

Completed acquisition by Healthcare Environmental Services Limited of G.W. Butler Limited

ME/6499-14

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 18 March 2015. Full text of the decision published on 1 April 2015.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. On 17 October 2014, Healthcare Environmental Services Limited (**HES**) acquired G.W. Butler Limited (**GW Butler**) (the **Merger**). HES and GW Butler are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) has found that the Parties have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore considers that a relevant merger situation has been created.
3. The Parties overlap in the supply of the collection, treatment and disposal of healthcare risk waste (**HRW**) for (a) large quantity generators (**LQGs**) in a 50-mile area around Leeds, (b) small quantity generators (**SQGs**) in a 50-mile area around Leeds and (c) consortia of LQGs and SQGs in the UK. The CMA considers that these customer segments have different requirements and procurement strategies and that the range of suppliers which can meet their needs varies by customer segment. The CMA has therefore assessed the impact of the Merger in the collection, disposal and treatment of HRW for (a) LQGs, (b) SQGs and (c) consortia in the Leeds area.
4. The CMA has concluded that HES and GW Butler currently pose a limited competitive constraint on the two leading integrated suppliers, SRCL and Tradebe, both for LQGs and SQGs in the Leeds area, and for consortia nationally. SRCL and Tradebe are strong existing suppliers which have imposed an effective competitive constraint on each other and the Parties in

gaining contracts in all three segments in recent years. The CMA believes that post-Merger, SRCL and Tradebe will remain active in all three segments, together with collection-only suppliers in the SQG segment, and they will continue to impose an effective competitive constraint on each other and on the Parties.

5. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in relation to the collection, treatment and disposal of HRW for LQG and SQG customers in the Leeds area, and for consortium customers in the UK.
6. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. HES provides services for the integrated collection, treatment and disposal of HRW and operates two plants in Scotland and one in Wakefield, England. The turnover of HES in the year ending April 2013 was around [§] in the UK.
8. GW Butler also provided services for the integrated collection, treatment and disposal of HRW. GW Butler owned three plants located in Bradford, Essex and Nottingham. The turnover of GW Butler in the year ending June 2014 was around [§] in the UK.

Transaction

9. HES acquired the entire issued share capital of GW Butler on 17 October 2014 through a Sale and Purchase Agreement.

Jurisdiction

10. As a result of the Merger, the enterprises of HES and GW Butler have ceased to be distinct.
11. The Parties overlap in the collection, treatment and disposal of HRW within a 50-mile radius of Leeds (the **Leeds area**) and, as a result of the Merger, the

Parties have a combined share of supply in this area, based on licensed capacity, of 38%, with an increment of 9% (see paragraphs 59 to 60).¹

12. Section 23(4) of the Act states that the share of supply test is measured on the basis of supply in a substantial part of the UK. A substantial part of the UK has been found to refer to an area of such size, character and importance as to make it worth consideration.² The Leeds area covers a large population (including Leeds, Sheffield and Manchester) and, for this reason, the CMA believes that the Leeds area may reasonably be described as a substantial part of the UK.
13. The CMA has therefore found that the share of supply test in section 23 of the Act is met.
14. The Merger completed on 17 October 2014 and was first made public on 24 October 2014. The four-month deadline for a decision under section 24 of the Act is 30 April 2015, following an extension under section 25(2) of the Act.
15. The CMA has therefore found that it is or may be the case that a relevant merger situation has been created.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 30 January 2015 and the statutory 40 working day deadline for a decision is therefore 26 March 2015.
17. HES did not notify the Merger to the CMA. The CMA opened an own-initiative investigation into the Merger by sending an Enquiry Letter to HES on 17 November 2014.³

Counterfactual

18. The CMA assesses a merger's impact relative to the situation that would prevail in the absence of the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger.
19. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that,

¹ Under section 23(5) of the Act the CMA may apply such criterion, including capacity, as it considers appropriate when applying the share of supply test. See also *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraph 4.56.

