considerable efficiencies and service quality improvements which will enable the combined entity to become a more effective and efficient competitor for the supply of HRW services to LQG customers.

4.10 In particular, the Transaction will enable the Parties to:

(a) reduce the costs to Tradebe by bringing HT services in-house;

(b) better allocate volume across their plants (both in terms of inter-plant transfers of HT waste and in terms of customer collections) and thereby reduce the necessary drive-times for HRW service delivery, and/or improve plant efficiency;

(c) invest in IT capabilities and R&D (particularly in environmentally friendly technologies); and

(d) improve their overall customer offering by combining their expertise to form a full service integrated national network which is operated independently of third party service providers.

Reduction in costs from bringing HT in-house

4.11 There are clear cost (and customer perception) benefits from the Parties' vertical integration, for two main reasons.

(a) First, some customers favour suppliers who have the capacity in-house for both AT and HT treatment (in the belief that this gives them greater efficiency and security as the contractor is not dependent on third parties).

For example, Tradebe recently received an email regarding [✂][22]

Tradebe therefore currently scores badly (compared with SRCL in particular) on this issue in tenders because it does not have an HT plant and because it has fewer alternative AT plants. In the event of (e.g.) a plant breakdown, Tradebe can purchase services in the short term from a competitor plant. However, the lack of alternative plants and the need to rely on its competitors may result in a poor score for security of supply in NHS tenders.

(b) More importantly, subcontracting HT facilities leads to "double marginalisation" rendering it difficult for the supplier to compete on price. At present, apart from extremely limited HRW activities at Fawley in Hampshire ([50-200] tonnes of HRW in 2012), Tradebe does not have any in-house HT incineration capacity. Furthermore, although Tradebe has undertaken investments in Fawley which would enable it to take loading bins and therefore in principle to incinerate clinical waste, in practice it is extremely unlikely that – given the significant distance between Fawley and Tradebe's AT sites, together with the high opportunity cost for using Fawley to process clinical waste – Fawley could represent a feasible in-house supply of HT supply for Tradebe. Consequently, Tradebe has had to rely on the use of third party treatment companies, which will charge it a margin for their supply at a high competitor-to-competitor rate and can change their prices at short notice.

In 2012, Tradebe paid £[✂] to Veolia, SRCL and other competitors for the disposal of HT waste – which is around [✂]% of Tradebe's total turnover.[23] It considers that the prices it pays are substantially in excess of the costs it would incur if it were to treat HT volumes in-house.

For example, the costs Tradebe incurs to subcontract the disposal of HT waste to Veolia are comprised of: (i) the HT waste disposal fee which is approximately £[✂] per tonne, (ii) the costs of collecting the waste from the customer of £[✂] per tonne, (iii) the costs of delivering the waste to Veolia of £[✂] per tonne; and (iv) a handling cost in the AT plant of approximately £[✂] per tonne (the waste needs to be unloaded and reloaded onto another vehicle). In total, this amounts to approximately £[✂] per tonne of HT waste. This is also substantially higher than the current market price of HT waste, which Tradebe estimates at £460-£470/tonne.

By contrast, if Tradebe were to dispose of its waste in-house using Sita's HT facilities at Redditch it would incur an HT treatment cost per tonne of

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22 Email [✂]. This email was supplied to the OFT as Appendix 13 to the Parties' response to the issues paper.

23 Tradebe paid around [✂] of its total turnover (£[✂]) to Veolia Tyseley alone in 2012 for the disposal of HT waste. It paid a bag rate of around £[✂] and a plastics rate of around £[✂], which is around £[✂] as a weighted average. See Bundle of Documents – Initial Factual Information Request 5th November 2013, Section A22.

approximately £[✂][24]; assuming the costs of delivering waste to Sita were the same as to deliver to Veolia, if Tradebe processed all of the waste in Sita's HT facility, it would be able to recover its costs at prices at £[✂] per tonne.[25]

Accordingly, the disposal of HT waste in-house could save Tradebe at least £[✂]-£[✂] per tonne. The Transaction thus provides Tradebe with both the ability and incentive to internalise the pre-existing "double mark-up" on HT treatment services resulting in a decrease in the price the firm is able to offer for HT waste treatment.

(c) Furthermore, there is a disadvantage to Tradebe that these prices and costs will be subject to fluctuation at short notice: for example, in January 2013, [✂] increased the HT prices charged to Tradebe by [✂].[26] Such unexpected changes in price, over which Tradebe clearly has no control, substantially limit the effectiveness of Tradebe as a competitor, when compared to rivals that have their own HT capacity.

4.12 Tradebe therefore believes that it would be a more efficient competitor, were it to have access to in-house capacity. This is indicated by the bidding data supplied by the Parties to the OFT for the last 2 years in relation to invitations to tender issued by LQGs within an approximate 70 mile radius of Birmingham,[27] which indicates that SRCL was the only supplier to win tenders where it was not already the incumbent. The only contract won by Tradebe was where it was already the incumbent and it priced HT waste at [✂] – the other tenders clearly show Tradebe's inability to compete on price for HT waste.

Reduction in transport/operating costs arising from a wider network of treatment centres

4.13 The Transaction will reduce both Parties' cost of transporting HRW as the Parties will obtain a wider combined national network thereby reducing the necessary drive-times for HRW service delivery. This benefits both Parties' existing businesses and the lower drive-times will benefit their customers post-integration in the form of lower variable costs (and therefore prices) and a more reliable service.

4.14 **Inter-plant transfers**: One of the key benefits of the Transaction is that HT waste can be processed more efficiently, by reducing the transport between HT and AT plants.

