

5 March 2021

Jeff Hamilton
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Public version

Copy: Michael Tilley

by email

Dear Jeff,

Can Plan/Nelmac: Chapman Tripp note

- 1 Thank you for your update call on 3 March 2021.
- 2 We understand the Commission may need more time to consider Can Plan's application to acquire Betta Bins principally because, post-merger, Can Plan would have high market shares on the Commission's analysis.¹
- 3 We fully respect the Commission's process and investigation. And we have no current reason to challenge the Commission's market share analysis or market definition.
- 4 But, respectfully, we emphasise that Can Plan's application proceeds on the basis that it faces significant entry and expansion threats from incumbent national and international waste management companies.²

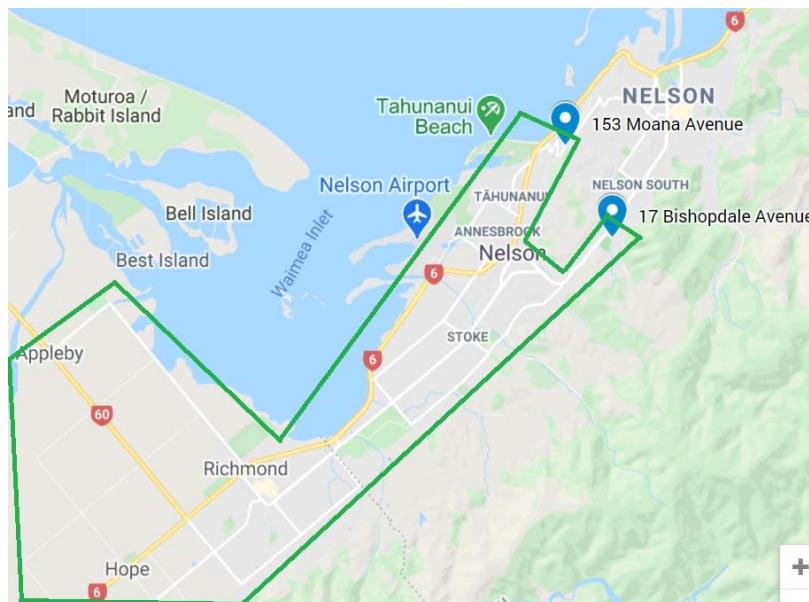
¹ We understand the relevant market has been assessed as residential wheelie bin customers between Richmond and Nelson, excluding commercial customers that also use wheelie bins.

² We note that Can Plan's estimated market shares in the application would [], so Can Plan appropriately focused the entry and expansion threats it faces from Smart Environmental, Waste Management and Envirowaste's competitive threat. We reiterate some of those points in this letter.



The threats Can Plan faces

- 5 Can Plan is unlike any other clearance applicant we're aware of. The company is a small family-owned local business that Mr and Mrs Boocock have built into a sustainable operation through their commitment to the local community.³
- 6 It would not make commercial (or personal) sense for Can Plan's principals to undermine that local advantage by implementing the type of non-transitory price increase the Commission might be hypothesizing in its deliberation. If Can Plan does not provide the local community with a service they are happy with, then those customers will drop their loyalty and spend their money with the large private-equity owned waste management companies that are already present in the area.
- 7 And, on that front, we emphasise that Smart Environmental is, by far, the most significant competitive threat Can Plan faces (both today and post-transaction).
 - 7.1 Smart directly offers wheelie bin services to households from Richmond to Moana and Bishopdale in Nelson, []. Smart's online catchment area covers the vast majority of the Commission's market (all areas within the green lines):⁴



³ Can Plan does not, by comparison, have the same cost advantages, operational advantages and route planning software as Nelson's large waste management companies. (And, at this point we observe that "route density" was not considered to be a significant barrier to entry in Nelson when the Commission cleared the 2007 *Envirowaste* deal).

⁴ **Schedule A** has screenshots of Smart's website for the two reference point properties used in this map. And, of course, Smart also operates beyond Appleby and Hope into Mapua and Brightwater.



