

## Statement of Issues

Public version

### Can Plan/Nelmac

22 March 2021

### Introduction

1. On 18 December 2020, the Commerce Commission registered an application (the Application) from Can Plan Nelson Limited (Can Plan) to acquire certain assets from the waste collection business of Nelmac Limited (Nelmac) in Nelson. The assets form part of Nelmac's 'Betta Bins' business (the Proposed Acquisition).<sup>1</sup>
2. To clear an application, the Commission must be satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. This Statement of Issues (Sol) sets out the potential competition issues we have identified following our initial investigation. This is so that Can Plan and Nelmac (together, the Parties) and other interested parties can provide us with submissions relating to those concerns.
4. In reaching the preliminary views set out in this Sol, we have considered information provided by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues) and our views may change, and new competition issues may arise, as the investigation continues.

### The concerns we are testing

5. We are still to conclude on the relevant markets for our assessment of the Proposed Acquisition. However, at this stage, we are testing the potential for the Proposed Acquisition to substantially lessen competition due to:
  - 5.1 horizontal unilateral effects resulting from a loss of competition in the supply of residential general waste collection services in the geographic area of competitive overlap between the Parties (ie, Richmond, Stoke, Nelson City and the area extending to Cable Bay: postcodes 7020, 7011, 7010 and 7071 respectively);<sup>2</sup> and/or
  - 5.2 horizontal coordinated effects resulting from a change in market conditions making coordination more likely, more complete, or more sustainable in the

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<sup>1</sup> A public version of the Application is available on our website at: [www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/](http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/).

<sup>2</sup> Figure 1 shows a map of the area of geographic overlap.

supply of residential general waste collection services in the area of geographic overlap and potentially the wider Nelson-Tasman region.

6. While the Commission's preliminary view is that the Proposed Acquisition may not substantially lessen competition in the supply of commercial or green waste collection services in the geographic area of overlap, we are continuing to investigate these questions. We also continue to investigate whether the Proposed Acquisition could give rise to a substantial lessening of competition in the supply of residential general and green waste collection services due to conglomerate effects.
7. We explain our current concerns below and invite submissions on our position.

### Process and timeline

8. We have agreed an extension with Can Plan until 14 May 2021 from the initial 40 working day statutory timeframe in which to decide on the Application.
9. The Commission would like to receive submissions and supporting evidence from the Parties and other interested parties on the issues raised in this Sol. We request responses by close of business on **7 April 2021**, including a public version of any submission made. Please read the instructions for making a submission, which can be found on page 16 of this document.
10. All submissions received will be published on our website with appropriate redactions.<sup>3</sup> All parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on **14 April 2021**.
11. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) so that we can work with you to accommodate your needs where possible.

### The Parties

#### Can Plan

12. Can Plan is a family-owned company which collects waste from small (typically residential) customers that use its wheelie bins and bags. Can Plan also collects waste from (typically commercial) customers that use larger bins. It also provides a skip hire service and a fortnightly green waste collection service.<sup>4</sup> Can Plan provides these services in the Nelson-Tasman region (including Nelson City, Stoke, Richmond, Māpua, Brightwater, Wakefield and Motueka).

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<sup>3</sup> Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each piece of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

<sup>4</sup> According to the Application, green waste is collected fortnightly as this tends to be less voluminous than general waste.

### **Nelmac and Betta Bins**

13. Betta Bins is the waste collection division of Nelmac, which is owned by Nelson City Council (NCC). Betta Bins collects waste from small customers that use its bags and wheelie bins, and also offers large bin collection services for large customers. Like Can Plan, Betta Bins provides a fortnightly green waste collection service.
14. Betta Bins only serves customers located in the area encompassing Richmond, Stoke, Nelson City and to Cable Bay in the east.