(a) **Sita can provide HT capacity to Tradebe**: Sita's HT capacity is in the locality of Tradebe's plants in Birmingham and Avonmouth (using Sita's Redditch or Wrexham HT plants) and to a lesser extent Doncaster (using Sita's Salford HT plant). The Transaction will allow the Parties to allocate their waste more efficiently to the most appropriate plant. This relates, for example, to the inter-plant transporting of HT waste from AT plants to HT plants for processing and also

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[24] The Redditch plant's average cost per tonne in 2013 (Jan-June) was £[✂], based on its current mix of waste. Of course, at a higher capacity level, the average cost would be expected to decline further, but this effect has not been taken into account. On a variable cost only basis, the costs in Redditch would be only £[✂] per tonne; and any internal charge above this level would be sufficient to cover the incremental costs of the additional volumes and to contribute to the fixed costs of the plant. However, this would not recover the fixed cost of running the HT facility, and on a conservative basis, an average cost per tonne has been applied.

[25] If all of the waste were processed at Redditch, no AT costs, or inter-plant transport costs would be incurred. Even if some of the waste were to be continued to be processed at the AT site, the overall costs would remain substantially lower, at below £[✂] per tonne (£[✂] collection, £[✂] AT handling cost, £[✂] delivery to HT, and £[✂] treatment).

[26] See the letter from [✂] to Tradebe dated 22nd January 2013 at Appendix 12 of the informal submission to the OFT.

[27] Appendix 11 of the Informal Submission. There were only six tenders in the last two years, primarily because most hospitals in the area belong to the Birmingham consortium, which has recently renewed its contract with SRCL without going to formal tender (it seems that an indicative price from Tradebe was used to negotiate a price reduction from SRCL).

the re-allocation of waste between plants when HT plants are closed for maintenance (around two or three times per year).

(b) **Tradebe could potentially provide HT capacity to Sita**: Tradebe could also in future provide HT capacity to Sita. Tradebe currently processes a negligible amount ([50-200] tonnes in 2012) of HT waste at its Fawley plant near the south coast in Hampshire, which is primarily used for the treatment of hazardous (non-healthcare) waste. Absent the Transaction, the Fawley plant would not have been utilised for HRW except to a negligible degree because it is a long distance from Tradebe's HRW operations.

[✂] The Fawley plant is unlikely to be attractive to any other HRW suppliers due to its location and the fact that SRCL already has its own HT plants in the region. However, Tradebe would not want to overstate the importance of the Fawley plant to competition in the HRW sector given its likely continued focus on hazardous non-healthcare waste, which tends to have a [✂].

(c) **Maintenance down-time**: Both Parties can re-allocate HRW volumes when their plants are closed for scheduled maintenance. This is around two or three times per year for an HT plant.

4.15 **Customer collections**: The Transaction is expected also to improve the efficiency of the Parties' collections from customer sites. For example:

(a) **Sita can provide AT capacity to Tradebe**: For a number of Tradebe's LQG customers, it may be more efficient to transport their AT waste to one of Sita's plants rather than Tradebe's plants. For example, customers in Merseyside would be closer to Sita's Wrexham plant than to Tradebe's Birmingham plant.

(b) **Tradebe can provide AT capacity to Sita**: Sita's AT plants are currently a significant distance from its HT plants, resulting in potential transport inefficiencies and service quality failures. Its AT plants are in North Wales, North London and Kent; its HT plants are in Birmingham and Manchester. Post-integration, Sita's AT waste can be disposed of more efficiently.

Sita does not have an AT plant in the Birmingham or Gloucester 50 mile catchment areas. In those areas, absent the merger, Sita would have a choice of subcontracting its AT waste (and therefore facing high competitor-to-competitor prices and uncertainty), incinerating AT waste at its HT plant (which may be cost inefficient depending on the plant's level of spare capacity), or transporting its AT waste to its distant plants in North Wales or London (which is cost inefficient).

4.16 To provide an indication of the extent of the cost savings that could be achieved from a reduction in drive-times, Table 7 below outlines the Parties' estimated costs for three standard collection trips. These estimates are based on the usage of an 18 tonne specification vehicle with a standard load of 42 bins weighing 41.2 kg per bin (carrying 74% AT waste, 16% HT waste and 10% landfill) for trips of 76, 100 and 138 miles.

Table 7: Estimation of transport cost differentials for trips of varying lengths

Trip Miles	Time taken to transport load from hospital to plant	Trip transport cost per tonne
76	45 minutes	£56.06
100	60 minutes	£68.04
138	90 minutes	£89.84

Source: Parties' estimates

4.17 Of course, transport costs are only one cost factor, and efficiencies of operators will depend on a trade-off between various variables of cost or competitive advantage. However, as these figures make clear, all else equal, reductions in transport costs resulting from reductions in drive times or more efficient usage of transportation capacity could potentially result in a considerable cost saving if achieved for sufficiently large volumes over a sufficiently wide area.

Improvement in IT and R&D

4.18 Sita has been highly cost-constrained [✂]. The Transaction will lead to increased investment in areas of direct value to customers, including in particular IT and R&D.

4.19 Customers differ widely on what type of IT offering they prefer (if any), so it is difficult to generalise about the competitive advantage IT and R&D gives an HRW supplier. However, tenders always include questions about the supplier's IT capabilities. For some customers this will be an important part of the tender and for others it will not be. Regardless of explicit customer preferences, an efficient IT system is a vital part of a supplier's ability to minimise costs and so its ability to offer bid-winning prices.