- 7.2 In the limited areas not covered by Smart's online catchment (much of which, we note, is downtown Nelson which comprises many commercial business), Smart's website gives a conflicting message on whether its services are available at those locations, but directs: "all [prospective] Nelson/Tasman residential bin [customers]" to contact a specified local Smart employee. Can Plan does not know whether Smart then agrees to service those out-of-catchment customers or not. []:⁵
- 7.3 Smart's aggressive expansion strategy can be seen in supermarkets too, where Smart sells Tasman District Council rubbish bags within the Nelson City Council area. See **Schedule C** for photos of Smart bags being sold in Nelson supermarkets.
- 7.4 [].
- 7.5 Smart's competitive threat and market position has been noted by others too. [].⁶
- 7.6 The fact that Smart's [] are one online click away for the vast majority of the region is enough in itself to constrain Can Plan's pricing across the market. There is no way that Can Plan would or could price discriminate for the small subset of the market that *might* fall outside of Smart's arbitrary catchment area. We say that because:
- (a) as we set out above, Can Plan does not know what Smart's routes are and would never second guess Smart's obvious expansion plans in the area;
 - (b) Can Plan's online systems cannot price discriminate against customers based on their residential address – the website offers a uniform price regardless of whether the customer is in, for instance, Nelson, Richmond or Mapua; and
 - (c) it is commercially unthinkable that Can Plan would charge Nelsonians who live in, say, Washington Valley more than their friends down the

⁵ [].

⁶ []. The Can Plan clearance application explains the competitive effect that environmental-led initiatives have on its business.



road in Moana. (Again we emphasise that customer loyalty is the backbone of Can Plan's business).⁷

- 7.7 Moreover, to the extent that Smart would need more trucks to push its expansion plans even further forward, it has an entire network of waste management assets across the country to pick from. And, consistently, Smart routinely contracts new owner-drivers in other areas of New Zealand as Can Plan points out in the clearance application.
- 8 In addition to Smart's in-market threat, "competition from others established in different market segments in region", like Waste Management and Envirowaste, also place a significant constraint on local wheelie bin businesses around the country.
- 9 Both of those multinational companies have offices in Nelson and predominantly serve local commercial customers with wheelie bins and large bins. Those companies could, though, extend their business to selling wheelie bins to Nelson homes at the drop of a hat. There is no prospect that Can Plan, whose owners' livelihoods depend on the direct success of their business,⁸ would gamble on incentivising those multinational waste companies to enter the market by increasing prices by 5-10% (in addition to the constraints we mention above).
- 10 In the result, we are sure that these threats – in whole and part – will constrain Can Plan post-merger. And, indeed, we were pleased to see that the majority of SOPI submitters agreed and supported the opportunity that this transaction offers to a locally owned and operated Nelson business.

[
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11 [
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12 [
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⁷ And, on this point, we note with interest that the Commission approved a 2→1 merger for local Wanaka skiers in *Cardrona/Treble Cone* partly on the basis that: "*even if the merged entity has the ability to price discriminate against Wanaka locals, we consider it unlikely that it would have the incentive to do so. This is because, as noted above, such a strategy would likely impose additional costs on customers which would increase the likelihood of some non-local skiers choosing another ski field. In addition, a strategy of price-discriminating against locals would also potentially lead to a loss of goodwill in the local community. The value of local goodwill, while difficult to estimate with a high degree of accuracy, is likely to be considerable*".

⁸ Which makes Can Plan much more risk adverse than companies with diversified business operations spread across New Zealand, like Smart, Waste Management and Envirowaste.



12.1 []

12.2 [].

13 [].

14 Please say if you need any further information from us or Can Plan and we will give it to you immediately. Thank you very much for your assistance in this matter.

Kind regards,

A handwritten signature in blue ink, appearing to read "Matt Sumpter".

Matt Sumpter

Partner



SCHEDULE A: SCREENSHOTS OF SMART ENVIRONMNETAL WEBSITE

- 1 The following screenshots of Smart's website shows that the company offers wheelie bins all the way to Nelson's Moana and Bishopdale suburbs. []



SCHEDULE B: BETTA BINS PRICE MATCHING

1 [].

SCHEDULE C: SMART SELLING TDC BAGS IN NELSON SUPERMARKETS

- 1 Smart Tasman District Council rubbish bags sold in Nelson supermarkets.

Countdown St Vincent (white 45L TDC bags)



New World Nelson and Stoke (yellow 60L TDC bags)





Countdown Halifax (white 45L TDC bags)