### **Background to the industry**

15. Waste collection services in the Nelson region are operated by private collection companies (such as the Parties) on a user-pays basis. This is different to regions that have rates-based kerbside waste collection. NCC operates rates-based recycling services.<sup>5</sup>
16. Tasman District Council (TDC) runs a rates-based collection of rubbish bags and recycling in the Tasman region, which extends into Richmond and parts of Stoke.<sup>6</sup>
17. Waste collection services in the Nelson-Tasman region include the sale/rental and collection of:
  - 17.1 for smaller customers: wheelie bins (typically 120L, 140L, or 240L in size) and rubbish bags (typically 65L), which are collected weekly by side-load or rear-load rubbish trucks;<sup>7</sup> and
  - 17.2 for larger commercial customers: larger bins (660L and larger), which are typically collected by either a rear-end-lifter (REL) truck or a front-end-loader (FEL) truck.
18. Smaller customers in Nelson-Tasman buy and use waste collection services in several ways.
  - 18.1 They can buy branded “prepaid” rubbish bags from retail outlets (eg, Betta Bins bags or Can Plan bags), which are then collected by the relevant supplier when put out on collection day.<sup>8</sup>
  - 18.2 They can rent wheelie bins on a monthly basis or for longer periods (eg, up to 12 months). The price paid covers both the rental of the bin and regular collection during the rental period.<sup>9</sup>

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<sup>5</sup> NCC currently contracts with Nelmac to provide this service. The contract will be reviewed in 2023.

<sup>6</sup> TDC currently contracts with Smart Environmental to provide these services.

<sup>7</sup> There are also front-load trucks. We understand these are not used to collect wheelie bins but can be used for collecting bags (see the Application at [9]). Rear-load and rear-end-lifter trucks are different to each other.

<sup>8</sup> These can also be ordered online directly from some suppliers.

<sup>9</sup> Green waste collection services are typically paid for in this way.

- 18.3 They can purchase wheelie bins up-front and then pay for each collection individually by buying bin tags or bin liners and putting their bin out with a tag or liner on collection days as frequently as needed.

### The relevant markets

19. We define markets in the way that we consider best isolates the key competition issues that arise from a merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services that fall outside the market, but which would still impose some degree of competitive constraint on the merged entity.
20. When defining relevant markets we consider whether, in response to a small price increase in the relevant products:
- 20.1 customers could/would switch to alternative products or locations (known as ‘demand-side’ substitution); and
- 20.2 firms could/would switch production to the products or supply locations in question without incurring significant costs (known as ‘supply-side’ substitution).
21. Can Plan submitted that the relevant markets for the Commission’s consideration of the Proposed Acquisition are waste collection services in the Nelson-Tasman region for each of the following putative customer-based markets:<sup>10</sup>
- 21.1 wheelie bins (typically 120L, 140L, or 240L) and bags (65L); and
- 21.2 large bins, including REL bins (660L and 1100L) and FEL bins (typically in 1,500L, 3m<sup>3</sup> and 4m<sup>3</sup>).
22. Can Plan also submitted that:
- 22.1 green waste and general waste collection are in the same market, submitting that both customers and suppliers can easily substitute between the services;<sup>11</sup> and
- 22.2 waste collection services are in a separate market to recycling, but recycling places an “out-of-market” constraint on waste collection. Can Plan submitted that, in response to a price increase, customers can substitute a significant portion of their general waste into their recycling bins,<sup>12</sup> and then pay less for waste collection (eg, by switching from using a 240L wheelie bin to a 120L wheelie bin or 65L bag).

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<sup>10</sup> The Application at [89].

<sup>11</sup> At [101].

<sup>12</sup> At [100].

23. We have not reached final views on any of the relevant markets. However, we set out below our preliminary views based on our enquiries to date.

### **Smaller wheelie bins and larger bins appear to be in distinct product markets**

24. Consistent with Can Plan's submissions and the Commission's previous investigations,<sup>13</sup> our preliminary view is that there are likely to be separate product markets for the provision and collection of:
- 24.1 bins up to 240L; and
- 24.2 660L and larger bins.<sup>14</sup>
25. We consider that customers who generate small amounts of waste are unlikely to demand larger bins, and that customers who generate large amounts of waste are, in many cases, unlikely to demand multiple smaller bins.
26. Turning to the supply side, different vehicles are needed to collect smaller bins (up to 240L) compared to larger bins.<sup>15</sup> We understand that new vehicles can be relatively expensive,<sup>16</sup> and so buying one could constitute material expansion and not mere supply-side substitution.<sup>17</sup>