² *R. v. Monopolies and Mergers Commission, Ex parte South Yorkshire Transport Limited* [1993] 1 W.L.R. 23 at p. 32.

³ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

in the absence of the merger, the prospect of the pre-merger conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁴

20. In this case, HES submitted that, absent the Merger, GW Butler would have been declared insolvent by approximately the end of October 2014 and would have exited the market.
21. The CMA therefore considered whether, based on the evidence available, the effects of the Merger should be measured against this alternative counterfactual.
22. HES submitted a due diligence report indicating that GW Butler was in serious financial difficulty and, in its view, would have exited the market absent its acquisition. [✂]
23. HES submitted that it was informed during negotiations with GW Butler that there were several potential buyers for the business. However, HES submitted that it had not found any evidence since completion of the Merger that there were in fact other potential buyers.
24. The CMA recognises that, in the absence of it being acquired, GW Butler might have exited the market. However, the CMA's market testing has found that some third parties were interested in acquiring the business. One of these third parties indicated that it had seriously considered acquiring GW Butler, stating that it had held several conversations about a possible acquisition with the managing director of GW Butler, had engaged third party solicitors, had discussed the possibility of acquiring GW Butler with its accountants and had submitted an indicative offer. This third party [✂].
25. Based on this evidence, the CMA believes that, in the absence of the Merger, there is a realistic prospect that GW Butler would have been acquired by an alternative purchaser and that this acquisition would have resulted in an effective continuation of the pre-Merger conditions of competition. For this reason, the CMA has used the pre-Merger situation as the counterfactual in its assessment.

Background

26. HRW is a type of waste that requires treatment prior to disposal as it is potentially infectious or could otherwise be harmful to health. HRW includes

⁴ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

syringes, dressings, medicines, plastic tubing, anatomical waste and some low-level radioactive waste.

27. Customers fall broadly into three categories:
- (i) LQGs, which are mainly NHS acute trusts. LQGs produce large quantities of HRW and require collection of the waste in large trucks on a daily basis.
 - (ii) SQGs, which encompass a broad range of waste generators, such as GP surgeries, pharmacies, dentists and tattoo parlours. SQGs produce small quantities of HRW and require collection in small vans every few days.
 - (iii) Consortia of NHS trusts, which are groups of LQGs and SQGs which purchase HRW services collectively.
28. There are two distinct types of treatment technology for HRW: high-temperature (**HT**) plants, which incinerate HRW; and alternative technology (**AT**) plants, which use several different methods (eg dry heat augers, steam augers and chemical treatment systems) to make HRW safe prior to disposal. The regulatory regime requires certain types of HRW to be subject to HT treatment.
29. Suppliers of HRW services can be divided into:
- (a) integrated collection and treatment companies (such as HES, GW Butler, SRCL and Tradebe);
 - (b) collection-only companies, which collect HRW but subcontract treatment to a company that operates a treatment plant (such as Sharpsmart and Rentokil Initial); and
 - (c) treatment-only companies, which receive HRW from third parties and treat it to make it safe for disposal (such as Veolia).

Frame of reference

30. The CMA considers that market definition provides a framework for assessing the likely effects of a merger on competition and involves an element of judgement. The boundaries of the market are not in themselves determinative of the outcome of the analysis of the competitive effects of the merger, as the CMA recognises that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in

which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁵

31. The Parties overlap in the supply of the collection, treatment and disposal of HRW in the Leeds area, as set out below.

