

Anticipated acquisition by Severn Trent Plc (through its subsidiary Severn Trent Green Power Limited) of Andigestion Limited

Decision on relevant merger situation and substantial lessening of competition

ME/7043/23

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 18 August 2023. Full text of the decision published on 13 September 2023.

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

SUMMARY

1. On 7 February 2023, Severn Trent Plc (**ST plc**), through its subsidiary Severn Trent Green Power Limited (**STGP**), agreed to purchase the entire issued share capital of Andigestion Limited (**ADL**) from Summerleaze Limited (**Summerleaze**) (**the Merger**). STGP and ADL are together referred to as the **Parties**. For statements referring to the future, STGP and ADL are together referred to as the **Merged Entity**.
2. The Parties overlap in the supply of anaerobic digestion (**AD**) processing of segregated food waste (**Food Waste AD**). This is a form of food waste treatment (distinct from methods such as incineration, landfill or composting) which results in liquid digestate and renewable biogas, which is either combusted to generate electricity and heat or exported into the regional gas network.
3. The Competition and Markets Authority (**CMA**) focused its investigation on the impact of the Merger in the supply of Food Waste AD. As competition between Food Waste AD suppliers generally takes place at the local level, the CMA assessed the impact of the Merger in the local areas surrounding each of the Parties' plants (reflecting where, on average, 80% of the Parties' processed waste is sourced from). In particular, after having applied a market share filter (based on a combined

market share threshold of 35% with a 5% increment) to identify those overlap areas where there is no realistic prospect of competition concerns arising, the CMA focused its assessment on the local area surrounding ADL's Bishop's Cleeve plant, where the Parties' combined market share exceeded the relevant threshold. The CMA carried out a detailed local competitive assessment to determine whether the Merger may give rise to a realistic prospect of a substantial lessening of competition (**SLC**) around ADL's Bishop's Cleeve site.

4. The CMA found that the Parties do not currently compete particularly closely and are facing competitive constraints from existing competitors, in the context of a growing sector which is likely to see entry and expansion. In addition, the CMA received evidence that several competitors have planning permission to either enter or expand their existing capacity in the near future, which will lead to significant new capacity in the local area around ADL Bishop's Cleeve. Overall, the CMA considers that these factors will prevent any SLC in the supply of Food Waste AD in the local area around ADL Bishop's Cleeve.
5. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.
6. The Merger will therefore not be referred under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

PARTIES

STGP

7. STGP is a renewable energy, food waste recycling and green waste composting business headquartered in the UK. STGP's ultimate parent company is ST plc, a public limited company listed on the London Stock Exchange.¹
8. STGP is active in the supply of Food Waste AD. It owns and operates eight Food Waste AD plants across the UK, situated in Bridgend (South Wales), Cassington (Oxfordshire), Coleshill (Warwickshire), Derby (Derbyshire), Roundhill (Staffordshire), Wallingford (Oxfordshire), North London (Hertfordshire) and West London (Surrey).²
9. In 2022, STGP had a UK turnover of £63.6 million and ST plc group (including STGP) had a UK turnover of £1,943.3 million.³

ADL

10. ADL is a wholly owned subsidiary of Summerlease, a privately-owned mineral extraction, waste management and renewable energy company.⁴
11. ADL is also active in the supply of Food Waste AD and operates two Food Waste AD plants in the UK, located at Holsworthy (Devon) and Bishop's Cleeve (Gloucestershire), and has planning permission to construct a third Food Waste AD plant on land in Angel Wells, Grantham (Lincolnshire).⁵
12. Separately, ADL is also active in the supply of food waste collection services, predominantly in relation to food waste transported to, and processed by, its own Food Waste AD plants.^{6,7}
13. In 2022, ADL had an annual turnover of £11.2 million.⁸

¹ Merger Notice submitted to the CMA on 22 June 2023 (**Merger Notice**), paragraphs 3.1-3.2.

² Merger Notice, paragraphs 3.5 and 3.9.

³ Merger Notice, paragraphs 6.1-6.2.

⁴ Merger Notice, paragraph 3.30.

⁵ Merger Notice, paragraphs 3.31 and 3.33.

⁶ Merger Notice, paragraph 3.34.

⁷ The Parties are also both active in the production and supply of digestate, which is a by-product of Food Waste AD, and the production and wholesale supply of energy from biogas, which is produced by Food Waste AD. The CMA considers that the Merger does not give rise to competition concerns in relation to any of: (i) the production and supply of digestate, (ii) the production and wholesale supply of energy from biogas, and (iii) the supply of food waste collection services. Therefore, the Parties' activities in these areas are not considered further in this Decision.

⁸ Merger Notice, paragraph 6.3.

TRANSACTION

14. On 7 February 2023, STGP and Summerleaze entered into a sale and purchase agreement for the sale and purchase of the entire issued share capital of ADL by STGP (the **SPA**).⁹ The Merger involves base cash consideration of [X] and was publicly announced on 8 February 2023.¹⁰
15. STGP submitted that the Merger is in line with its sustainability goals. STGP explained that, in particular, the Merger would allow STGP to increase the share of its energy requirements covered by its own renewable energy generation, thus reducing its carbon footprint. According to STGP, the Merger would also allow it to achieve complementary geographic growth.¹¹
16. ADL submitted that Summerleaze and ADL consider that [X] and therefore intend to transfer the ownership of the ADL business to a responsible purchaser at an acceptable sale price.¹²
17. Documentary evidence seen by the CMA does not contradict the Parties' submissions set out above.

PROCEDURE

18. The Merger was considered at a Case Review Meeting.¹³

JURISDICTION

19. The CMA has jurisdiction over transactions where it considers that it is or may be the case that a relevant merger situation has been created. In anticipated mergers, a relevant merger situation exists where the following criteria are met:¹⁴
 - (a) two or more enterprises have ceased to be distinct, or there are arrangements in progress or in contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct; and
 - (b) either:
 - (i) the UK turnover associated with the enterprise being acquired exceeds £70 million (the '**turnover test**'); or

⁹ Annex 006 to the Merger Notice.

¹⁰ Merger Notice, paragraphs 2.3-2.4.

¹¹ Merger Notice, paragraph 2.14.

¹² Merger Notice, paragraph 2.16.

¹³ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), January 2021, page 43 and paragraphs 9.29-9.41.

¹⁴ [CMA2](#), chapter 4.

- (i) the enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, together supply or acquire at least 25% of all those particular goods or services of that kind supplied in the UK or in a substantial part of it (the ‘**share of supply test**’).¹⁵

20. Each of STGP and ADL is an enterprise within the meaning of section 129 of the Act.¹⁶ As a result of the Merger, STGP will acquire sole control of the entire issued share capital of ADL, such that the two enterprises will cease to be distinct within the meaning of section 26 of the Act.¹⁷

Turnover test

21. In the most recent financial year, ADL had a turnover below £70 million so the turnover test in section 23(1)(a)(b) of the Act is not satisfied.

Share of supply test

Legal test

- 22. The share of supply test should be satisfied in relation to the UK or a ‘substantial part’ of it.
- 23. In deciding whether the area or areas affected by the particular merger are a substantial part of the UK, the area or areas considered must be of such a size, character and importance as to make them worth consideration for the purposes of merger control.¹⁸ In making this assessment, the CMA considers multiple potential factors such as: the size, population, social, political, economic, financial and geographic significance of the specified area or areas, and whether it is (or they are) special or significant in some way.¹⁹ There is no need for the substantial part of the UK to constitute an undivided geographic area, and where the Merger involves multiple local areas, the CMA may consider the local areas collectively to determine if the merger affects a substantial part of the UK.²⁰

Parties’ submissions

24. The Parties submitted that the share of supply test would be satisfied on the basis that there are a limited number of local areas within the UK (which may constitute a substantial part of the UK) in which the Parties will, after the Merger, supply 25% or

¹⁵ [CMA2](#), paragraph 4.3 and section 23 of the Act.

¹⁶ [CMA2](#), paragraphs 4.6-4.15.

¹⁷ [CMA2](#), paragraphs 4.5 and 4.16.