### **Rubbish bags and smaller wheelie bins may be in the same product market**

27. In principle, rubbish bags and smaller wheelie bins may both be options for customers with smaller amounts of waste, and also seem to have similar prices.<sup>18</sup> However, the evidence is currently inconclusive as to whether these products are in the same market. We have seen evidence that bags and wheelie bins are not always close substitutes for small customers. However, we have also seen evidence that they may be closer substitutes on the supply side.
- 27.1 Some smaller customers seem to prefer bags or even feel compelled to use them.<sup>19</sup> We have heard that some customers prefer bags because they can be more conveniently purchased than bins (as part of a supermarket shop, for example) and require no contract or other dealings with the supplier.<sup>20</sup>

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<sup>13</sup> *Transpacific Industries Group (NZ) Limited and Ironbridge Capital Pty Limited* Decision 604; *Transpacific Industries Group (NZ) Limited and Ironbridge Capital Pty Limited* Decisions 622, 623, 624, and 625.

<sup>14</sup> Commerce Commission interviews with [ ] (28 January 2021) and [ ] (3 February 2021).

<sup>15</sup> In order to collect 660L bins and above, a rear-end or front-end lifter truck is needed. On the other hand, smaller wheelie bins can only be collected using a side-loader truck: Commerce Commission interview with [ ] (28 January 2021).

<sup>16</sup> [ ] for a LEV truck and [ ] for a tri-combi truck which is capable of collecting waste and recycling: Commerce Commission interview with [ ] (10 February 2021).

<sup>17</sup> Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.16.2].

<sup>18</sup> [ ] responses to Commission 21 January 2021 requests for information.

<sup>19</sup> Commission interview with [ ] (10 February 2021).

<sup>20</sup> Commerce Commission interview with [ ] (25 January 2021).

- 27.2 We have also heard that customers located on steep hills may only be able to use bags because, we have been told, trucks with mechanical arms cannot operate in such areas.<sup>21</sup>
28. On the other hand, there is evidence to suggest that suppliers who do not offer bags could quickly and cost-effectively begin doing so in response to price increases for bag collections. This is because bags appear to be inexpensive and easy to obtain in bulk.<sup>22</sup> However, we continue to investigate whether access to retail shelf space would make it difficult for a supplier to begin supplying bags.
29. For the purposes of this Sol, we proceed on the basis that small bins and bags are in the same market. We consider that our competition analysis remains the same, regardless of whether small bins and bags are in separate or the same markets.

### **Potential separate markets for residential and commercial customers**

30. Although the Application did not raise this issue, we have seen evidence that suppliers can and do price discriminate.<sup>23</sup>
- 30.1 We have evidence that smaller commercial customers can be charged more than residential customers for 120L or 240L bins when the costs of supply appear to be the same.<sup>24</sup> We continue to investigate whether there is also price discrimination in the supply of larger bins. Price discrimination is possible because waste is collected from customers' addresses, so commercial and residential customers can usually be distinguished from each other.
- 30.2 There is evidence that commercial customers are sometimes offered stricter contract terms than residential customers. For example, we have seen evidence of commercial customers being held to one-year contracts when residential customers can rent bins on a monthly basis.<sup>25</sup>
31. Our preliminary view is that the relevant product markets may be further divided between residential and commercial customers. We are continuing to investigate the extent of price discrimination, and we invite submissions on this point.

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<sup>21</sup> Commission interview with [ ] (10 February 2021).

<sup>22</sup> Commerce Commission interview with [ ] (10 February 2021). We heard that the wholesale price of bags is typically around one-tenth of the typical retail price, and that large suppliers can meet bulk orders of bags with just a few weeks' notice.

<sup>23</sup> For instance, Commerce Commission interviews with [ ] (28 January 2021), [ ] (3 February 2021) and [ ] (10 February 2021).

<sup>24</sup> Commerce Commission interview with [ ] (10 February 2021).

<sup>25</sup> Commerce Commission interview with [ ] (27 January 2021). We note that customer contracts will be subject to the unfair contract terms laws under the Fair Trading Act 1986.