Product scope

Type of waste

32. In Tradebe/Sita⁶ the Competition Commission (**CC**) concluded that the relevant product market is the collection, treatment and disposal of HRW. The CC considered that the product market consists of both waste that requires HT treatment (**HT waste**) and waste that can be treated using either AT or HT treatment (**AT waste**).
33. The CMA's market testing and bidding data supported this as it showed that suppliers that operate only AT plants, such as HES and GW Butler, in practice compete for the treatment of both types of waste with suppliers that operate either AT or HT plants. This is because customers produce both types of waste jointly, approximately 80% of HRW is AT waste, and suppliers that operate only AT plants can outsource the treatment of HT waste to third parties.
34. In this case, the CMA has seen no reason to deviate from the approach in Tradebe/Sita, and believes that, for the reasons set out above, the product frame of reference consists of the collection, treatment and disposal of both HT waste and AT waste.

Type of customer

LQGs and SQGs

35. In Tradebe/Sita the CC distinguished between LQG and SQG customers as LQGs are typically only serviced by integrated companies, whereas SQGs are serviced by both integrated companies and collection-only companies.
36. In this case, the CMA's market testing confirmed that SQG customers are serviced by both integrated and collection-only companies, but found that some collection-only companies had tendered for LQG business as well as integrated companies. However, an analysis of bidding data gathered from

⁵ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁶ Final report CC, [Tradebe Environmental Services Limited and Sita UK Limited](#), 28 March 2014.

seven LQG customers in the Leeds area showed that collection-only companies [redacted] had not been successful in winning any contracts.

37. This evidence was supported by comments from collection-only companies and LQG customers. One collection-only company stated that it was unable to bid competitively for LQGs at current prices, and another collection-only company noted that it had struggled to grow its business in the LQG market. [redacted].
38. On the basis of this evidence, the CMA believes that, in line with Tradebe/Sita, LQG customers are typically only serviced by integrated companies and that collection-only companies are less likely to be regarded by customers as providing an effective competitive constraint.

Consortia

39. The CMA notes that consortia may face different conditions of competition compared to LQGs.⁷ This is because consortia can structure their tendering process so as to enable bidding by suppliers which do not currently own plants in the area (eg by contracting for large volumes of HRW over a long period and with sufficient lead time before the start of the contract to enable the construction of a new plant).
40. This was confirmed by both Tradebe and SRCL, as both said that they will be building new plants to serve consortium contracts (eg Tradebe's new plant to service the All Wales consortium contract), and this would not have been economically viable for a single LQG contract.ⁱ In the same way, HES is building a new plant in the North East of England to service the Northern consortium contract.
41. While LQGs which procure HRW contracts on an individual basis can only expect to receive competitive bids from suppliers which already have treatment capacity in the area, consortia can potentially receive competitive bids from any suppliers with the financial and technical capacity to build a plant to service the contract.
42. Given these different contract characteristics and competitive constraints the CMA believes it appropriate to use separate product frames of reference for LQGs, SQGs and consortium contracts for the purpose of its assessment in this case.

⁷ In general, consortia generate approximately 7000 tonnes of HRW per annum and single hospitals generate approximately 500 tonnes. In addition, the duration of consortium contracts are around ten years whereas single hospital contracts last around five years.

Conclusion on product scope

43. For the reasons set out above, the CMA has considered the impact of the Merger in the collection, treatment and disposal of HRW for (a) LQGs, (b) SQGs and (c) consortia separately.