¹⁸ *R v MMC, ex parte South Yorkshire Transport Ltd* [1993] 1 WLR 23 at 32B (South Yorkshire). See also [CMA2](#), paragraphs 4.61–4.63. The CMA will consider the aggregated local areas only if they form part of the same merger.

¹⁹ [CMA2](#), paragraph 4.62.

²⁰ [CMA2](#), paragraph 4.63 and [Henderson Retail/Martin McColl](#), paragraphs 19-30.

more of the Food Waste AD capacity. Accordingly, the Parties acknowledged that the share of supply test would be satisfied in respect of the Merger.²¹

CMA assessment

25. As further discussed below, the Parties overlap in the supply of Food Waste AD in certain local areas in the UK. The CMA identified relevant local areas for the purposes of the share of supply test pursuant to the methodology used to calculate catchment areas in relation to the competitive assessment (as set out in the competitive assessment section below). The CMA considers that the Parties have a combined share above 25% in the supply of Food Waste AD²² with an increment arising from the Merger in at least two local areas – namely, the local areas surrounding each of ADL’s site in Bishop’s Cleeve and STGP’s site at Roundhill.²³
26. Further, the CMA considers that the local areas constitute, whether individually or collectively, a substantial part of the UK given that they capture a significant part of the population and territory of Gloucestershire and counties in the West Midlands region (in particular, Worcestershire).

Conclusion on jurisdiction

27. For the reasons set out immediately above, the CMA believes that it is or it may be the case that the share of supply test in section 23 of the Act is met in the supply of Food Waste AD in a substantial part of the UK.
28. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
29. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 23 June 2023 and the statutory 40 working day deadline for a decision is therefore 18 August 2023.

COUNTERFACTUAL

30. The CMA assesses a merger’s impact relative to the situation that would prevail absent the merger (ie the counterfactual).²⁴
31. In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment. The CMA will generally conclude on the counterfactual

²¹ Merger Notice, paragraph 5.3.

²² Based on the relevant sites’ capacity.

²³ Market shares are set out in Table 2 in the competitive assessment below.

²⁴ [CMA’s Merger Assessment Guidelines \(CMA129\)](#), March 2021, chapter 3.

conditions of competition broadly – that is, conditions of stronger competition or conditions of weaker competition. In its assessment, the CMA seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger, and it will generally focus only on potential changes to the pre-merger conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment. The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the merger, with any detailed description of competitive conditions better considered in the competitive assessment.²⁵

32. In the present case, the CMA assessed the Merger against the prevailing conditions of competition.
33. The Parties submitted that the appropriate counterfactual should take into account the pending legislative developments discussed at paragraphs 50 to 54 below, which are likely to provide ‘significant stimulus for new growth and expansion of Food Waste AD sites in England and Wales’.²⁶ The CMA considers that the prevailing conditions of competition include upcoming changes in the relevant legislation which are expected to increase the volume of available segregated food waste and, in turn, demand for Food Waste AD. However, the CMA has considered it more appropriate to assess the implications of these market developments as part of the competitive assessment rather than the counterfactual.²⁷

Grantham site

34. The Parties also submitted that, absent the Merger, ADL had [X]. In this regard, the Parties explained that [X].²⁸ The CMA did not find it necessary to reach a conclusion on the likelihood of ADL installing a Food Waste AD plant on its land in Grantham absent the Merger, as whether or not ADL installs this plant, the Parties’ combined market share in the local areas around Grantham would fall well below the threshold of the filter applied by the CMA, which is discussed further at paragraphs 65 and 66 below.²⁹
35. Accordingly, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

FRAME OF REFERENCE

36. Market definition provides a framework for assessing the competitive effects of a merger. The assessment of the relevant market is an analytical tool that forms part

²⁵ [CMA129](#), paragraphs 3.7-3.11.

²⁶ Merger Notice, paragraph 11.2.

²⁷ This approach is consistent with [CMA129](#), paragraph 3.10.

²⁸ Merger Notice, paragraphs 14.8-14.9 and footnotes 38 and 3.

²⁹ This approach is consistent with [CMA129](#), paragraph 3.9.

the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.³⁰ The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging 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.³¹

37. As noted above, the Parties overlap in the supply of Food Waste AD.

Product scope

Parties' submissions

38. The Parties submitted that the exact frame of reference could be left open as there is no plausible basis on which the Merger could give rise to an SLC.
39. The Parties also submitted that the narrowest product frame of reference would be no wider than Food Waste AD for all types of segregated food waste as: (i) Food Waste AD is distinct from other methods of waste disposal, processing and recycling; and (ii) Food Waste AD is a separate process from AD used to dispose of other organic waste (eg crop waste) due to technical and regulatory requirements.³²
40. In addition, the Parties submitted that it was not appropriate to further segment the product frame of reference by either the type of food waste, in particular on the basis of its calorific content, or depending on whether the feedstock is solid or liquid.³³ The Parties also submitted that segmentation by customer group, ie whether the processing was for a local authority or commercial food waste contract, would not be appropriate as there was no fundamental difference in the feedstocks, the technology, the processing lines or the operational practices.³⁴

CMA assessment

41. The evidence that the CMA has received supports a market definition limited to Food Waste AD. The CMA notes that crop waste can be processed in some Food Waste AD facilities but this requires additional equipment.
42. The evidence suggests that it would also not be justified to widen the product frame of reference to include other types of food waste processing (for example, landfill, or aerobic systems such as in-vessel composting (**IVC**)). Third-party evidence indicates that there are not many other waste management services or processes

³⁰ [CMA129](#), paragraph 9.1.

³¹ [CMA129](#), paragraph 9.4.

³² Merger Notice, paragraph 12 and paragraphs 13.3-13.5.

³³ Merger Notice, paragraphs 13.6-13.14.

³⁴ Merger Notice, paragraphs 13.15-13.18.

that could be considered substitutable with Food Waste AD. Many customers identified that their preferred option for food waste disposal was Food Waste AD.³⁵ Some respondents to the CMA's questionnaires indicated that IVC could not compete financially with Food Waste AD, noting that it does not generate gas or electricity. Other solutions, such as landfill or 'energy from waste', where food waste is incinerated, were described by some third parties as less attractive because they are less environmentally sustainable than Food Waste AD.³⁶ Therefore, the CMA does not consider that the product scope should be widened to include these alternatives.

43. In addition, the CMA does not consider it is appropriate to further segment the product scope by type of food waste or by customer. Third parties indicated that Food Waste AD providers compete for and treat different types of waste (eg packaged or unpackaged food waste or food waste of different calorific content).³⁷
44. Third parties also indicated that Food Waste AD providers compete to collect food waste from different types of customer groups. While the CMA notes that there tend to be differences between customers of different sizes (eg small customers or larger customers) and types (local authorities and commercial customers) with respect to the contracts they typically enter into (eg their duration or the volumes the contract is for), and the process followed to select Food Waste AD suppliers, the CMA has found these differences to be insufficient to require further segmentation of the market. Instead, where relevant, the CMA has taken these differences into account in the competitive assessment section below.
45. Accordingly, the CMA considers the appropriate product frame of reference to be the supply of anaerobic digestion processing of segregated food waste (ie Food Waste AD).

Geographic scope

Parties' submissions

46. The Parties submitted that the narrowest geographic frame of reference would be local in scope, based on the local area around each individual Food Waste AD plant.³⁸ The Parties explained that local authority contracts cover the geographic area of that local authority, and that for commercial contracts, transportation distances depend on the calorific value of the feedstocks: the lower the calorific value, the less economically viable it is to transport the feedstocks over large distances.³⁹

³⁵ Responses to the CMA customer questionnaire, June 2023.

³⁶ Responses to the CMA customer questionnaire, June 2023.

³⁷ Responses to the CMA competitor questionnaire, June 2023.

³⁸ Merger Notice, paragraph 13.23.

³⁹ Merger Notice, paragraphs 13.19-13.23.

CMA assessment

47. The CMA received evidence indicating that customers have a strong preference for providers that operate in their local areas.⁴⁰ In addition, customers are increasingly aware of their carbon footprint and prefer local solutions which reduce the emissions generated from the disposal of their food waste.⁴¹ Competitors also confirmed a focus on collecting waste from customers located close to their plants.⁴² The CMA also found that haulage fees (transport costs) are a significant factor in determining the prices that Food Waste AD providers offer.⁴³
48. Accordingly, the CMA considers that competition between Food Waste AD providers occurs on a local basis and that it is therefore appropriate to conduct the competitive assessment on a local basis by reference to catchment areas. The methodology followed to identify relevant catchment areas is discussed within the competitive assessment below.