**We are still investigating whether green waste collection and general waste collection are in separate markets**

32. As noted above, Can Plan submitted that green waste and general waste collection are in the same market, submitting that firms can substitute between collecting either kind of waste using the same equipment, although not at the same time.<sup>26</sup>
33. Consistent with Can Plan's submission, market participants have told us that the same bins and trucks used to collect general waste can be used to collect green waste.<sup>27</sup> However, we are still investigating whether, in practice, green waste collection suppliers could viably switch to collecting general waste in response to a small price increase in general waste, and vice-versa. Also, even if supply-side substitution is possible, the conditions of competition in the collection of general and green waste may differ, as noted in the competition analysis below. On a conservative basis, we consider general waste and green waste separately in this Sol.

**The relevant geographic market may be no wider than Richmond, Stoke and Nelson, and it may be narrower**

34. In the Application, Can Plan submitted that there is one relevant geographic market encompassing the whole of the Nelson-Tasman region. Can Plan submitted that:
- 34.1 on the demand side, customers commonly buy residential and commercial waste services from suppliers based outside of their district council region; and
- 34.2 on the supply side, waste collection companies can serve customers in both Nelson and Tasman, and there are no barriers to a commercial waste collection company expanding into any part of either of the two regions.
35. Our investigation to date has indicated that the Parties overlap mainly in the collection of small bins and rubbish bags in a contained geographic area: from Richmond in the west, through Stoke, into Nelson City and extending to Cable Bay in the east.<sup>28</sup> This area is shown in Figure 1, below.

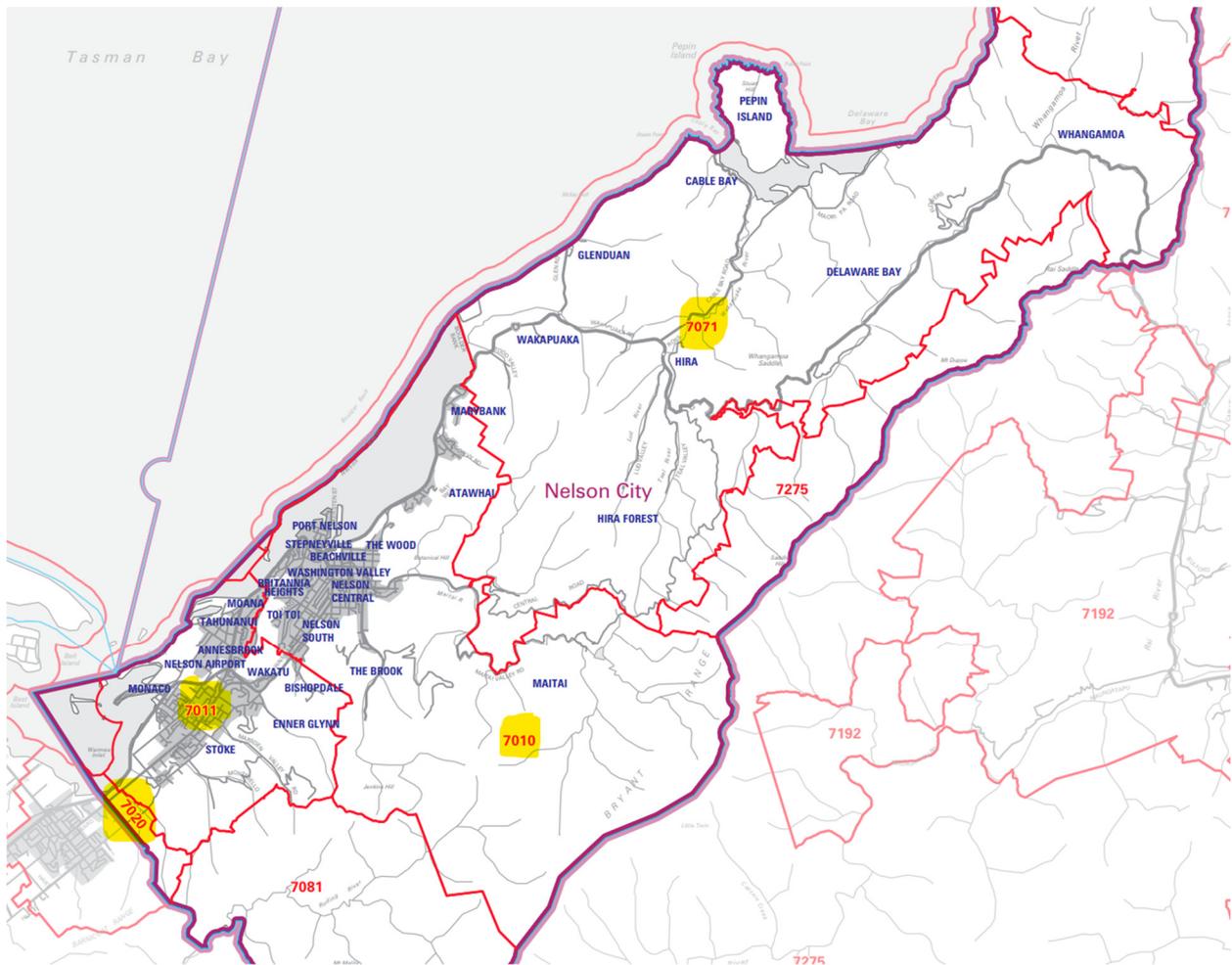
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<sup>26</sup> The Application at [101].