4.20 At present, both Parties [✂].

(a) Tradebe records its bin movements [✂] and calculates invoices [✂].

(b) Sita uses [✂].

4.21 Those customers who regard IT as important often favour (for example) online invoicing, bin tracking software, and e-learning tools. NHS customers request these types of capability.

4.22 Tradebe would like to spend around £[✂] on [✂] and which will enhance Tradebe's competitiveness in the quality criteria of tenders. It would introduce the types of capability that other HRW competitors already have. [✂].

4.23 LQG tenders also typically include questions about the environmental impact of the supplier's HRW services. The Parties would like to invest in more innovative technology in areas such as [✂].

4.24 At the moment, SRCL has the advantage of scale, which enables it to invest in IT systems and new technologies. Other competitors such as Grundon or the FM companies are part of larger corporate groups with sophisticated group-wide IT capabilities. On the other hand, new entrants bidding for a large consortium contract have the ability to build new plants with the most environmentally friendly technologies currently available and the

most up to date IT systems if they wish to do so. They can also tailor their offerings precisely to what the customer wants in a way that established competitors such as Tradebe and Sita cannot easily do.

Improvement in customer offering from the development of a full service integrated national network

4.25 Some customers prefer a HRW supplier with a broad geographic scope to their offer.[28] For these customers, the following improvements in the Parties' offering are expected as a result of the Transaction:

(a) First, greater combined national coverage will enable the Parties to offer a one-stop service to those customers who value dealing with a single large scale HRW supplier, including:

(i) customer consortiums whose members span wide geographic regions;

(ii) national collection-only companies such as PHS, Cannon and Initial Rentokil;

(iii) private companies who require national integrated services such as private hospitals, BUPA, and National Blood; and

(iv) companies such as Mitie, ISS, Serco, Biffa, Bywaters, Sodexho, and Carillion who hold FM or TWM contracts with hospitals.

(b) Second, the scale of activities brought about by the Transaction will make certain offerings possible, such as a dedicated national bid team, marketing literature, event sponsorship and attendance at trade fairs, and a national training team covering specific areas such as waste minimisation and waste segregation.

4.26 Hence the Transaction will enable the combined entity to compete for segments of the market where neither party alone has been a credible competitor to date. Consequently, the Parties consider that the Transaction will be welcomed by those customers who place more value on being a large scale supplier because these customers currently face only one credible supplier (SRCL). These customers will appreciate that the Transaction would introduce a larger second player into the market (albeit still less than half the size of SRCL[29]) and the increase of competitiveness of the Parties' existing offerings.

5. COMPETITIVE LANDSCAPE

5.1 The tables below set out plant numbers and capacity, across the country, for AT and HT plants respectively. As is discussed in paragraphs 6.12 to 6.16 below, measures of market share – and in particular market share estimates based on capacity – are likely to have substantial deficiencies for merger analysis in the HRW sector. However (and in the absence of complete data on third party contract wins and operating volumes) these data make clear that the Transaction combines only the second and fifth largest suppliers, by capacity, of AT capacity, while the combined firm would remain as the second largest HT

[28] Many other customers may regard national or regional scope as less important; these customers will continue to face a large choice of large and small HRW suppliers. For the avoidance of doubt, the Parties do not regard these two types of LQG customer as belonging to separate economic markets. LQG customers simply differ in their preferences and, whatever those preferences, no customers will be disadvantaged as a result of the Transaction.

[29] The Parties' combined turnover was £[✂] million in 2012. The Parties estimate that SRCL's turnover from HRW activities was comfortably more than double this amount. Its total turnover was around £80 million, but the group has some non-HRW activities including its Avanti business.

operator, some way below SRCL (and with no material increment resulting from the Transaction).

5.2 Furthermore, the Parties will continue to face competition both from SRCL and from a range of other integrated and non-integrated HRW competitors. These competitive constraints are discussed in more detail in this section.

Table 8: AT plant numbers and capacity in Great Britain

Operator	Number of Plants	Total Annual Operational Capacity (tonnes)	% Total Capacity at AT Plants
SRCL	6	50,000	[30-40]%
SITA	3	[15,000-20,000]	[10-20]%
HES	2	19,000	[10-20]%
GW Butler	3	18,500	[10-20]%
Tradebe	3	[15,000-20,000]	[10-20]%
Novus	1	7,000	[0-10]%
Grundon	1	5,000	[0-10]%
Medisort	1	3,500	[0-10]%
Waste Services Scotland	1	3,500	[0-10]%
Total	21	[136,500-146,500]	100.0%

Source: Tradebe and Sita actual data, Tradebe best estimates of competitor capacity

Table 9: HT plant numbers and capacity in Great Britain

Operator	Number of Plants	Total Annual Operational Capacity (tonnes)	% Total Capacity at HT Plants
SRCL	10	77,500	[60-70]%
SITA	3	[20,000-25,000]	[10-20]%
Grundon	1	7,000	[0-10]%
Peakes	1	5,000	[0-10]%
Veolia	1	5,000	[0-10]%
Viridor	1	3,500	[0-10]%
Addenbrookes	1	3,000	[0-10]%
Tradebe	0	0	0%
Total	18	[121,000-126,000]	100.0%

Source: Tradebe and Sita actual data, Tradebe best estimates of competitor capacity

Integrated HRW suppliers

5.3 The merged entity will continue to face competitive constraints from key integrated competitors including: SRCL, GW Butler, HES, and Grundon. These are companies who offer both a collection service and a processing service.