Conclusion on frame of reference

49. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of anaerobic digestion processing of segregated food waste (ie Food Waste AD) at a local level.

INDUSTRY CONTEXT

Legislative developments

50. In November 2021, the UK parliament passed the Environment Act 2021 into law, which, among other things, grants the Secretary of State the power to introduce mandatory food waste collections for both domestic and commercial food waste.⁴⁴ The Parties submitted that they expect these requirements to be introduced in March 2026,⁴⁵ after the implementation of the extended producer responsibility scheme, which the UK Government recently announced is currently scheduled for October 2025 after being deferred for a year.⁴⁶
51. The Parties submitted that the UK Government's proposal to introduce the mandatory separate collection of food waste, although not yet in effect, is already increasing the availability of segregated food waste as local authorities seek to get ahead of this legislative development. The Parties expect the availability of segregated food waste to increase even further once the requirement is made

⁴⁰ Responses to the CMA customer questionnaire, June 2023.

⁴¹ Responses to the CMA customer questionnaire, June 2023; note of a call with a third party, May 2023.

⁴² Responses to the CMA competitor questionnaire, June 2023.

⁴³ Merger Notice paragraph 12.56.3 and footnote 162.

⁴⁴ See: [World-leading Environment Act becomes law - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/world-leading-environment-act-becomes-law), and sections 45A, 45AZA and 45AZB of the [Environment Act 2021](https://www.gov.uk/government/legislation/the-environment-act-2021), as substituted by section 57.

⁴⁵ Issues Letter Response, paragraph 2.5.2.

⁴⁶ See: [Update on packaging reforms to help drive down inflation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/update-on-packaging-reforms-to-help-drive-down-inflation).

mandatory,⁴⁷ but submitted that the increase in segregated food waste volumes will be a smooth, rather than abrupt, process.⁴⁸ Overall, the Parties expect that the anticipated legislative requirement will result in [X] of available feedstock, with a particular impact in the Midlands and north of England where most local authorities do not currently collect segregated food waste.⁴⁹

52. When asked how the upcoming requirement will affect competition in the Food Waste AD market, the majority of Food Waste AD customers indicated that this would create a surge in demand for AD plant capacity.⁵⁰ Third-party evidence indicates that while there is currently spare capacity in the market to accommodate demand, the increase in the availability of feedstock is likely to overtake capacity in many regions, resulting in prices increasing over the next few years.⁵¹
53. The CMA considers that, while it is currently unclear when the requirement for local authorities to segregate food waste collection will be introduced, the third-party evidence is consistent with the Parties' submissions and indicates that the Food Waste AD sector will see a significant increase in demand for AD capacity.
54. The CMA will consider these factors where relevant in its competitive assessment.

COMPETITIVE ASSESSMENT

Nature and parameters of competition

Parties' submissions

55. The Parties submitted that the most important factor considered by customers when selecting a Food Waste AD provider is price, and that proximity is important to the extent that it affects haulage costs (and in turn, price).⁵²
56. The Parties submitted that other (non-price) factors affecting customers' choice of Food Waste AD processor include reputation, risk (ie available contingency capacity), proximity of the processing site, and vehicle turnaround time, noting that the importance of different factors may vary between customers, for example depending on whether they are smaller commercial customers or local authorities.⁵³
57. The Parties submitted that the only types of customers that award contracts on the basis of formal tender processes are local authorities and large supermarket chains

⁴⁷ Merger Notice, paragraph 11.2.

⁴⁸ Issues Letter Response, paragraph 2.5.2.

⁴⁹ Merger Notice, paragraphs 2.14, 11.2 and 22.3. See also: [Consistency in Household and Business Recycling in England - Defra - Citizen Space](#).

⁵⁰ Responses to the CMA customer questionnaire, June 2023; note of a call with a third party, May 2023.

⁵¹ Responses to the CMA customer questionnaire, June 2023.

⁵² Merger Notice, paragraphs 12.54-12.56.

⁵³ Merger Notice, paragraph 12.56.

(eg Sainsbury's or Asda). Other customers typically award contracts on an informal basis.⁵⁴

58. The Parties submitted that when deciding whether to submit a bid for a tender they consider the level of available resources required, the location of the customer, their knowledge of competing sites and their ability to deliver a competitive solution.⁵⁵

CMA assessment

59. The evidence gathered by the CMA from third parties indicates that almost all customers consider price and the location of a Food Waste AD site to be the most important factors when selecting a provider.⁵⁶ Third-party evidence indicates that the location of a Food Waste AD site is likely to affect the price charged to a customer, as haulage costs are an important determinant of price.⁵⁷ Furthermore, the CMA understands from third parties that location is important to some customers who prefer not to have their food waste transported over long distances due to the emissions associated with haulage.⁵⁸
60. The evidence from Food Waste AD competitors indicated that location, strength of local competition and the level of local demand were the main considerations for most when selecting which contracts to pursue.⁵⁹
61. Other factors which third parties regarded as important for customers when selecting a provider included:⁶⁰
- (b) The capacity of a provider, which was raised by almost half of customers and by almost all large customers, as an assurance that the provider can handle their waste volumes.
 - (c) The contingency plans offered by a provider, where some customers noted that providers who operated multiple sites were more likely to have reliable contingency plans.
 - (d) The reputation and reliability of a provider (for example no history of compliance breaches), which was seen as critical by some larger customers.
62. A small number of third parties also mentioned that multi-site providers can allow large customers to use a variety of their sites to optimise waste movements, which

⁵⁴ Merger Notice, paragraphs 15.87 and 15.89.

⁵⁵ Merger Notice, paragraph 15.82.

⁵⁶ Responses to the CMA customer questionnaire, June 2023.

⁵⁷ Responses to the CMA customer questionnaire, June 2023.

⁵⁸ Responses to the CMA customer questionnaire, June 2023.

⁵⁹ Responses to the CMA competitor questionnaire, June 2023.

⁶⁰ Responses to the CMA customer questionnaire, June 2023.

is beneficial from a customer's perspective.⁶¹ The ability to provide haulage was also seen as helpful but ultimately of limited importance from a customer's perspective.

63. The CMA considers that the above evidence indicates that the supply of Food Waste AD is relatively undifferentiated, and that price (largely related to distance) is the main parameter of competition, although other factors may also be important to some customers.

Horizontal unilateral effects

64. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.⁶² Horizontal unilateral effects are more likely when the merging parties are close competitors. 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 horizontal unilateral effects in the supply of Food Waste AD on a local basis.
65. As noted above, STGP has eight plants in the UK, while ADL has two operating plants, with planning permission to build an additional plant in Grantham. When analysing whether a merger may result in a realistic prospect of an SLC in cases involving a number of local overlaps where the merger firms tailor their offering to each specific local area, the CMA may use a filtering methodology based on market shares.⁶³ A filter screens out overlap areas where it is not realistic for competition concerns to arise, thereby identifying remaining areas for assessment.⁶⁴
66. The CMA also considered the use of a decision rule in this case. However, since: (a) as explained in paragraph 95 below, only one local area failed the filter, allowing the CMA to feasibly conduct a detailed competitive assessment of this area; and, in conjunction, (b) the CMA has not reviewed any past cases in the Food Waste AD industry, which as explained in paragraphs 50 to 54 above is currently experiencing significant change, the CMA considered that a filtering approach would be more appropriate in the present case.

Design of the filter

67. With respect to the filter methodology, the CMA considered the following:
- (a) the appropriate catchment areas within which to consider competitive constraints;

⁶¹ Responses to the CMA customer questionnaire, June 2023.

⁶² [CMA129](#), paragraph 4.1.

⁶³ [CMA129](#), paragraph 4.32.

⁶⁴ [CMA129](#), paragraph 4.32.

- (b) the appropriate measure to assess the market share in each local area; and
- (c) the appropriate threshold(s) above which the CMA considers that competition concerns may arise.