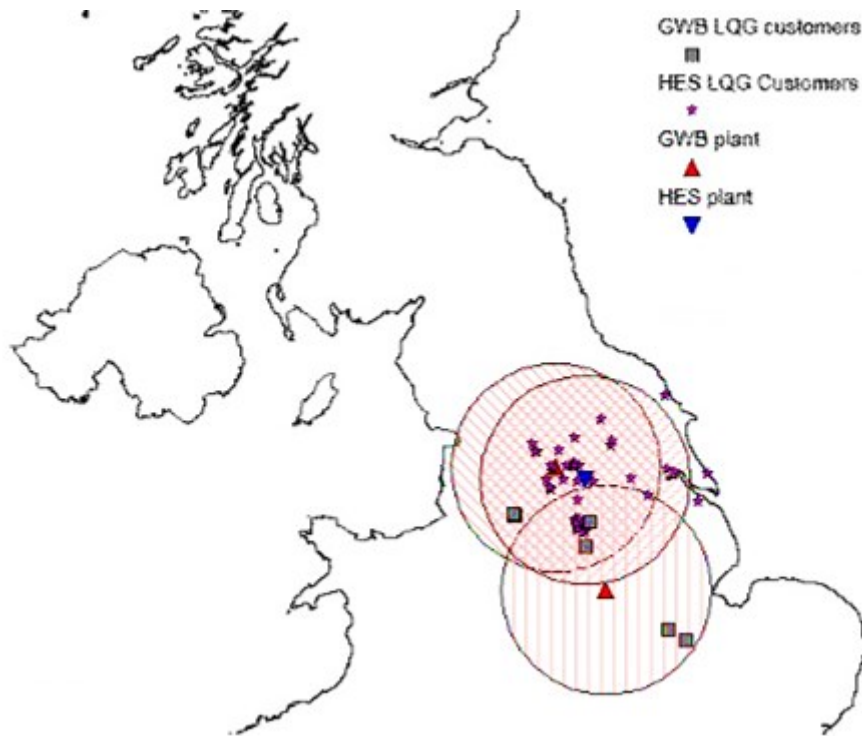
Geographic scope

44. In Tradebe/Sita the CC assessed the merger at a local/regional level, using an area of 50 miles around Birmingham and a smaller area around Gloucester, extending part way to Bristol. In defining the relevant geographic market the CC took account of three key features of the HRW industry: transport costs, contract sizes and customer footprint. Taken together, these features of the HRW market mean that LQG and SQG customers are only likely to get competitive offers from suppliers located relatively close to their premises, with the result that competitive conditions are likely to vary between local areas.
45. HES submitted that there is only limited geographic overlap between the Parties as their two facilities in the Leeds area are used to service customers in different geographic areas. HES operates a plant in Wakefield which is mainly used to serve its NHS Yorkshire and Humber consortium contract, while GW Butler predominantly used its Bradford plant to treat and dispose of HRW collected from the north west of England.
46. The CMA's market testing indicated that competitors in general considered it economic to transport HRW in an area with a radius of around 60 miles, while acknowledging that the distance could vary to some extent per contract.
47. On a cautious basis, and in line with Tradebe/Sita, the CMA used a 50-mile radius around the plants of the Parties to delineate catchment areas. This provided an indication of the areas in which the Parties were most likely to compete with each other for new contracts, notwithstanding their different geographic focuses historically. The CMA used the intersection of these catchment areas to identify the potentially affected areas.

Geographic scope for LQGs

48. Figure 1 shows that the 50-mile radius catchment area from each Party's plant(s) overlap in the area around Leeds. In addition, the CMA analysed detailed information of the Parties' current LQG customers in this part of the UK. As demonstrated in Figure 1 most of the Parties' LQG customers fall within a 50-mile radius from their plants in the Leeds area.

FIGURE 1 Catchment areas of HES plant in Wakefield and GW Butler plants in Bradford and Nottingham for LQG customers