5.4 **SRCL** accounts for [30-40]% of all AT capacity, and [60-70]% of all HT capacity (see Tables 8 and 9 above). However, even these shares understate its competitive position: in terms of revenues and in terms of volumes, SRCL is more than twice the size of Tradebe and Sita combined.[30] It has unrivalled geographical scope and therefore transport efficiency. It is the incumbent supplier for most large HRW contracts and has close relationships with most important customers. Its intimate knowledge of many customers often gives it an advantage in when those customers issue tender documents because (as discussed above) customers differ in what they consider important (price, quality criteria, security of supply, etc). The Parties strongly consider that, when the CC collates the bidding data from all competitors, it will find that SRCL continues to win the majority of LQG contracts across the country. For example, as indicated by Table 10 below, the Parties estimate that SRCL currently holds contracts with 64% of LQG customers within a 50 mile radius of Gloucester and 59% of the contracts with LQG customers within a 50 mile radius of Birmingham.

[30] The Parties' combined turnover was £[✂] million in 2012. The Parties estimate that SRCL's turnover from HRW activities was comfortably more than double this amount. Its total turnover was around £80 million, but the group has some non-HRW activities including its Avanti business.

Table 10 – SRCL LQG contracts in Gloucester and Birmingham

Coverage	Number of SRCL LQG customers	Total number of LQG customers	SRCL LQG customers (% total)	SRCL tonnage for LQG customers	Total tonnage for LQG customers	SRCL tonnage for LQG customers (% total)
LQG customers within a 50 mile radius of Gloucester	16	25	64%	5,542	9,902	56%
LQG customers within a 50 mile radius of Birmingham	17	29	59%	6,738	12,406	54%

Source: Appendix 2 to the Parties' response to the OFT issues letter.

5.5 There is every indication that SRCL is continuing to grow its coverage in this region. For example, examination of the bidding data for the last 2 years in relation to invitations to tender issued by LQGs within a 70 mile radius of Birmingham shows that the majority of these bids (4 out of 6) were won by SRCL, and that SRCL was the only supplier to win contracts where it was not already the incumbent.[31]

5.6 **GW Butler (GWB)** has substantial treatment capacity (18,500 tonnes per annum) with three AT plants located in Yorkshire, Nottingham and London, enabling it to bid for contracts over a widespread area. This supplier is perceived to have strong local customer links and has been successful in recent tenders for LQG contracts including for the Central Manchester University Hospitals Trust from Sodexho (previously serviced by Sita) in August 2013 and in Yorkshire where in June 2013 it was awarded the contract for the Rotherham NHS Foundation Trust (with estimated volumes of over 250 tonnes per annum) where SRCL was the incumbent and Tradebe, Sita and HES also bid.[32]

5.7 As an example of how customers view GWB in the market, Table 11 below sets out the Rotherham Trust's comparison of the bids submitted by GWB and Tradebe, which indicates that – notwithstanding GWB's difficult financial performance – the customer considered GWB to score more highly than Tradebe on technical capability and service provision.

31 See Appendix 11 to the Informal Submission to the OFT.

32 On its website (http://www.rotherhamhospital.nhs.uk/About_us/) Rotherham Hospital states that it has 500 inpatient beds, its A&E department deals with around 75,000 patients per year and there are approximately 55,000 inpatient and 250,000 outpatient attendances each year. On the basis of the calculation of volumes of HRW at a hospital of 0.8 tonnes per bed, Tradebe estimates that the annual volume of HRW arising out of that contract would be 400 tonnes pa.

Table 11: The Rotherham Trust Evaluation of Tradebe and GWB bids

	Max. score	Tradebe score	Winning score (GWB)
Award Criteria – Service Provision			
i) Process, capacity and capability	[✂]	[✂]	[✂]
ii) Transport, containerisation and logistics arrangements	[✂]	[✂]	[✂]
iii) Quality Assurance/Corporate Governance	[✂]	[✂]	[✂]
iv) Management Information and Reporting	[✂]	[✂]	[✂]
v) Environmental Awareness	[✂]	[✂]	[✂]
Award Criteria – Technical Capability			
i) Disposal Technology	[✂]	[✂]	[✂]
ii) Legislative Compliance	[✂]	[✂]	[✂]
Award Criteria – Financial Evaluation	[✂]	[✂]	[✂]

5.8 **Grundon** is part of a large corporate group with significant financial resources and it has both AT and HT capacity. It is currently redeveloping its HT plant in the Thames Valley. Grundon also operates in other waste disposal markets and is therefore able to utilise cross-market expertise for innovation and cost-savings.[33]

5.9 **Healthcare Environmental Services (HES**) is slightly smaller than Tradebe and Sita but it is a fast-growing competitor with its 2012 accounts showing an 18% growth in revenues compared with 2011.[34] Indeed, of the four tenders where the incumbent has been displaced this year, HES won two of them from Sita and SRCL – these were for two of Initial Medical Services' sites for a combined volume of over 300 tonnes.[35]

5.10 HES is a clear product of the initiatives by hospitals to organise large consortium tenders, which in and of themselves are explicitly designed to encourage a new entrant because (inter alia) they are long term, guarantee a return on capital, and they give sufficient lead time for the new entrant to build the necessary HRW plants. HES as a new entrant won the first of such contracts for Yorkshire, displacing SRCL by building a new plant in Yorkshire in 2011 (the tender was awarded in August 2010 but allowed sufficient lead time for the new entrant to build its plant).