Catchment areas

Parties' submissions

68. The Parties submitted that it would be most appropriate to use 80%⁶⁵ individual site catchment areas rather than an aggregate measure such as the simple or weighted average catchment area.⁶⁶ According to the Parties, individual catchment areas better capture differences in the conditions of competition between sites, such as the distance over which it is economically viable to source feedstock. For example, the Parties consider that conditions of competition can vary due to the nature of local customers, the waste they produce, the strength of local competition and the size of the site, with larger sites requiring higher total calorific inputs.⁶⁷ The Parties added that the significant degree of variance between individual catchments in this case is such that the average bears little relation to any of the actual catchment areas, with the individual catchment areas being either significantly above or below the average.⁶⁸
69. Additionally, the Parties argued that individual catchment areas are an appropriate measure of competition as data from 2021 and 2022 suggests limited variability year-on-year, and that even if there was large volatility between years, this would not necessarily make an average catchment area more appropriate.⁶⁹
70. The Parties further submitted that if the CMA were to adopt an average catchment area approach, a weighted average should be used instead of a simple average. In the Parties' view, data from sites with lower processing volumes is more susceptible to outliers or to being skewed by the inclusion of a single large customer.⁷⁰ Moreover, the Parties submitted that using a simple average would be distortive of the underlying customer data, as it gives equal weight to each individual catchment area without considering the number and size of customers within them. The Parties submitted that a weighted average, by giving more weight to the catchment areas of

⁶⁵ An 80% catchment area in this case is determined by the driving distance or drive time within which 80% of customer volumes were received in a given year.

⁶⁶ Parties' submission dated 3 July 2023, paragraph 4.7. See footnote 77 for an explanation of how each average measure is calculated.

⁶⁷ Issues Letter Response, paragraphs 5.4, 5.5.

⁶⁸ Issues Letter Response, paragraph 5.8.

⁶⁹ Parties' submission dated 3 July 2023, paragraph 5.2–5.4.

⁷⁰ Parties' submission dated 3 July 2023, paragraph 5.5–5.7.

sites with larger processed volumes, would ensure that the datapoints contained within them have an appropriate impact on the resultant aggregate catchment.⁷¹

71. Finally, the Parties submitted that the CMA should measure catchment areas based on road miles from the centroid site.⁷² They suggested that road miles are a more reliable basis for calculating distance than drive time as they are not affected by factors such as travel conditions, time of day, and speed limits. The Parties noted that data on drive time was sourced from Google Maps over multiple days and times and so it is not entirely consistent.⁷³ The Parties also submitted that some local authority contracts include specific haulage cost calculations based on the number of miles travelled.⁷⁴

CMA assessment

Individual vs average catchment areas

72. The CMA considers that the size of individual catchment areas is different across sites, but that there is no evidence indicating that these differences are due to differences in customers' willingness to use Food Waste AD suppliers located further away. There is also no evidence suggesting that this variance can be explained systematically (eg differences between sites located in urban and rural areas).
73. The CMA also considers that while the size of each catchment area did not vary greatly between 2021 and 2022, it can change materially over a longer timescale due to its sensitivity to single large customers⁷⁵ rather than any changes to customer preferences. Therefore, individual catchment areas are unlikely to be reflective of the area within which competitors compete in the long run.⁷⁶
74. The CMA therefore considers it appropriate to use an average catchment measure as a basis for its market share calculations.

⁷¹ Parties' submission dated 3 July 2023, paragraph 5.8. In relation to this issue, the Parties acknowledged that the question of which type of average catchment area to use would, in practice, have only marginal impact on the relevant market shares in this case (Issues Letter Response, paragraph 5.15).

⁷² Parties' response to the CMA's Request for Information dated 28 April 2023, (RFI3), paragraph 1.4.

⁷³ Parties' submission dated 3 July 2023, paragraph 4.7.2. In relation to this issue, the Parties acknowledged that the question of whether to use road miles or drive time would, in practice, have only marginal impact on the relevant market shares in this case (Issues Letter Response, paragraph 5.19).

⁷⁴ Issues Letter Response, paragraph 5.18.

⁷⁵ For example, paragraph 15.65 of the Merger Notice notes that if [X] were to win a contract with [Y], the site would have to cease serving some other customers to make space, materially reducing the size of the catchment area.

⁷⁶ As an illustrative example, using an individual catchment area when assessing STGP Cassington's market share produces a [X]% market share based on a [Y] road mile catchment, which is unlikely to be a true reflection of competition in the local area.

Weighted vs simple averages

75. The CMA considers that, in the present case, it is appropriate to use simple averages as opposed to weighted averages.⁷⁷
76. The CMA has not received evidence to suggest that the capacity (and by proxy, the processed volumes) of a Food Waste AD site affects the size of the catchment area of that plant, such that larger sites would better account for the locations of customers than sites with lower capacity. The CMA does not consider that giving greater weight to the catchment areas of the Parties' larger sites would make the average catchment area a better indicator of the local area where competition primarily takes place.⁷⁸
77. In addition, the simple average catchment area calculated for the Parties' sites was broadly in line with information received from third parties regarding the distance their customers' waste travelled.⁷⁹
78. Overall, the CMA considers it appropriate to use the simple average catchment areas in its market share calculations as it considers that there is limited evidence to support giving greater weight to catchment areas of larger sites.

Distance vs drive time

79. The CMA considers that, in the present case, catchment areas are best measured using drive time rather than road miles as transportation vehicles are impacted by the factors raised by the Parties in paragraph 71 above (travel conditions, time of day, and speed limits). Furthermore, the Parties acknowledged that for cost and efficiency reasons, multiple waste deliveries can be allocated to a single delivery driver, with the number of deliveries limited by travel time due to maximum working hours requirements.⁸⁰ Additionally, some third parties indicated that factors such as road infrastructure and speed limits impact journey time/efficiency which is an important determinant of the economic viability of a provider.⁸¹ While a small number of local authorities included cost calculations based on the number of miles travelled, the CMA does not consider this to be a compelling reason to use distance in road miles over drive time.

⁷⁷ The simple average is calculated as the simple arithmetic mean of the individual catchment areas identified for each of the Parties' sites. The weighted average is where the individual catchment areas of each of the Parties' sites are weighted relative to the total processed volume of that site.

⁷⁸ For example, under a weighted average approach, the catchment area of the site with the smallest processing capacity ([><]) would have the lowest weight assigned to it, which would not be supported by the evidence.

⁷⁹ Responses to the CMA customer questionnaire.

⁸⁰ Merger Notice, paragraph 14.20.

⁸¹ Responses to the CMA customer questionnaire.

Conclusion on catchment areas

80. The CMA considers that an 80% catchment area calculated using a simple average, measured using drive time (ie 71 minutes) captures the effective competitor set faced by a Food Waste AD site, as competing sites outside of this area likely pose a weaker competitive constraint due to the importance of proximity in customers' choices.

Choice of concentration measure

Parties' submissions

81. The Parties' market shares analysis uses the capacity of a site (in kilotonnes of food waste per annum (**ktpa**)) as the concentration measure.
82. The Parties submitted a hypothetical alternative approach of using the number of AD sites as a proxy for the competitive constraint posed by Food Waste AD processors would not be appropriate as it would not give weighting to the relative size or capacity of Food Waste AD processors.⁸²
83. The Parties also submitted that market shares should be calculated using a linear distance weighting of a site's total capacity based on its distance from the centroid (with sites further from the centroid being assigned lower weight).⁸³ The Parties submitted that this would better reflect the competitive constraint posed by competitor sites as distance is an important parameter of competition and hence competitors further from the centroid are likely to compete less strongly for customers near the centroid site.⁸⁴

CMA assessment

84. The CMA considers that market shares based on food waste capacity is the most appropriate measure of concentration in this case.
85. The CMA agrees with the Parties that a count of AD sites is not an appropriate measure of the competitive constraint posed by third parties. The CMA considers that, for a given combined market share, in this case, fascia counts are not useful in determining the competitive constraint from third parties in a local area. This is because, although a greater number of alternative third-party sites may indicate that a customer has more alternative providers to consider, the number of suppliers does not indicate their relative size and therefore competitive strength. See paragraph 61, where the CMA discusses the importance of the size of a provider to customers.