<sup>27</sup> Commerce Commission interview with [ ] (3 February 2021).

<sup>28</sup> Encompassing the 7010, 7011, 7020 and 7071 postcodes.

Figure 1: Map of overlap postcodes (highlighted yellow)<sup>29</sup>



Notes: Purple line: NCC boundary; Red lines: postcode boundaries; Yellow highlighting indicates postcodes where the Parties overlap

36. While Can Plan operates more widely throughout Nelson-Tasman, Nelmac's Beta Bins business only operates in these four postcodes.<sup>30</sup>
37. We are testing:
  - 37.1 whether the geographic market is as wide as Nelson-Tasman, or whether the four postcodes constitute the widest possible extent of the relevant geographic market; and
  - 37.2 whether there could be more than one geographic market within this area, including whether conditions of entry and expansion vary between postcodes or between other geographic boundaries.
38. We invite submissions on these points.

<sup>29</sup> New Zealand Post Nelson City postcode map:  
<https://www.nzpost.co.nz/sites/nz/files/uploads/shared/postcodemaps/nelson-city.pdf>.

<sup>30</sup> Beta Bins has previously operated in other areas, including into Tasman as far as Brightwater in the west and towards Mapua: email from Nelmac to the Commerce Commission [ ].

## With and without scenarios

39. Assessing whether a substantial lessening of competition is likely requires us to:
  - 39.1 compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the acquisition, often referred to as the factual) with the likely state of competition if it does not (the scenario without the acquisition, often referred to as the counterfactual); and to
  - 39.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.
40. With the Proposed Acquisition Can Plan would acquire assets from Nelmac, being the Betta Bins residential general and green waste and commercial waste collection businesses.
41. Without the Proposed Acquisition, Can Plan submitted that Betta Bins would be sold to the next preferred bidder.<sup>31</sup>
42. We continue to investigate what the appropriate counterfactual is, including whether Nelmac would be likely to sell Betta Bins to another in-market competitor. For the purposes of this Sol we assume that Can Plan and Betta Bins would continue to compete independently.

## Competition concern: horizontal unilateral effects

43. Horizontal unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that a market participant can profitably increase prices above (and/or reduce quality below) the level that would prevail without the merger.
44. The Parties overlap significantly in collecting smaller bins and bags from residential customers in the four postcodes of overlap (below, the “geographic area of overlap.”) Our current evidence indicates that users of smaller bins in this area are largely residential customers. Also, the Parties do not overlap significantly in collecting bins of any size from commercial customers.
45. Accordingly, we focus on the potential loss of competition from the Proposed Acquisition in the collection of smaller bins and bags for residential customers, considering general waste and green waste separately. Even if the evidence ultimately indicates that residential and commercial customers are in the same market, we consider that the analysis would be fundamentally unchanged in the geographic area of overlap.

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<sup>31</sup> The Application at [87].

## Residential general waste collection services

46. For the reasons set out below, we are not currently satisfied that the Proposed Acquisition would not be likely to substantially lessen competition in the supply of residential general waste collection services in the geographic area of overlap.