5.11 In terms of AT treatment, HES has [✂] than Tradebe. Its new entry in Yorkshire shows that it is a credible competitor in all areas of the country. Moreover, the Parties' understanding is that the Yorkshire plant still has spare capacity, which creates the

33 See http://www.grundon.com/whoWeAre/whoWeAre.htm.

34 See http://www.healthcareenv.co.uk/about-us.aspx.

35 This is limited to tenders involving bids from one or more of the following plants: Redditch, Wrexham, Salford, Birmingham, Doncaster or Avonmouth (as per Q37 of the market questionnaire). The other two were the Rotherham NHS Foundation Trust (won by GWB) and a very small ([✂] tonnes per year) site won by Tradebe from SRCL as part of the United Lincolnshire consortium tender.

expectation that HES will put forward strong bids in forthcoming tenders. The Parties understand that HES now has planning permission for a new HT plant in Scotland (it is currently transporting all Scotland's HT waste to be processed in England) which will further enhance its ability to compete for high value contracts.

Non-integrated HRW suppliers

5.12 In contrast to the OFT's view, Tradebe considers that the merged entity will also face a strong competitive constraint from non-integrated competitors.

5.13 **Veolia** in particular is a crucial competitive constraint, since its HT capacity enables both companies with only AT plants such as Tradebe and third party collection providers to compete with service providers with the full complement of treatment plants.

5.14 Veolia's current capacity to treat HRW is estimated to be in the region 4,800-5,000 tonnes per annum. Veolia would be expected to have substantial spare capacity post-Transaction, as all of the volumes that are processed for Tradebe would be freed up, as these volumes are taken away by the Parties in-house. As Table 12 below indicates, 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 [✂]%.

Table 12 – Veolia capacity utilisation

Initial capacity utilisation	Capacity utilisation following withdrawal of Tradebe volumes
90%	[✂]%

Source: Parties' estimates. Notes: Based on estimated capacity for Veolia of 4800 tonnes per annum and Tradebe 2012 volumes to Veolia of [✂] tonnes per annum . Estimation of the initial capacity utilisation of Veolia is based upon the Parties' estimates of current treatment volumes and capacity provided in Figure 2 of the submission to the OFT page 14.

5.15 Veolia exercises a competitive constraint in multiple different ways, including by providing a source of HT capacity to non-integrated suppliers, and by being a potential entrant into integrated supply in its own right.

(a) Collection companies, such as PHS, and non-integrated incinerator companies such as Veolia, can act together to fully replicate the integrated companies.

(b) Veolia could expand into the supply of an integrated service alone. The purchase of a single truck would allow Veolia to bid directly for many contracts in the Birmingham area (for example, its plant is only around 5 miles away from Birmingham Heartlands Hospital). In addition, Veolia has in the past expressed an appetite to become an integrated supplier. For example:

(i) Veolia made a bid to acquire the Wrexham, Salford and Redditch treatment plants from SRCL including the associated contracts for the integrated supply of HRW collection, delivery and treatment services to

Wrexham's customers. The Wrexham plant was divested following the CC's STG Decision in 2007 (and was ultimately purchased by Sita). The Parties assume that the CC will have documents prepared by Veolia on this issue in its files, which show Veolia's business case and its desire to become an integrated player if an attractive situation presents itself.

(ii) The Birmingham Heart of England contract is to be retendered in 2014, and Tradebe believes that the customer wanted a TWM solution.[36] [✂].

FM contracts and TWM contracts

5.16 As discussed above, some customers prefer FM contracts and some prefer TWM contracts. In these cases, HRW is a relatively small part of the contract. The merged entity will face competition from FM companies including Mitie, ISS, Serco, Bywaters, Sodexho and Carillion, and dry waste companies including Biffa, Bywaters and Veolia.

5.17 These companies are potential competitors as well as potential customers of the Parties. Their large scale, high brand awareness, and integrated services covering many of the hospital's needs give them a strong competitive advantage for those customers who want to organise their suppliers under an umbrella FM contract. Where they win FM or TWM contracts, they need to subcontract the HRW part of the contract. Their wide geographic scope, the guaranteed volumes they can provide, and the sophistication of their procurement processes, gives them a strong bargaining position when negotiating with HRW suppliers. They often prefer contracts covering large regions of the country, or wider.

5.18 In the case of the Sodexho contract recently lost by Sita, Sodexho has the FM contract for Central Manchester University and sub-contracted the HRW processing to Sita. However, part-way through the term of the contract, Sodexho switched HRW supplier to GW Butler. This shows the strength of the FM companies when dealing with the HRW suppliers as subcontractors.

6. LOCAL AREA ANALYSIS

6.1 As discussed above, there are strong incentives for HRW suppliers to win additional business from a range of existing competitors and potential new entrants, further enhanced by the customers through various levers of buyer power, mean that the merger will not reduce competition in any local area, or for any subset of customers.

6.2 In addition to these competitive constraints which apply with equal force in the local areas of potential concern identified by the OFT – Birmingham and Gloucester – this section considers other evidence specific to these two areas.

[36] If Tradebe does not win this contract, it will [✂]. Tradebe is concerned that its lack of an in-house HT plant will make its bid unattractive under the current structure of quality criteria. The merged Parties will hopefully be a much more attractive proposition for the customer.

Approach to local area analysis: geographic scope of competition

6.3 The Parties do not agree with the OFT's use of a 50 mile catchment area for the purposes of assessing competition in this industry. The "local market" 50 mile approach to defining geographic catchment areas is a useful starting point for a Phase I analysis, but it is too simplistic and does not take account of the fundamental competitive dynamics of the market.