⁸² Merger Notice, paragraph 14.22.

⁸³ RF13, paragraph 2.1.5.

⁸⁴ Parties' submission dated 3 July 2023, paragraph 5.14.

86. The CMA also does not consider that it has sufficient evidence to suggest that additional drive time makes a material difference to the competitive constraint provided by a competitor, to the extent that the competitive constraint from this competitor has to be adjusted by altering its capacity. It therefore does not consider distance weighting to be appropriate.

Choice of threshold

87. In determining the appropriate threshold for the filter approach discussed above, the CMA considered both a combined market share threshold of 30% and a 35% with a 5% increment.

Parties' submissions

88. The Parties submitted that a 35-40% threshold should be used in the present case because:⁸⁵
- (a) The Food Waste AD sector is characterised by out-of-market geographic constraints. Some food waste (such as in the case of higher-calorie waste) may travel greater distances beyond the size of the catchment area of a given site (depending on economic conditions).
 - (b) ADL Bishop's Cleeve has limited spare capacity and so its market share based on total capacity likely overstates its competitive significance on a forward-looking basis.
 - (c) The Food Waste AD sector is a dynamic market involving a number of strong competitors both at a national and local level.
 - (d) There will be significant opportunity for entry and expansion in this sector driven by incoming legislative changes.
 - (e) The Parties are not close competitors as shown by the Parties' bidding, opportunities and customer analysis, and their internal documents.

CMA assessment

89. At the outset, the CMA notes that the design of a filter should rely on the specific facts of each case, and that the use of different thresholds in other cases does not require the CMA to apply the same thresholds in the present case. Rather, the CMA's assessment of mergers is inevitably case-specific, and the CMA must consider each merger with due regard to the particular circumstances of the case.⁸⁶

⁸⁵ Parties' submission dated 3 July 2023, paragraph 4.5.

⁸⁶ [CMA129](#), paragraph 1.12.

90. In the present case, the CMA considers that competition concerns may arise in areas where the Parties' combined market share exceeds 35% with a 5% increment, for the reasons set out below:
- (a) Food Waste AD providers offer a relatively undifferentiated service meaning there is a high degree of substitutability between providers.
 - (b) The capacity of individual plants is unlikely to fluctuate on a regular basis due to the building works or planning permission requirements involved with increasing capacity.
 - (c) The CMA considers that the market for Food Waste AD is, at present, dynamic and there is evidence of recent and planned entry and expansion, as detailed in paragraphs 117 to 119 below.
 - (d) It is expected that the new legislation discussed in paragraphs 50 to 54, alongside economic drivers, will lead to further entry and expansion beyond that referred to in (c) above, and spare capacity, in and around the relevant local areas.

Market shares in local catchment areas and filtering results

91. On the basis of the methodology described above, the CMA has carried out a local area market share analysis to identify any specific areas that require a detailed competitive assessment.

Parties' market share analysis

92. The Parties submitted local area market share analyses using a range of methodologies and outlined that their preferred methodology was to calculate distance-weighted market shares using 80% individual catchment areas determined by customer distance in road miles.⁸⁷ Under this methodology, no sites had a combined share greater than 35% with an increment greater than 5%.

CMA's market share analysis and filtering results

93. Based on the methodology described in the sections above, which involves using 80% simple average catchment areas determined by customer distance in drive time minutes, the CMA has calculated market shares using sites' total capacities (not weighted by distance from the centroid) for each of the catchment areas around the Parties' sites. This is outlined in Table 1 below.

⁸⁷ Merger Notice, paragraphs 14.19 and 14.21; Parties' submission dated 3 July 2023, paragraph 5.17.

94. The CMA has used data provided by the Parties (including data from the Anaerobic Digestion and Bioresources Association (**ADBA**))⁸⁸ in its market share calculations, supplemented with data from third parties.⁸⁹ For the local area around ADL Bishop's Cleeve (which the CMA identified as requiring a detailed competitive assessment as described immediately below), this includes additional information regarding STGP's Roundhill plant and Northwick Power's plant, for which planning permission has already been obtained. More specifically, with respect to these plants the CMA considered the following:

- (a) Northwick Power: The ADBA database provided by the Parties lists Northwick Power's total capacity as 70 ktpa. However, Northwick confirmed that it has obtained planning permission to increase its capacity to 120 ktpa, and [redacted]. Northwick expects [redacted], and [redacted].⁹⁰
- (b) STGP Roundhill: STGP submitted that STGP Roundhill has obtained planning permission and has applied for a permit to the Environment Agency for a capacity increase from 48.5 ktpa to 75 ktpa. STGP expects to [redacted].⁹¹

95. The only local area that the CMA identified as requiring a detailed competitive assessment was the area around ADL Bishop's Cleeve, on the basis of the Parties' combined local market share being higher than 35% with an increment above 5%, as set out in Table 1 below.

Table 1: Local area market shares for all STGP and ADL sites where a site of the other Party is present in any of its catchment areas⁹²

<i>Site</i>	<i>Owner</i>	<i>Combined Share</i>	<i>Increment</i>
Cassington	STGP	[30-40, <35]%	0%
Coleshill	STGP	[20-30]%	0%
Derby	STGP	[20-30]%	[0-5]%
Roundhill	STGP	[30-40, <35]%	[5-10]%
Bishop's Cleeve	ADL	[30-40, >35]%	[5-10]%
Grantham (not yet constructed)	ADL	[10-20]%	[0-5]%

Source: Data from the Parties (including ADBA data) and third parties.

96. Table 2 below sets out market shares for all competitors within the catchment area of ADL Bishop's Cleeve, calculated using the above methodology.

⁸⁸ Two additional operational sites not included in the ADBA database were also included in the CMA's market share calculations after the Parties became aware of them during the course of the CMA's investigation. These are Raw Energy's Charlton Park Biogas site ([redacted] ktpa capacity) and GENeco's Bristol site (57 ktpa capacity).

⁸⁹ To that effect, the CMA asked competitors to provide, for each of their sites, the total Food Waste AD capacity (in ktpa) (excluding crop waste).

⁹⁰ Response to the CMA follow-up questions from a third party, August 2023.

⁹¹ Parties' response to the CMA's Request for Information dated 28 June 2023, (**RFI7**), paragraphs 2.1-2.3.

⁹² For the avoidance of doubt, the methods of calculating catchment areas considered when producing Table 1 were individual catchments, simple average catchments, weighted average catchments and combined customer list catchments.

Table 2: Local area market shares for ADL Bishop’s Cleeve⁹³

<i>Entity</i>	<i>Market share</i>
Severn Trent	[30-40]%
Andigestion	[5-10]%
Merged Entity	[30-40, >35]%
Northwick Power	[20-30]%
GENeco/Wessex Water	[10-20]%
Raw Energy	[5-10]%
Rose Hill Farm	[5-10]%

Source: Data from the Parties (including ADBA data) and third parties.

97. The CMA considers that the Merged Entity’s combined market share of [30-40, >35]% (the largest in the area) with a [5-10]% increment indicates potential competition concerns requiring a more detailed local competitive assessment.

Competitive assessment of the local area around ADL Bishop’s Cleeve

98. The CMA has regard to the following in its assessment of the effects of the Merger in the local area that failed the filter:

- (a) closeness of competition;
- (b) competitive constraints from existing competitors;
- (c) specific planned entry and expansion; and
- (d) broader entry and expansion.

Closeness of competition

Parties’ submissions

99. The Parties submitted that ADL Bishop’s Cleeve is subject to significant capacity constraints as it is serving a long-term contract for Gloucestershire County Council (**GCC**) that accounts for the majority (around [60-70]%) of its total capacity and the majority ([60-70]%) of its processed tonnage. The contract ends in 2029 [X].⁹⁴

100. The Parties’ submitted that ADL Bishop’s Cleeve’s significant capacity constraints mean that [X] for at least as long as the GCC contract is in place.⁹⁵ The Parties noted that STGP’s internal documents support this notion.⁹⁶ They also argued that

⁹³ One competitor was excluded from the CMA’s market share calculations as it told the CMA it does not principally compete for food waste.

⁹⁴ Merger Notice, paragraphs 15.98.1 and 15.107.