### *Reduction in competition in Richmond, Stoke and, particularly, in Nelson*

47. Based on the evidence currently before us, the merged entity would have a very high customer share (at least [ ]%) in the collection of bins and bags for residential customers across, and in each of, the four postcodes of overlap, whichever way markets are defined. The aggregation with the Proposed Acquisition would be approximately [ ]%.<sup>32</sup>
- 47.1 In East Nelson (postcode 7071), the merged entity would hold [ ]% of the customer share.
- 47.2 In each of the other postcodes, the merged entity would hold [ ]% or more of the customer share.

### *Constraint from entry or expansion is unclear*

48. In respect of the level of competitive constraint provided by the Parties' rivals, in the Application Can Plan submitted that:
- 48.1 Smart is Can Plan's closest competitor in the Nelson-Tasman area.<sup>33</sup> Can Plan submitted that Smart actively targets Can Plan's customers,<sup>34</sup> and the fact that Smart has a national presence means it can quickly and easily expand;<sup>35</sup>
- 48.2 Waste Management and EnviroWaste could quickly and easily begin supplying wheelie bins in Nelson;<sup>36</sup> and
- 48.3 new competitors could enter to constrain Can Plan post-acquisition.<sup>37</sup>
49. However, on the evidence currently before us, we are not satisfied that competition from either the Parties' current rivals in the relevant area, or from new entry, would be sufficient to constrain the merged entity. Currently:
- 49.1 while Smart is the third-largest national supplier of waste collection services behind Waste Management and EnviroWaste, it does not have a significant presence in the geographic area of overlap.;

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<sup>32</sup> Focusing on residential bin customers in the overlap postcodes, Can Plan's share across the four postcodes would grow by approximately [ ]% with the acquisition of Betta Bins. Focusing on residential customers for bins and bags, Can Plan's share would grow by approximately [ ]%. These figures are approximate due to various issues with all parties' data.

<sup>33</sup> The Application at [119].

<sup>34</sup> At [120].

<sup>35</sup> At [124].

<sup>36</sup> At [129], [143].

<sup>37</sup> At [146].

- 49.2 Waste Management appears to focus on commercial customers in the relevant areas. While it does offer a wheelie bin service for residential customers, this is significantly smaller than the merged entity's would be; and
- 49.3 EnviroWaste does not offer waste collection services to residential customers in the geographic area of overlap.
50. While these suppliers may be able to expand, including because they all have a national presence in the relevant services which they could draw on, we consider that they could face significant challenges to profitable expansion into Nelson. We also consider that the incentives for new entry could be weak.
51. Some of the main costs of entry and/or expansion may not be prohibitive. For example, the costs of vehicles (especially second-hand), licensing, bins, bags and crews may only be moderate compared to the total revenues available across the Nelson-Tasman region.
52. However, other factors could make entry or expansion difficult, expensive relative to the market opportunities available, and particularly risky from an entrant's point of view.
- 52.1 Suppliers told us that entry and expansion would be difficult even in fairly contained areas like the postcodes of overlap. In particular, they said even well-resourced existing suppliers find it challenging to expand into a new postcode because they must obtain significant numbers of new customers quickly before a profit can be made on the truck and crew costs committed to a new route. A new entrant, irrespective of its national footprint, could find this "route density" issue particularly daunting.<sup>38</sup>
- 52.1.1 For a supplier that is already present in the opportunity area and that has spare capacity, the costs of targeting new customers may not be significant. However, if the opportunity area is not close to an area where the supplier is already present, route density considerations may discourage it from targeting new customers.
- 52.1.2 For a new entrant, the costs of purchasing at least one vehicle and enough bins, and of hiring crews, and the risks of not acquiring sufficient route density to make those profitable, could seem proportionately larger.
- 52.2 We also note that if the merged entity only raised prices in the relatively small area of the four overlap postcodes, or perhaps even only in Nelson or East Nelson, the immediate opportunity to target could be quite small compared to the costs and risks of entry/expansion.

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<sup>38</sup> Commerce Commission interviews with [ ] (25 February) and [ ] (28 January 2021).