6.4 Rather, the question of whether suppliers located within a given radius of a set of LQG customers actively compete against one another to supply these customers is crucially dependent on the fundamental trade-off these suppliers face between the benefits attained from supplying these customers and the costs incurred in doing so.

6.5 Specifically, it is rational for a supplier to bid to supply a customer so long as the incremental gains from increasing its capacity utilisation outweigh the incremental transportation costs it incurs. Accordingly, the extent to which suppliers located over 50 miles from a customer have the incentive and ability to compete to supply this customer will depend on first, the extent to which they have excess capacity and second, the scale of the transportation costs they incur to supply services to the customer.

6.6 As a result, suppliers frequently bid for contracts far beyond the 50 mile radius: for example, Tradebe bid for the North Bristol NHS Trust, located more than 80 miles away from its Birmingham plant, and it also bid for the North and South Devon Trusts (and believed it was the second choice, despite closer competitors), even though the customers were located more than 100 miles away from its Avonmouth plant. Given the non-negligible bidding costs incurred, these bids are by no means fanciful, but rather reflect the fact that HRW companies need to trade off the costs of transport against the incentive to utilise their plants more fully.

6.7 These considerations also imply that the allocation of contracts in one region may have knock-on effects on competition in surrounding regions in a way that is not accounted for in the “local market” 50 mile approach. For example, if a high volume contract comes up for tender and is offered to a new entrant, the incumbent firm will be left with substantial spare capacity which it may seek to distribute over a wider region.

6.8 Moreover, the economic radius of deliveries will also depend on several factors including:

(a) The transport network: if a customer is located close to a motorway system travel time may become as important as travel distance.[37]

(b) The distribution of customers: A company may have a vehicle that is not full travelling close to another customer. This may also affect the cost of collection and the distance a vehicle can travel in order to fill the capacity of the vehicle.

6.9 Accordingly, the local market approach may fail to account for the scope of competition from suppliers outside the standard local radius. For example, Sita's Redditch plant collects HRW waste representing [✂]% of its revenues from customers located over 90 miles away and [✂]% from customers located over 80 miles away.[38]

6.10 Finally, it should be noted that the observed catchment areas are also a by-product of individual tenders won: the fact that the identified scope of these catchments varies among suppliers and regions is evidence that other considerations, such as the need to

[37] This was acknowledged by the CC in the Ecowaste Decision at paragraph 7.27.

[38] See spreadsheet supplied to OFT on 19 September 2013.

utilise spare capacity across regions, may well outweigh concerns regarding incremental transport costs.

Deficiencies in "market share" calculations in this industry

6.11 The Parties recognise that the OFT was obliged as part of its analysis to produce market share numbers. However, this approach (use of market share numbers generally as well as the specific measures used by the OFT) is not helpful in understanding the actual competitive interactions in the market, as described in this paper.

6.12 The use of market shares based on **total capacity** of plants within a given catchment area is a particularly misleading as a measure of the competitive constraints available to customers in a given local area (such as for example, customers centred on Gloucester).

(a) First, the capacity associated with each plant can be expected to serve a range of different local areas. The fact that a firm has a plant with a large capacity overall however says nothing whether it has spare capacity that it has to supply an additional customer, or the costs at which it can do so. [39]

(b) Second, market shares based on total capacity of plants within a given catchment will over-represent the market position of suppliers that have fewer (larger) plants rather than more geographically dispersed plants, even though the latter may well have a more efficient cost structure which allows then to be geographically closer to more of their customers.

(c) Furthermore, it should also be recognised that the cost structure of HT plants implies that they have a strong incentive to operate at higher levels of capacity: this would imply that, in the context of spare capacity, it can be expected that AT plants (which by comparison have higher variable costs of operations) are more likely to operate at lower levels of capacity utilisation, than HT plants. This means that capacity can be misleading as a proxy for volumes actually achieved in the market (and might particularly overstate the volumes achieved by AT plants in particular).

6.13 In addition, the Parties would particularly caution against the use of market shares based on **licensed capacity**, which can often diverge substantially from practicable capacity, which can be bound by other constraints such as lack of storage capacity, restrictions in the operating hours according with the planning permission, or the requirement for further investments (e.g. additional lines) in order to attain its theoretical licensed capacity.

6.14 As Table 13 indicates, the Parties' licensed capacity may differ substantially from operational capacity, depending on the equipment available at each plant. For example, licensed capacity at [✂] is considerably higher than operational capacity ([✂] tonnes as opposed to [✂] tonnes) as the licence was set up for [✂].

[39] Further, like many market share measures, a share of licensed capacity will fails to account for the advantage an incumbent may have in bidding for a renewal of a given contract.

Table 13 – Tradebe and Sita licensed capacity, operational capacity and production September 2013 – August 2013

Plant	Type	Capacity (Licensed) (tonnes)	Capacity (Operational) (tonnes)	Actual Production (tonnes) September 2012 – August 2013
Avonmouth	**AT**	3,650	[✂]	[✂]
Birmingham	**AT**	15,330	[✂]	[✂]
Doncaster	**AT**	3,650	[✂]	[✂]
Enfield	**AT**	3,650	[✂]	[✂]
Rochester	**AT**	16,000	[✂]	[✂]
Wrexham	**AT**	6,500	[✂]	[✂]
Total AT	**AT**	48,780	[✂]	[✂]
Wrexham	**HT**	6,600	[✂]	[✂]
Redditch	**HT**	10,161	[✂]	[✂]
Salford	**HT**	8,800	[✂]	[✂]
Total HT	**HT**	25,561	[✂]	[✂]
Total	**All**	74,341	[✂]	[✂]