⁹⁵ Issues Letter Response, paragraph 7.27.

⁹⁶ Issues Letter Response, paragraph 7.28.

ADL Bishop's Cleeve's capacity constraints are exacerbated by [REDACTED]⁹⁷ and that planning permission restrictions require it to source 80% of its feedstock from within Gloucestershire, [REDACTED].⁹⁸

101. As evidence that they do not compete closely, the Parties also submitted an analysis of their customer locations, a formal tender bidding analysis, an analysis of their existing customer and prospective customer offer lists and a survey of STGP's customers. More specifically:
- (a) The Parties submitted that the 'most significant area of competitive overlap' between the Parties is likely to be [REDACTED].⁹⁹ As most of ADL Bishop's Cleeve's customers [REDACTED],¹⁰⁰ the Parties consider that this indicates a lack of closeness of competition between the Parties.¹⁰¹
 - (b) The Parties submitted an analysis of their bids in formal tenders for local authority and large commercial contracts over the last ten and five years respectively. Specifically, they submitted that they were competitors for only [REDACTED] local authority contract out of [REDACTED] bid processes identified, and for [REDACTED] out of [REDACTED] commercial customer contracts. The Parties submitted that this analysis shows they rarely encounter each other in tenders and are therefore not meaningful competitors in the local area around ADL Bishop's Cleeve.¹⁰²
 - (c) The Parties also compared their own customer lists against the offers they made to each other's existing customers. This analysis shows that STGP submitted [REDACTED] offers to customers of ADL Bishop's Cleeve and ADL Bishop's Cleeve has submitted offers to [REDACTED] customers of STGP. The Parties' analysis showed that STGP has won [REDACTED] customer from ADL Bishop's Cleeve and that ADL Bishop's Cleeve has won [REDACTED] customers from STGP. The Parties submitted that this analysis shows that the Parties do not compete closely in the local area around ADL Bishop's Cleeve as they rarely submit offers to each other's customers and that customers rarely switch between them.¹⁰³
 - (d) The Parties submitted a customer overlaps analysis for customers that award contracts without formal tenders by comparing the Parties' customer lists. On this basis, the Parties noted they only have [REDACTED] customers in common.¹⁰⁴
 - (e) The Parties submitted a survey of STGP's customers to gauge their awareness of STGP's competitors. Of the [REDACTED] STGP customers who responded, only [REDACTED] indicated any awareness of ADL (at any site) as a

⁹⁷ Issues Letter Response, paragraph 7.29.

⁹⁸ Issues Letter Response, paragraph 7.27.3(b).

⁹⁹ Merger Notice, paragraphs 15.67-15.77.

¹⁰⁰ *Id.* [REDACTED].

¹⁰¹ Issues Letter Response, paragraph 7.8.

¹⁰² Merger Notice, paragraphs 16.1-16.7.

¹⁰³ Merger Notice, paragraphs 15.86-15.106.

¹⁰⁴ Merger Notice, paragraph 15.93.

potential competitor of STGP. Of those [X], only [X] used ADL, and [X] had not done so. According to the Parties, this demonstrates there is minimal overlap of the Parties' customers.¹⁰⁵

102. The Parties' submitted that STGP's internal documents¹⁰⁶ demonstrate a lack of any meaningful competition between the Parties as ADL is mentioned infrequently. When it is mentioned, it is given no particular emphasis; rather, STGP often focuses on other competitors.¹⁰⁷

CMA assessment

103. The CMA considers that third-party evidence suggests that the Parties are competitors in the local area around ADL Bishop's Cleeve, but they may not currently be particularly close competitors. The CMA considers that this may reflect the capacity constraints faced by the Parties, including particularly at ADL's Bishop's Cleeve site:

- (a) Less than half of customers submitted that they consider both STGP and ADL as viable alternatives to their current provider.¹⁰⁸
- (b) Only two customers indicated that the Parties competed closely or very closely, and in both cases the customers indicated that this was their assessment of likely competition between the Parties based on the distance between them. The large majority of customers indicated that the Parties competed only relatively closely, not closely, or did not compete at all. A number of customers also indicated they were unable to provide a view on competition between the Parties. A larger proportion of competitors indicated that the Parties competed closely or very closely, but it remains the case that less than half of third parties responding to the CMA suggested that the Parties compete closely.^{109,110}
- (c) A minority of third parties (both competitors and customers) expressed concerns about the impact of the Merger on competition and consumers, with some of these concerns referring to STGP's large existing presence in the industry.¹¹¹

104. The CMA considers that, at face value, the analysis of bids both in formal tenders and for customers who do not use formal tenders shows that the Parties are not

¹⁰⁵ Merger Notice, paragraph 15.104.

¹⁰⁶ ADL does not produce internal documents [X]. Merger Notice, paragraph 9.5.

¹⁰⁷ Merger Notice, paragraph 15.108.

¹⁰⁸ Responses to the CMA customer and competitor questionnaires.

¹⁰⁹ Responses to the CMA customer and competitor questionnaires.

¹¹⁰ The CMA notes that, although some third parties did not indicate that the Parties' competed closely in the local area around ADL Bishop's Cleeve, such responses commonly did not provide any associated reasoning or simply stated that they did not have sufficient knowledge to comment on the matter, or that they were in a long-term contract and therefore had no immediate concerns.

¹¹¹ Responses to the CMA customer and competitor questionnaires.

close competitors. The CMA considers that these results may reflect the capacity constraints faced by the Parties, including particularly at ADL's Bishop's Cleeve site. The Parties' submissions support this position as they acknowledge that capacity constraints [REDACTED].¹¹²

105. While STGP's internal documents¹¹³ do not suggest a significant focus on ADL as a competitor, the CMA considers that these documents do not provide useful insight into the closeness of competition between the Parties in the local area around ADL Bishop's Cleeve. STGP's internal documents rarely assess competition or competitive factors in the local area around ADL Bishop's Cleeve. However, in one document where the local area around ADL Bishop's Cleeve was considered, [REDACTED].¹¹⁴

106. As regards some of the other evidence put forward by the Parties (in particular the customer location analysis), the CMA considers that is subject to various limitations for the reasons set out below:

- (a) **Customer locations analysis.** The CMA considers that it is unclear whether this evidence supports a lack of closeness of competition given that providers may be more likely to win customers in areas where competitive constraints are weaker. The Parties' own submissions relating to the use of individual catchment areas suggest [REDACTED].¹¹⁵
- (b) **Customer list overlaps analysis.** Regarding customer overlaps between the Parties, the CMA considers that it is not clear whether this indicates a lack of closeness of competition as overlaps may indicate both substitutability or complementarity between the Parties' sites. Further, only customers who multi-home (ie use multiple providers at once) would be captured by this analysis, and evidence from third parties indicates that multi-homing is not common in the AD industry.¹¹⁶
- (c) **Customer survey.** The CMA considers that the survey of STGP's customers is not relevant to an assessment of the extent of competition between STGP and ADL in the area around ADL Bishop's Cleeve, as the survey included customers of STGP's sites across the UK.¹¹⁷ Customers who are located outside of the local area around ADL Bishop's Cleeve would not be expected to be aware of providers in that area.

107. The CMA considers that capacity constraints can affect the extent to which suppliers are able to compete with one another at a given point in time, especially where

¹¹² Issues Letter Response, paragraph 7.14.2.

¹¹³ ADL does not produce internal documents [REDACTED]. Merger Notice, paragraph 9.5.

¹¹⁴ STGP Internal Document, Annex 096 to the Merger Notice, [REDACTED].

¹¹⁵ Issues Letter Response, paragraph 5.6.2.

¹¹⁶ Responses to the CMA customer and competitor questionnaires.

¹¹⁷ Merger Notice, paragraph 15.104.

capacity is committed to long-term contracts as in the case of ADL Bishop's Cleeve's contract with GCC. The CMA considers that these capacity constraints may at least in part explain the evidence presented by the Parties that shows limited overlap in both formal tender bids and informal customer offers, as well as some of the third-party evidence suggesting that the Parties compete but not particularly closely.