- 52.3 Further, we continue to test whether potential new entrants could be deterred by the competitive dynamics in the postcodes of overlap. Potential entrants may observe that large national players have relatively small market shares and see this as an indication that entry and expansion are challenging.
- 52.4 Finally, some market participants have stated that the potential for NCC to move to a rates-based contract for kerbside waste collection is a strong disincentive for entry or expansion.<sup>39</sup>

*Other proposed competitive constraints may be insufficient*

53. In the Application Can Plan submitted that NCC has substantial countervailing power due to its ability to contract for recycling and waste collection services.<sup>40</sup> Can Plan also submitted that households could substitute a significant portion of their waste to recycling in response to a price increase for general waste collection, and that such a constraint will continue and increase in future.<sup>41</sup>
54. We continue to investigate the extent to which these constraints are likely to provide an effective discipline on the merged entity.

**Green waste**

*Possible reduction from two to one residential household green waste collection suppliers*

55. As noted above, we continue to investigate whether there is a separate market for green waste collection, distinct from general waste collection.
56. If there is a separate market, we may have concerns about horizontal aggregation in green waste collection as the Parties appear to be the only suppliers of a designated residential green waste collection service in the geographic areas where they compete.
57. Current evidence suggests that customers have alternatives for disposing of their green waste. These methods are:
- 57.1 dropping off their own green waste at either of the two composting facilities in the Nelson-Tasman region, or to the Tahunanui resource recovery centre (which then contracts the transportation of the green waste to Greenwaste to Zero for processing);
- 57.2 for some customers who only generate a small amount of green waste, composting their own green waste; or

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<sup>39</sup> Commerce Commission interviews with [ ] (27 January 2021) and [ ] (3 February 2021). Such a model has been introduced recently by several councils around the country. For example, Hamilton City Council moved to a contracted model recently, and the Tauranga City Council is moving to a similar contracting arrangement this year. The Hutt City Council has also recently moved to a rates-based contracted model for recycling and general waste.

<sup>40</sup> Application at [162] – [165].

<sup>41</sup> At [153] – [161].

57.3 hiring a skip from EnviroWaste or Waste Management.<sup>42</sup>

58. At this stage it is unclear whether these methods are good substitutes for customers that use green waste collection services. We continue to investigate whether these, individually or collectively, constrain the pricing of green waste collection suppliers.

### **Competition concern: coordinated effects**

59. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all, or some, of its remaining rivals to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase across a market. Unlike unilateral effects, which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.<sup>43</sup>
60. Can Plan submitted that the Proposed Acquisition would not be likely to result in coordinated effects. It submitted that coordination would be difficult with or without the Proposed Acquisition because prices are not transparent.<sup>44</sup>
61. Below, we focus on residential general waste collection services. We note that the analysis of green waste could be slightly different – for example, if green waste customers can more easily turn to self-disposal in response to price increases than general waste customers can. However, we do not consider that a separate analysis of green waste is necessary in this Sol. We also do not cover commercial waste collection, where the Parties appear to not overlap significantly.
62. For the reasons set out below, we are not yet satisfied that the supply of residential waste collection services in the area of overlap, and potentially the wider Nelson-Tasman region, are not vulnerable to coordination, or that the Proposed Acquisition would not be likely to facilitate coordination.

### **Whether the relevant markets are vulnerable to coordination**

63. Our preliminary view is that the relevant markets could be vulnerable to coordination. In principle, coordination could take various forms. For example, suppliers might seek to maintain stable market shares by accommodating each other's pricing or by fixing routes and dividing territories. We are continuing to work through this analysis.
64. Some market features that could facilitate coordination are set out below.<sup>45</sup>

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<sup>42</sup> Commerce Commission interview with [ ] (5 February 2021).

<sup>43</sup> Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019) at [3.84].

<sup>44</sup> The Application at [121] and fn 39.

<sup>45</sup> We do not set out here how each feature might facilitate agreement, monitoring or punishment in a coordinated agreement or understanding. Each feature might affect multiple parts of a coordinated effects analysis, depending on the type of coordination envisaged. However, the features are standard ones, as described in the Commission's *Mergers and Acquisitions Guidelines*: above n 17.