Source: CMA analysis

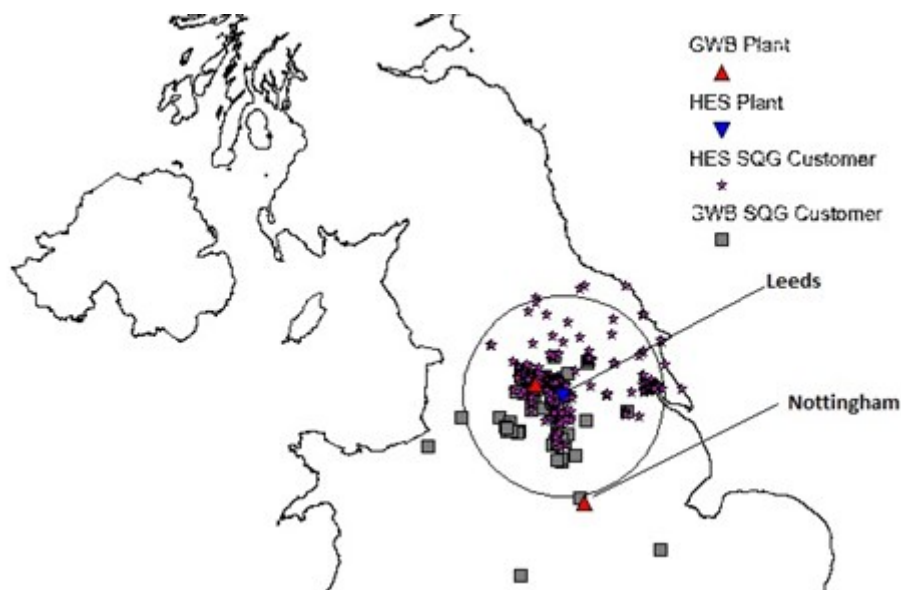
68. On the basis of this evidence, the CMA considered the impact of the Merger for LQG customers in the area of 50 miles around Leeds.

Geographic scope for SQGs

49. With regard to SQGs, the CMA again used a 50-mile radius around the Parties' plants to delineate catchment areas and tested if the Parties' current SQG customers fell within this radius.

50. Figure 2 shows that nearly all the Parties' SQG customers fall within a 50-mile radius around the Parties' plants in the Leeds area.

FIGURE 2 Catchment areas of HES plant in Wakefield and GW Butler plants in Bradford and Nottingham for SQG customers



51. On the basis of this evidence, the CMA considered the impact of the Merger for SQG customers in the area of 50 miles around Leeds.

Geographic scope for consortia

52. In Tradebe/Sita the CC found that the minimum waste tonnage for which a company would build new capacity was 2,500 tonnes. In this case, the CMA’s analysis of customer lists and tender data shows that consortia generally have tonnages far above this level, varying from around 7,000 to 10,000 tonnes.
53. The CMA’s market testing indicated that all integrated competitors would build new plants or increase capacity if they won a consortium contract in the UK, and the CMA found that a few suppliers had plans to build new plants for consortia contracts in the near future (see paragraph 40). Therefore, it appears that suppliers to large consortia do not need to have a presence in the area of a consortium in order to be able to compete for the contract.
54. On the basis of this evidence, the CMA considered the impact of the Merger for consortia on the basis of a UK-wide geographic frame of reference.

Conclusion on geographic scope

55. For the reasons set out above, on a cautious basis, the CMA has considered the impact of the Merger in the following geographic frames of reference:
- in the area of 50 miles around Leeds (the Leeds area) for LQG and SQG customers; and

- in the UK for consortium customers.

Conclusion on frame of reference

56. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- the collection, treatment and disposal of HRW for LQG customers in the Leeds area;
 - the collection, treatment and disposal of HRW for SQG customers in the Leeds area; and
 - the collection, treatment and disposal of HRW for consortia in the UK.

Competitive assessment

Horizontal unilateral effects

57. Horizontal unilateral effects may arise when one firm merges with a competitor which previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.⁸ Horizontal unilateral effects are more likely when the merger parties are close competitors.
58. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to unilateral horizontal effects in the collection, treatment and disposal of HRW for LQGs, and SQGs in the Leeds area and for consortia in the UK.