108. The CMA does not consider that capacity constraints alone should imply that ADL's Bishop's Cleeve is not a close competitor to STGP's sites in its catchment area, not least because the capacity of other competitors in the area may also be tied up in longer-term contracts with other customers.
109. However, although the CMA has seen evidence that ADL Bishop's Cleeve has [redacted],¹¹⁸ it does consider that ADL Bishop's Cleeve's capacity constraints weaken the extent to which it can compete with STGP's sites within the catchment area compared to a scenario where its capacity is not committed to a long-term contract.
110. Overall, the CMA considers that the Parties are not particularly close competitors in the Bishop's Cleeve area, and this is likely to continue to be the case for the duration of the GCC contract.

Competitive constraints from existing competitors

Parties' submissions

111. The Parties submitted that they will remain subject to significant competition from existing competitors following the Merger. The Parties submitted that while constraints from competitors are to a degree accounted for by market shares, this cannot be to the exclusion of other evidence.¹¹⁹ In particular:
 - (a) Northwick Power is located 31 minutes from ADL Bishop's Cleeve – materially closer than STGP's Cassington and Roundhill sites (61 and 62 minutes respectively).¹²⁰
 - (b) Northwick Power and ADL Bishop's Cleeve are therefore likely to compete closely for a significant number of customers, and ADL management considers [redacted].¹²¹ The Parties also submitted that Northwick Power has competed aggressively in the past – for example, it competed for and initially won the Warwickshire County Council contract despite not having a facility in the area and competing against two other bidders who did have a local facility.¹²² Finally, the Parties submitted that Northwick Power has a strong incentive to

¹¹⁸ Merger Notice, paragraph 15.65 and Figure 58.

¹¹⁹ Issues Letter Response, paragraph 8.7.

¹²⁰ Issues Letter Response, paragraph 8.5.1.

¹²¹ Issues Letter Response, paragraph 8.8.2.

¹²² Merger Notice, paragraphs 15.110.

compete strongly on price to fill its capacity in future, given the upcoming expansion of its plant from 70 to 120 ktpa (as discussed above).¹²³

- (c) Rose Hill Farm is located 37 minutes from ADL Bishop's Cleeve. The Parties submitted that it would therefore compete more closely with ADL Bishop's Cleeve than either of the relevant STGP sites, and also noted that it has an operational, engineering and technical partnership with Veolia, and held the [§<] contract prior to it being awarded to ADL Bishop's Cleeve.¹²⁴
- (d) Raw Energy is a new entrant, having opened its site in 2022, while GENeco has recently expanded its capacity from 40 to 57 ktpa. The Parties submitted that both these sites will therefore be incentivised to compete strongly on price to fill their new capacity.¹²⁵

CMA's assessment

- 112. The CMA considers the market share analysis set out above already reflects the operational capacity and location of competitors by limiting the relevant geographic market to the catchment area around ADL Bishop's Cleeve.
- 113. However, the CMA acknowledges the Parties' submissions, in particular in relation to Northwick Power. Northwick Power's location suggests that it is likely to compete closely for a significant proportion of customers around ADL Bishop's Cleeve, including the customers in locations that STGP would compete most closely for. This is because STGP's two closest plants are located to the north (Roundhill) and the east (Cassington) of ADL Bishop's Cleeve, while Northwick Power is located directly northeast, between ADL Bishop's Cleeve and STGP's two plants. Third-party evidence indicated that both of the Parties compete with Northwick, and that ADL in particular competes with Northwick for both local authority and commercial contracts.¹²⁶ On the other hand, the CMA has placed limited weight on the Parties' submissions regarding Northwick Power's bid for the Warwickshire County Council contract, as STGP ultimately won this contract after [§<].¹²⁷
- 114. While Rose Hill Farm is also located closer to ADL Bishop's Cleeve than either of the STGP sites, the CMA does not agree that it would therefore compete more closely with ADL Bishop's Cleeve than either of the STGP sites. Rose Hill Farm is located to the west of ADL Bishop's Cleeve, directly opposite from STGP's Cassington plant. In the absence of a full customer locations analysis (including all customers, not just the Parties' customers), the CMA is unable to make clear

¹²³ Issues Letter Response, paragraph 8.8.4.

¹²⁴ Issues Letter Response, paragraphs 8.5 and 8.10.1.

¹²⁵ Issues Letter Response, paragraphs 8.10.2–8.10.3.

¹²⁶ Note of a call with a third party, May 2023.

¹²⁷ Merger Notice, footnote 157 and Figure 57.

conclusions on whether Rose Hill Farm's location is more or less competitive than STGP's plants for customers in the relevant market.

115. The CMA's market share analysis already incorporates Northwick Power's proposed expansion from 70 to 120 ktpa, as well as Raw Energy's recent entry and GENeco's recent expansion from 40 to 57 ktpa, as described at paragraph 111(d) above. The CMA acknowledges that it is likely that each of these alternative competitors would be able to compete in the Bishop's Cleeve area given that their capacity is less likely to be tied into existing contracts.
116. Overall, the CMA considers that post-acquisition, the Merged Entity will face competitive constraints from existing competitors. For the most part, these constraints are accurately reflected by market shares. In addition, as set out below, the CMA has received evidence of further planned entry and expansion that it has taken into account in its assessment.

Specific planned entry and expansion

117. The CMA has received evidence of planned entry by Stenergy and planned expansion by one existing provider ([redacted]), both of which would affect available capacity in the ADL Bishop's Cleeve catchment area. While these providers have not received planning permission yet, they confirmed to the CMA that they are either expecting it shortly (Stenergy) or are planning to apply for it soon ([redacted]).

(a) Stenergy:

- (i) Stenergy confirmed to the CMA that it submitted a Planning Application to develop a new plant for the processing of Food Waste AD at Hindlin Lane, Worcester, with a capacity of approximately 48.5 ktpa.¹²⁸ A decision on Stenergy's planning application is due by November 2023, and Stenergy submitted that if planning permission is obtained, it is confident that the plant will be fully operational within two years.
- (ii) Stenergy further explained that it is planning to commence construction works immediately after planning permission has been attained, and that it does not foresee any external factors or conditions that would prevent it from developing a fully operational plant within two years of planning permission being obtained.¹²⁹

(b) [redacted]:

¹²⁸ Issues Letter Response, paragraph 3.9.1; Response to the CMA follow-up questions from a third party, July 2023.

[redacted]
¹²⁹ Email received from a third party, July 2023. [redacted]

- (iii) One existing provider, [X], told the CMA that it is looking to expand the capacity of its [X] site by [X]% from [X] ktpa to [X] ktpa.¹³⁰

118. On this basis, the CMA considers that:

- (a) Stenergy is likely to develop an additional Food Waste AD plant with an approximate capacity of 48.5 ktpa in a timely manner; and
- (b) One existing competitor, [X], may also expand its capacity by [X]% to [X] ktpa in a timely manner.

119. The CMA therefore considers that it is likely that material new capacity is going to be introduced in the local area around ADL Bishop's Cleeve in a timely manner. Specifically, once this expected capacity is taken into account, the Merged Entity's market share would reduce from [30-40, >35]% to [30-40, <35]%, which would be below the relevant threshold at which the CMA would have concerns in this market. Even only taking into account Stenergy's proposed entry, the Parties' combined share still reduces to [30-40, <35]%, ie also below the relevant threshold.

Broader entry and expansion

120. In its competitive assessment, the CMA may take into account entry and/or expansion plans of rivals who will enter or expand irrespective of whether the merger proceeds.¹³¹

Parties' submissions

121. As discussed in paragraph 51 above, the Parties submitted that the requirement to collect food waste separately under the Environment Act 2021 will lead to increased demand for Food Waste AD capacity.

122. The Parties also noted that the expected increase in demand for Food Waste AD is driven by broader economic and environmental incentives. In particular, Food Waste AD is cheaper and more environmentally friendly than other waste disposal processes such as landfill.¹³²

123. In this context, the Parties estimate that local authority food waste volumes in the geographic area surrounding ADL Bishop's Cleeve will increase by [X]%.¹³³ In the Parties' view, this will be driven by new segregated food waste volumes from local authorities who do not currently collect food waste separately (or do so only to a limited degree). Information provided by the Parties also shows that some of these local authorities have started to engage with the market, via market testing or

¹³⁰ Note of a call with a third party, August 2023. [X]

¹³¹ [CMA129](#), paragraph 8.28.