- 64.1 It appears that prices for residential waste collection services are transparent. Suppliers advertise prices online.<sup>46</sup> We have also seen evidence of suppliers tracking each other's prices.<sup>47</sup>
- 64.2 Market shares are also fairly transparent, since rubbish bins and bags are clearly branded and are placed on the street for collection.
- 64.3 Waste collection appears to be a homogenous service, with little innovation.
- 64.4 Demand may be stable. We invite evidence on the point set out below.
- 64.4.1 Waste collection is a necessary service, meaning that demand could be inelastic. Demand may also change predictably, in line with population.
- 64.4.2 Set against this, demand could decrease in an unpredictable way if many customers currently do not sort their general waste and other waste (mainly green waste and recycling) efficiently but began to in the future. This may be the case if many customers are not highly concerned about environmental issues, and if social pressures and/or price increases for general waste could make them more concerned in future. In such a case, suppliers may struggle to predict when demand could change and how elastically it would respond to coordinated price increases.
- 64.4.3 However, since recycling is well established, and since environmental concerns are topical, many customers may already be sorting efficiently. If so, customers' demand for general waste collection could be inelastic and predictable if it is costly and inconvenient for them to change their purchasing habits.
65. We continue to investigate whether other factors could make the relevant markets less vulnerable to coordination, in particular whether:
- 65.1 suppliers have sufficiently different characteristics (cost structures, business models, etc) that it would be difficult for them to agree on the terms of coordination; and
- 65.2 whether any suppliers are particularly disruptive competitors and would be likely to remain so post-acquisition.

### **Effects of the Proposed Acquisition**

66. We are still considering whether the Proposed Acquisition would be likely to make coordination more likely, more complete, or more sustainable in the supply of

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<sup>46</sup> See, for example, Can Plan's and Smart's websites.

<sup>47</sup> [ ] response to Commerce Commission request for information (15 February 2021).

residential waste collection services in the area(s) of overlap, and potentially across the wider region.

67. The Proposed Acquisition would directly affect a relatively contained area (being the four postcodes of overlap in Richmond, Stoke and Nelson).
- 67.1 As noted above, within the area of overlap it appears that the merged entity could have a very high share of customers, however markets are defined. Therefore, focusing on just that area, coordinated effects may be unlikely.
- 67.2 However, we continue to investigate how the Proposed Acquisition could affect suppliers' incentives across the region. Without entry, the Proposed Acquisition would leave three suppliers active in residential waste collection: the merged entity, Smart and Waste Management. We are still assessing whether the removal of Betta Bins as an independent competitor could change those suppliers' incentives.

### **Competition concern: conglomerate effects**

68. A conglomerate merger is a merger between firms supplying goods or services that may be complementary. Such mergers may, in certain situations, increase a merged firm's ability and/or incentive to foreclose competitors by, for example, bundling together complementary products, or by refusing to sell those goods or services to customers unless they also buy a second service from it (this is known as tying).
69. While on the basis of current information we consider that conglomerate effects are not likely, we are still assessing whether the merged entity could leverage any market power in general waste to lessen competition in green waste (or vice versa).
70. In particular, we are continuing to explore whether:
- 70.1 there are separate markets for general and green waste;
- 70.2 the Proposed Acquisition would give Can Plan market power in general waste collection or green waste collection (but not both); and
- 70.3 whether Can Plan could leverage its power in one market, by for example, bundling or tying the collection of its general and green waste services to substantially lessen competition in the other.

### **Next steps in our investigation**

71. The Commission is currently scheduled to decide whether or not to give clearance to the Proposed Acquisition by 14 May 2021. However, this date may change as our

investigation progresses.<sup>48</sup> In particular, if we need to test and consider the issues identified above further, the decision date may be extended.

72. As part of our investigation, we are identifying and contacting parties that we consider will be able to help us assess the issues identified above.

### **Making a submission**

73. We are continuing to undertake enquiries and seek information from industry participants about the impact of the Proposed Acquisition. We welcome any further evidence and other relevant information and documents that the Parties or any other interested parties are able to provide regarding the issues identified in this Sol.
74. If you wish to make a submission, please send it to us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference "Can Plan/Nelmac" in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **7 April 2021**.
75. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would be likely to unreasonably prejudice the commercial position of the supplier or subject of the information.

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<sup>48</sup> The Commission maintains a clearance register on our website at <http://www.comcom.govt.nz/clearances-register/> where we update any changes to our deadlines and provide relevant documents.