General

Shares of supply

59. The Parties' and their competitors' provided the CMA with their licensed and actual capacity for the collection, treatment and disposal of HRW in the Leeds area, on the basis of which the CMA estimated the following shares of supply:

⁸ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

TABLE 1 Estimated share of supply of collection, treatment and disposal of HRW in the Leeds area in 2014

	<i>Plant</i>	<i>Licensed capacity (tonnes pa)</i>	<i>%</i>	<i>Capacity used (tonnes in 2014)</i>	<i>%</i>
HES	Wakefield	20,000	29	[REDACTED]	[20–30]
GW Butler	Bradford	6,000	9	[REDACTED]	[0–5]
Combined		26,000	38	[REDACTED]	[30–40]
Tradebe	Salford	8,000	12	[REDACTED]	[10–20]
	Doncaster	3,120	5	[REDACTED]	[0–5]
Tradebe total		11,120	17	[REDACTED]	[10–20]
SRCL	Leeds	17,000	25	[REDACTED]	[20–30]
	Oldham	7,884	11	[REDACTED]	[10–20]
	Bolton	6,570	10	[REDACTED]	[10–20]
SRCL total		31,454	46	[REDACTED]	[50–60]
TOTAL		68,574	100	[REDACTED]	100

Source: Parties' and third parties' data

60. Table 1 shows that the Parties have a relatively high combined share of supply of [30–40] to 38% in terms of their licensed and utilised capacity, and that the Merger results in a relatively small increment of [0–5] to 9%. The CMA notes that some plants may not be able to compete in the entire overlap area and that there are plants outside of the overlap area which may be able to compete partly in the overlap area. In addition, the shares of supply are not informative on the Parties' competitive strength in the separate frames of reference.

Unilateral horizontal effects for LQG customers

Closeness of competition

61. HES submitted that the Parties are not close competitors as HES focussed on LQG customers whereas GW Butler focussed on SQG customers.
62. However, the CMA's analysis of the Parties' customer lists indicated that each of GW Butler and HES serviced LQG contracts.⁹ Moreover, bidding data showed that both Parties competed for LQG contracts. The Parties' integrated competitors also considered HES and GW Butler to compete for LQGs.
63. The CMA received bidding data from seven LQG customers in and around the Leeds area: Chesterfield Royal Hospital, Royal Derby Hospital, Sheffield Teaching Hospitals, United Lincolnshire, Nottingham University Hospitals,

⁹ HES serviced [REDACTED] LQG customers and GW Butler serviced [REDACTED] LQG customers in 2014.

Rotherham, and Doncaster and Bassetlaw Hospitals.¹⁰ This bidding data showed that both the Parties had bid in [REDACTED] of the seven last tenders for these LQGs. [REDACTED] The only recent contract which had been won by either of the Parties from these seven LQGs in the Leeds area was by GW Butler which had won the 2013 tender for Rotherham.

64. This evidence suggests that, while HES and GW Butler competed for some of the same LQG customers before the Merger, they were not the strongest competitors in the Leeds area and any competitive interaction between them was unlikely to have affected significantly the tender outcomes.

Competitive constraints

65. HES submitted that the Parties' main competitors for both LQGs and SQGs are Tradebe, SRCL, Grundons, Sharpsmart, Rentokil Initial, Medisort and Veolia.
66. Bidding data showed that SRCL competed in [REDACTED] of the last round of LQG tenders in the Leeds area, of which it won four [REDACTED]. Tradebe competed in [REDACTED] tenders and won two.¹¹
67. SRCL and Tradebe both submitted that their ability to compete in future tenders was determined by their available capacity in the relevant area. SRCL said [REDACTED]. Tradebe said that several of its plants were close to capacity¹² [REDACTED].
68. The bidding data indicated that three LQGs in the Leeds area might re-tender their contracts from 2016 and two LQGs might re-tender from 2018.¹³ Two LQGs are managed by a facilities management company and several parties told us that these contracts were likely only to be tendered very infrequently. The CMA reviewed the sizes of the forthcoming contracts and noted that the volumes which were likely to be re-tendered over the next few years were likely to be relatively modest.
69. Despite mentioning possible reductions in its capacity in some areas, SRCL told the CMA that it planned to continue servicing its LQG contracts in the Leeds area [REDACTED]. The CMA noted that SRCL already services one of the three

¹⁰ No information available on East Cheshire NHS Trust. To the CMA's knowledge, this covers all the LQGs located in and around the Leeds area which procure HRW service outside a consortium (with the exception of the East Cheshire Trust).