Source: Parties' estimates

6.15 Further, as shown by the above Table, both licensed capacity and operational capacity [✂].

6.16 While market shares based on **volumes** are to some degree a better measure of market share, because they at least reflect historical ability to win contracts in a given area, it is well recognised that in markets characterised by bidding competition, market shares will reflect the lumpiness of contracts won historically and may not accurately represent a firm's competitive position in the next round of bidding. HES would have had a zero share of volumes in Yorkshire but obviously represented a strong competitive constraint on the incumbent, SRCL. On the other hand, Sita would have looked relatively strong in Merseyside until April 2013 when it lost the large consortium contract to SRCL, and its incumbency on some contracts awarded historically makes it seem much stronger than it currently is. Equally, volume which is already committed to an existing contract plays no part at all in the market dynamics for the duration of that contract.

Birmingham

6.17 While the location of the Parties' plants in Birmingham and Redditch of course means that they would be viable bidders and competitors for contracts in and around Birmingham, there is no danger of a substantial lessening of competition in this locality, given the remaining competitive constraints on the merged firm.

(a) SRCL is the main competitive constraint in the market:

(i) It has a strong relationship especially with University Hospital Birmingham, which leads the Birmingham consortium, which is the largest customer in the area. Indeed, the last time the contract was renegotiated in September 2013 (after indicative bids from Tradebe) without even going to tender. SRCL's new contract will run for 5 years from April 2014.

(ii) Tradebe estimates that SRCL currently has 75% of the LQG contracts (by number) in the central Birmingham area.

(iii) SRCL has won two contracts (representing around £600,000 per year in revenues) in the wider Birmingham area that it was not previously operating (one from Tradebe and one from Sita) in the last 18 months, whilst retaining both of the other two contracts it already held.

(iv) It can also be expected to have a low cost structure, through using its geographic plant coverage to minimise its transport costs more effectively than its rivals.

(b) GWB can and does compete economically in Birmingham, as is clear from its bids for (e.g.) the North Staffordshire and Health Trust Europe (Burton-on-Trent) contracts.

(c) Veolia is a strong competitive constraint:

(i) It will not be capacity constrained after the Transaction - the substantial tonnage utilised by Tradebe ([✂] tonnes in 2012[40]) will be "freed up" as Tradebe shifts towards the provision of HT treatment services in house. Furthermore, as discussed above, Veolia is able to increase its capacity further.

(ii) It benefits from economies of scale as its site is shared with its large incinerator for domestic waste.

(iii) Furthermore, there are no significant barriers to entry to Veolia also providing collection services either solely for customers nearby or in conjunction with a collection company.

(d) New Cross Hospital treats and disposes its own HRW and provides treatment services to collection-only companies. It undoubtedly presents a competitive constraint to some extent (recognising of course that some of its capacity is used for self-supply). Customers could cost effectively rely on a combination of a collection-only company in conjunction with New Cross Hospital up to the free capacity.

6.18 Not only will the merged firm continue to be constrained by competitors, but it will itself exercise a far more effective constraint on its rivals than Tradebe or Sita were able to do independently: it is notable that in recent years, Tradebe and Sita have only won contracts in and around Birmingham where they were the existing incumbents, rather than being able to gain existing business from competitors (including each other).

6.19 There are various opportunities for hospitals in the Birmingham area to sponsor new entry.

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[40] See *Bundle of Documents – Initial Factual Information Request 5th November 2013, Section A22.*

(a) Based on evidence received from several market operators, the CC has previously estimated[41] that the capital costs for a new AT plant are in the range £1.1 million – £1.5 million. This figure is broadly in line with the Parties' own estimates and indicates that the entry costs for AT services are not insurmountable. Rather, these costs may be recovered as a result of a single consortium contract.

Specifically, using the above estimates of the capital costs of entry, the CC estimated that the requisite annual turnover for a new entrant to break even would be in the range £1.4 million – £1.7 million.[42] On this basis, there is plenty of scope for the large buying consortiums to sponsor new entry (as they have done previously and continue to do) - for example, tenders such as the Yorkshire consortium (which sponsored HES' entry in 2011), the Merseyside consortium (which SRCL won from Sita in April 2013[43]), and the imminent all-Wales and Northern consortium tenders are explicitly structured to encourage new entry or expansion – they are long term contracts, which guarantee sufficient turnover to cover the breakeven point, and give a sufficient lead time to build the necessary HRW treatment plants.

(b) Furthermore, the costs of entry are lower where the hospitals own treatment sites and lease these to HRW service providers as part of their supply contracts. Both Sita and Tradebe's plants in the Birmingham area are leased from hospitals on this basis. For example, Tradebe's Yardley Green facility forms part of the Heart of England contract and so the tender for this contract is open to all undertakings regardless of whether they own facilities in the Birmingham area. This also creates a strong incentive for the merged firm to compete strongly for contracts: they would lose the plant if they are not awarded the contract on a re-tender and therefore be required to incur both the costs of decommissioning their existing plant and those associated with building a new plant or transporting volumes to a more distant plant if they are to continue to serve their customers in the region.

Gloucester

6.20 The Parties submit that the potential for unilateral effects to arise as a result of the Transaction are extremely limited for the following reasons:

(a) First, the Parties submit that the definition of Gloucester as a relevant geographic market – and in particular calculating "market shares" on this basis – rests upon a mischaracterisation of the nature of local competition.

(b) Second, the OFT excludes from its analysis Grundon, Veolia, New Cross Hospital, FM companies, and collection-only companies which are active suppliers of HRW treatment services with substantial potential to expand into the provision of integrated services to LQG customers.