¹³² Issues Letter Response, paragraph 2.2.

¹³³ Issues Letter Response, paragraph 3.3.

procurement processes, in relation to their respective food waste volumes.

According to the Parties, demand from commercial customers will also increase, as they are subject to the same upcoming legislative requirements and incentives to use Food Waste AD.¹³⁴

124. The Parties anticipate that increased demand for Food Waste AD will result in additional market entry and expansion, including in the area around ADL Bishop's Cleeve, as the availability of feedstocks¹³⁵ is a key factor in determining whether such growth is viable. The Parties gave an example that Ancala, the owner of Biogen, has recently announced a new £500 million investment fund for their UK assets, which include Biogen.¹³⁶ Regarding the area around ADL Bishop's Cleeve, the Parties estimated that, based on the ADBA database, there is approximately [X] ktpa of extra capacity at planning permission stage.¹³⁷
125. The Parties also provided data showing that both food waste collections and Food Waste AD capacity have grown significantly across the UK nations, with 79 new AD plants being built in England in the last decade, up from just six in 2010.¹³⁸
126. The Parties estimated that, to meet the additional demand for Food Waste AD that the legislative change will generate, the market will require new Food Waste AD plants from 2025 with a total of [X] large Food Waste AD plants needed by 2030 in England.¹³⁹

CMA assessment

127. The CMA considers that evidence from third parties is consistent with the Parties' submissions, indicating that providers are likely to enter or expand in the Food Waste AD sector following the expected legislative changes.
128. Most responses (from both competitors and customers) discussing entry and expansion suggested that, in order to satisfy the increased demand, existing providers were likely to expand their sites and develop new ones. One third party suggested that some entirely new providers may also enter the market, and another indicated that the expected increase in demand may dissuade existing providers from exiting the market by securing their long-term future. Another response indicated that the surge of food waste in the industry will likely ease the current pressure on AD operators to fill their facilities with feedstock.¹⁴⁰

¹³⁴ Issues Letter Response, paragraph 3.7.

¹³⁵ The principal input for Food Waste AD plants (also referred to as "feedstock") is segregated food waste supplied by local authorities and commercial enterprises. Merger Notice, paragraph 8.

¹³⁶ Issues Letter Response, paragraph 9.5.6(A).

¹³⁷ Issues Letter Response, paragraph 3.8.1.

¹³⁸ Parties' response to the CMA's Request for Information dated 28 July 2023, (RFI9), paragraphs 6.5-6.6.

¹³⁹ Issues Letter Response, paragraph 9.12.1.

¹⁴⁰ Responses to the CMA customer and competitor questionnaires.

129. The CMA notes that some third parties indicated that there may be a shortfall in capacity before new capacity is developed in response to increased demand, with one third party indicating that there is unlikely to be sufficient capacity to balance demand with supply for a number of years.¹⁴¹
130. Separately, regarding the Parties' submission that there is around [X] ktpa of capacity in planning permission stage in the local area around ADL Bishop's Cleeve, the CMA notes that some of this capacity has been accounted for in the CMA's assessment of specific entry and expansion into the local area around ADL Bishop's Cleeve, as set out in paragraphs 117 to 119 above.
131. Nevertheless, the CMA considers overall that, while a shortfall in capacity may be expected in the short term, Food Waste AD is a dynamic market and entry and expansion is likely to continue in the short-term and in the longer-term. The CMA has taken account of this likely future disruption in the market for Food Waste AD in determining the threshold applied as part of the filtering exercise.

Barriers to entry and expansion

Parties' submissions

132. The Parties submitted that there are no material barriers to entry in the Food Waste AD market.¹⁴² The Parties explained that building a Food Waste AD site involves: (i) identifying and obtaining the necessary land rights, (ii) obtaining planning permission and environmental permit, (iii) construction and ABP Regulations approval, and (iv) feeding and plant commissioning.¹⁴³
133. The Parties estimated that, once a suitable site has been secured, the time required to implement the steps described immediately above would total approximately 24-30 months.¹⁴⁴
134. The Parties also submitted that:
- (a) in some cases, contracts are awarded to plants yet to be constructed;¹⁴⁵
 - (b) there are examples of contracts awarded to suppliers with no existing reputation or track record in the sector;¹⁴⁶ and
 - (c) new facilities can still benefit from certain subsidies, which facilitates new entry.¹⁴⁷

¹⁴¹ Responses to the CMA customer and competitor questionnaires.

¹⁴² Issues Letter Response, paragraph 9.4.

¹⁴³ Merger Notice, paragraph 22.14.

¹⁴⁴ Merger Notice, paragraph 22.15.

¹⁴⁵ Issues Letter Response, paragraph 9.7.1.

¹⁴⁶ Issues Letter Response, paragraph 9.7.3.

¹⁴⁷ Issues Letter Response, paragraph 9.7.4.

135. The Parties also submitted that, although it is typically the case that facilities with larger processing capacities are more profitable as the incremental revenue from larger volumes outstrips the increase in marginal operating costs, and that site operators are incentivised to maximise the volumes processed at an individual site, there are no relevant economies of scale for existing players.¹⁴⁸

CMA assessment

136. As discussed in paragraph 128 above, most third parties that have responded to the CMA's questionnaire indicated that they expect capacity to expand as a result of legislative changes.

137. When asked about barriers to entry and expansion, some third parties submitted that various UK Government subsidies, which were accessible to older sites, are no longer available to new facilities,¹⁴⁹ and this may therefore constitute a barrier to new entry. Competitors also mentioned that delays to receiving the appropriate permissions (eg from the Environmental Agency), competition from other providers, securing staff with appropriate expertise and the overall cost of designing and constructing a Food Waste AD facility were other barriers to entry and expansion faced by new and existing providers.¹⁵⁰

138. While third party evidence indicates that security of demand is important in this sector and that contracts are typically awarded to operational plants,¹⁵¹ the CMA has seen examples of contracts being awarded to sites yet to be constructed and has heard that local authorities may be willing to consider plants yet to be constructed in their tender processes.¹⁵² For example, ADL Bishop's Cleeve competed for and won its initial GCC contract when the plant had not yet been constructed. The CMA also understands that STGP Cassington was awarded a contract from Oxfordshire County Council prior to its construction and that Devon Council awarded a Food Waste AD contract to a provider that, at the time of the award, did not have an operational AD plant.¹⁵³

139. The CMA considers that the Food Waste AD sector has grown significantly in the past decade, with a large number of new Food Waste AD plants being built across the UK from a very small base.

140. The CMA considers that entry and expansion is likely to continue, also in response to the expected increase in demand driven by legislative changes referred to in

¹⁴⁸ Merger Notice, paragraph 22.23.

¹⁴⁹ Responses to the CMA competitor questionnaire.

¹⁵⁰ Responses to the CMA competitor questionnaire.

¹⁵¹ Responses to the CMA competitor questionnaire.

¹⁵² Note of a call with a third party, May 2023.

¹⁵³ Issues Letter Response, paragraph 9.7.1.

paragraphs 50 to 54, despite there being a degree of uncertainty as to when the legislative requirement to segregate food waste collection will enter into force.

141. On the basis of this evidence and also taking into account the ability of large customers to award contracts to sites that are not yet operational, the CMA considers that barriers to entry and expansion are not material.

Conclusion on horizontal unilateral effects

142. As set out above, the CMA found that ADL Bishop's Cleeve's capacity constraints impact its ability to compete in the short-term and hence, any loss in competition is smaller than what its capacity and market share may suggest. The evidence also suggests that there are a number of existing competitors that compete with the Parties and future competitors planning to enter and expand whose additional capacity is not yet committed to customers. The CMA considered that, within the timeframe of the GCC contract, these new competitors are likely to be stronger competitors for customers in the relevant catchment area than ADL Bishop's Cleeve.
143. The CMA has therefore concluded that in the short-term and in the longer-term, the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of Food Waste AD.

DECISION

144. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
145. The Merger will therefore **not be referred** under section 33(1) of the Act.

Sorcha O'Carroll
Senior Director
Competition and Markets Authority
18 August 2023