¹¹ Grundons is an integrated company and could compete for LQG contract. However, Grundons told the CMA that it does not compete with the Parties in the relevant geographic area. The CMA believes that collection-only companies such as Sharpsmart, Rentokil Initial and Medisort do not compete with the Parties for LQG customers (see paragraphs 35 to 38). Veolia is a treatment-only company which does not directly deal with HRW generators, but treats HRW waste collected by collection-only and integrated companies.

¹² Salford, Rossington in Doncaster, Yardley Green in Birmingham and Redditch in Worcester.

¹³ The CMA understands that LQGs can typically extend their contracts for at least one extra year.

contracts which will be tendered within the next few years, which would release capacity to be used to service the same contract or other contracts.

70. Tradebe also said that it intended to bid for upcoming LQG contracts.¹⁴ As for SRCL, the CMA notes that Tradebe already services one of the three contracts which will be tendered within the next few years which would free up capacity to service upcoming contracts.
71. The CMA also put weight on the fact that both SRCL's and Tradebe's recent readiness to move plant (see paragraph 40) indicated an ability to develop capacity in an area if sufficient business was available, reducing the significance of temporary capacity constraints on competition for new contracts.ⁱⁱ
72. On the basis of this evidence, the CMA believes that Tradebe and SRCL are strong competitors, which impose strong competitive constraints on the Parties for LQG customers, including for the contracts which will be re-tendered within the next few years.

Conclusion

73. On the basis of the evidence set out above, and in particular the bidding data, the CMA believes that HES and GW Butler currently pose a limited competitive constraint on the two leading suppliers in the Leeds area, SRCL and Tradebe, which are the incumbent suppliers for six of the seven LQG customers. The CMA believes that post-Merger Tradebe and SRCL will remain active in the market and will continue to pose a strong competitive constraint on each other and on the Parties, thereby ensuring there is no realistic prospect that the Merger will result in an SLC for LQG customers in the Leeds area.

Unilateral horizontal effects for SQG customers

Closeness of competition

74. HES submitted that the Parties both compete for SQG customers and HES' and GW Butler's customer lists confirmed this, showing that, in 2014, HES serviced [REDACTED] SQG customers and GW Butler serviced [REDACTED] SQG customers.
75. The CMA did not receive any responses from SQG customers during its market testing.

¹⁴ [REDACTED]

Competitive constraints

76. HES submitted that the Parties' main competitors for both LQGs and SQGs are Tradebe, SRCL, Grundons, Sharpsmart, Rentokil Initial, Medisort and Veolia.
77. Competitors to the Parties named, besides the integrated companies (SRCL, Tradebe and the Parties), several collection-only companies as competitors for SQG business, including PHS, Cannon, Rentokil Initial, Vetspeed, Wastecare, Bognall and Morris, TC Bibby and Altero Waste Services.
78. One third party stated that Cannon, PHS and Rentokil Initial are long-established companies and that each of them are successful in winning contracts for SQGs, including NHS England SQGs.
79. In addition, both SRCL and Tradebe stated that they will have capacity to bid for SQGs in the Leeds area, and that they intended to continue bidding for these contracts. One collection-only company also said specifically that it will bid for SQG contracts in this area.

Conclusion

80. On the basis of the evidence set out above, the CMA believes that sufficient constraints from SRCL and Tradebe, and the presence of many collection-only companies at least some of which have competed for SQGs in the Leeds area and intend to do so again, will ensure that there is no realistic prospect that the Merger will result in an SLC for SQG customers in this area.