(c) Third, hospitals in Gloucester have a range of buyer power levers that they could use to prevent any risks of price increases following the merger.

(d) Fourth, there is a new entrant in the Avonmouth area, who would be expected to bid aggressively for contracts in the next few years in order to build its business.

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41 See the Ecowaste Decision, paragraph 7.130.

42 See the Ecowaste Decision, paragraph 7.134.

43 SRCL is building a new plant in Speke to service this contract.

Definition of Gloucester as a relevant market

6.21 The OFT has identified Gloucester as a potential pocket of customers where the Parties overlap. While the Parties agree that both Tradebe and Sita plants are potential suppliers – and credible bidders – for contracts in Gloucester, the OFT's approach of defining market shares in Gloucester by examining all capacity available to serve it clearly has no sensible economic interpretation.

6.22 In any event, the OFT's approach should have at the very least included in the relevant market SRCL's Four Ashes treatment plant in Cannock which is close to, albeit just outside, the 50 mile radius and is near the M5 and M6 motorways, supplies customers in Oxford and could easily also supply Gloucester. SRCL installed a second line at this plant around a year ago, which has doubled its capacity to around 16,000 tonnes per year. When the capacity associated with this treatment plant is included in the market share calculations the Parties' combined shares of capacity fall dramatically from 73% to 47%.

6.23 The actual sales volumes show clearly that SRCL has by far the strongest position with a 56% share of volumes in the Gloucester area. It is the incumbent supplier for the only LQG customer in Gloucester itself – the Gloucestershire Hospitals NHS Foundation Trust. The Parties' combined share of volumes (31%) is significantly lower than SRCL's and is below the level normally associated with a substantial lessening of competition.

Competitive dynamics in Gloucester

6.24 As with Birmingham, there is a competitive constraint from Veolia and (to some extent) New Cross Hospital, from the FM companies and from collection-only companies. Further, Gloucester could join a larger consortium, benefitting from the constraint of actual or potential new entrants who might build capacity to serve such a contract.

6.25 The Parties note that the collection-only companies were dismissed as a competitive constraint by the OFT, even though they do often bid for LQG contracts in the area. Tendering for these formal contracts is a time-consuming and costly process for suppliers. The fact that collection-only companies did bid on the contract is evidence that they considered that they had a realistic chance of winning.

6.26 A large part of the Gloucester 50 mile area is in Wales, which will be covered by the imminent all-Wales consortium tender. Furthermore, Gloucester's location ensures that it will be attractive to both the merged firm and SRCL in future. The specific geographic characteristics of the Gloucester area for the HRW sector mean that it will enjoy aggressive competition (and therefore low prices) in future:

(a) It is a potential source of marginal volumes for SRCL's Frome plant because the plant already enjoys a monopoly (or near monopoly) for LQG customers in the South-West. SRCL's Four Ashes plant already services the Oxford area[44]; its Birmingham plant services the Birmingham area (in particular the large Birmingham consortium contract); its Bridgend plant services South Wales. The Gloucester area is therefore a crucial source (and potentially the only source) of additional volumes for the Frome plant, which we understand has spare capacity.

[44] Oxford is within the Gloucester 50 mile area. In August 2012, SRCL retained the contracts to supply the Oxford consortium of four acute trusts and the Oxford consortium of CCGs. These two contracts are worth over £900,000 per year in revenues.

(b) It is a potential source of marginal volumes for Sita's Redditch plant, which is located to the south of Birmingham city centre.

(c) It is a potential source of marginal volumes for Grundon's Thames Valley plants, which are close to the edge of the 50 mile radius. Indeed, Grundon already has customers in the Swindon area (which is well within the Gloucester 50 mile area), and Grundon's marketing material shows that its "core business area" for clinical waste covers most of the area the OFT was concerned about (and much of the Birmingham 50 mile area too). The Parties believe that Grundon has recently bid for the Royal United Hospital in Bath, and for the Hinchinbrook Healthcare Trust in Huntingdon, Cambridgeshire, demonstrating its willingness to travel even outside of its core area to bid for business.

Figure 1 – Grundon's core business area

Source: http://www.grundon.com/WhoWeAre/OperatingArea.htm

New entry – recent and future

6.27 The Parties understand that Clinipower is a new entrant in the Avonmouth area (which is comfortably within 50 miles of Gloucester). This company was previously known as Compact Power and has converted its pyrolysis plant for use in the HRW sector. It will offer an integrated service from December 2013.[45] Its customers are likely to be located primarily in the Gloucester 50 mile area.

6.28 The Parties consider that the volume of HRW produced in the Gloucester area is not sufficient to incentivise further new entry purely to service Gloucester in the short to medium term. However, LQG customers in the Gloucester area could join a wider

[45] Please see their website for further details: www.clinipower.com.

consortium at the next renegotiation. The Parties would expect nearby consortiums for areas such as Wales, Bristol or Birmingham to welcome additional customers because it would increase their buyer power and because the consortium managers would receive the additional management fees.

6.29 Given this wide range of constraints, the Parties believe that there will be no lessening of competition for customers within the Gloucester catchment area, and even if the CC were to take a different view, any lessening of competition could not be described as substantial.

7. CONCLUSION

7.1 The Transaction relates to a highly competitive industry and it will boost competition in that industry. The Transaction will not give rise to a substantial lessening of competition on any basis. The Parties believe that their customers will broadly confirm this to the CC.

Hogan Lovells / RBB Economics
19 November 2013