Unilateral horizontal effects for consortia

Closeness of competition

81. Bidding data indicated that both Parties had bid for the two consortium contracts in the Leeds area: the Northern consortium and the Yorkshire and Humber consortium.^{15 iii}
82. The Northern consortium tendered in 2013 and HES won this contract, which runs until at least 2022. The consortium told the CMA that GW Butler participated in the tender process but did not meet the minimum financial standing required.

¹⁵ The Northern consortium covers 15 NHS Trusts, four supplementary users and 24 Newcastle University campus sites. It produces approximately 7135 tonnes of HRW per annum. The Yorkshire and Humber consortium covers 22 NHS Trusts. It produces approximately 9473 tonnes of HRW per annum.

83. The Yorkshire and Humber consortium tendered in 2009 and HES also won this contract, which lasts until 2021. GW Butler ranked second.
84. This evidence supports HES's view that GW Butler had become a weaker competitive constraint over the past few years, such that, by 2013, it was not considered as a credible bidder for a large consortium contract.

Competitive constraints

85. The bidding data also showed that SRCL and Tradebe had both participated in the tenders for both the Northern consortium and the Yorkshire and Humber consortium contracts. SRCL was the previous supplier for both of these consortia.
86. In the tender for the Northern consortium contract, SRCL and Tradebe ranked [X] and [X]. Therefore, it would appear that these two firms imposed a competitive constraint on the winner, HES, in contrast to GW Butler which did not meet the financial hurdle requirements.
87. In the Yorkshire and Humber consortium tender in 2009, SRCL and Tradebe ranked respectively [X] and [X] their bids showed that both were close competitors to both HES, which was the eventual winner, and GW Butler. [X].
88. Both SRCL and Tradebe confirmed that they would bid for consortium contracts in the future and, given that both of these suppliers have demonstrated their willingness to develop new capacity to service large contracts (see paragraph 40), the CMA believes that the extent of constraint imposed by these two suppliers on the Parties and on each other is likely to remain strong.

Conclusion

89. On the basis of the evidence set out above, the CMA believes that the loss of GW Butler would not have materially changed the outcome of previous consortium tenders. Also, the CMA notes that all integrated competitors intend to compete for these contracts in the future and are prepared to develop their capacity as necessary to service them. In addition, the CMA notes that both consortium contracts are not planned to be re-tendered before 2021.

Conclusion on horizontal unilateral effects

90. As set out above, the CMA believes that HES and GW Butler currently pose a limited competitive constraint on the two leading integrated suppliers, SRCL and Tradebe, both for LQG and SQG HRW in the Leeds area, and for

consortia HRW nationally. SRCL and Tradebe are strong existing suppliers which have imposed an effective competitive constraint on each other and the Parties in gaining contracts in all three segments in recent years. The CMA believes that post-Merger, SRCL and Tradebe will remain active in all three segments, together with collection-only suppliers in the SQG segment, and they will continue to impose an effective competitive constraint on each other and on the Parties. Accordingly, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the collection, treatment and disposal of HRW for LQG and SQG customers in the Leeds area, or for consortium customers in the UK.

Barriers to entry and expansion

91. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁶
92. In this case the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

93. The CMA contacted customers and competitors of the Parties. Only one customer raised concerns with the Merger, regretting the loss of a supplier. However, this concern was mitigated by an awareness of GW Butler's bad financial situation. Some competitors raised concerns about the limited number of suppliers. No other third parties raised concerns about the Merger.
94. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

95. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.

¹⁶ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

96. The Merger will therefore **not be referred** under section 22(1) of the Act.

Andrew Wright
Director, Mergers
Competition and Markets Authority
18 March 2015

ⁱ SRCL clarified that it may build new plants to serve consortium contracts and possibly also for single LQG contracts if it is economically viable.

ⁱⁱ SRCL clarified that the move of one of its plants has been an exception.

ⁱⁱⁱ The North of England Commercial Procurement Collaborative clarified that GW Butler technically did not bid for the Northern Clinical waste contract as it applied in response to the advert but did not pass the pre-qualification stage.