

Notice under section 66 of the Commerce Act 1986

Proposed business acquisition by Tennex Capital of San-i-pak

COMMERCE ACT 1986: BUSINESS ACQUISITION SECTION 66: NOTICE SEEKING CLEARANCE

20 October 2015

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
Wellington
NEW ZEALAND

By email only: registrar@comcom.govt.nz

Pursuant to s 66 (1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

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OVERVIEW

This application is made by Tennex Capital. Tennex's subsidiary International Waste (**IWL**) supplies medical and quarantine waste collection and treatment services on a national basis. Its major competitor is Waste Management Limited,¹ a significant multinational that competes across a range of waste markets and has a New Zealand turnover exceeding \$340M.² IWL's turnover was [] in 2015.

IWL seeks clearance to acquire the medical and quarantine waste business of San-i-pak in Christchurch. This is a small acquisition. The purchase price is []. IWL and San-i-pak are minor players in the broader waste industry with a combined turnover of less than [] out of an industry turnover likely to exceed \$650M. The parties rely mainly on three large customers, including two DHBs and Christchurch International Airport, for the majority of their revenue.

Until 2015 San-i-pak was the sole operator with medical/quarantine treatment facilities in Christchurch. This had been the case for nine years until IWL installed a new plant in 2015 as a condition of winning the Canterbury DHB contract from San-i-pak. IWL's Christchurch branch has operated at []. IWL has only ever viewed the Christchurch region as sufficiently large in scale to support one treatment plant. It had always anticipated that its entry would only be sustained through acquiring San-i-pak or awaiting San-i-pak's exit. [.]

This view is supported by experiences in other markets - metropolitan areas the size of Christchurch (and much larger) generally have one supplier.

While San-i-pak is not yet a failing firm, [

.] Any perceived lessening of competition in the short term will not be substantial and in any event allayed by existing constraints.

¹ WML's medical and quarantine waste business is operated through its subsidiary Medismart Limited.

² Companies Office website, Beijing Capital Waste Management NZ Limited, financial statements.

EXECUTIVE SUMMARY

The Proposal

1. Tennex Capital Limited (**Tennex**) seeks clearance to acquire the medical and quarantine waste business of San-i-pak Limited (**SIP**) located at Christchurch (**proposal**). Tennex supplies medical and quarantine waste collection and treatment services through its subsidiary International Waste (**IWL**).

There will be aggregation in the collection and treatment of medical and quarantine waste

2. The Commission last considered the relevant markets in *Medical Waste Group and San-i-pak*, 16 March 2000, Decision 386 (**Medical Waste/San-i-pak**). Following the Commission's analysis in that decision the proposal will result in aggregation in (1) the South Island market for the *collection* of medical and quarantine waste and (2) the South Island market for the *treatment* of medical and quarantine waste.

The proposal removes redundant excess capacity and allows synergies to be realised now

3. The markets are small, reducing in size and cannot sustain two treatment plants. Each party by itself has more than enough capacity to treat the existing volumes of waste. The Commission has acknowledged that the industry suffers from excess capacity.³ Since that acknowledgment, volumes have reduced further. This is not expected to change in the foreseeable future. The Christchurch earthquakes have had a material impact on quarantine volumes, in particular for two of SIP's largest customers [].⁴
4. Due to the lack of scale and insufficient volumes of waste both parties' businesses are marginal. The Commission acknowledged the importance of scale in *Medical Waste/San-i-pak*.⁵ Between 2011 and 2015 SIP's turnover has decreased by around [] and its net profit before tax by around []. For FY2015 the combined net position for the parties was []. Consolidating the businesses will create efficiencies through economies of scale. Immediately realising these efficiencies will make IWL's Christchurch branch viable on a stand-alone basis.

The proposal will not substantially lessen competition in any market

5. While the proposal would immediately lead to a reduction in the number of suppliers in Christchurch from two-to-one (compared to the status quo), there would be no substantial lessening of competition because there would only be one supplier under the counterfactual. This is due to the following factors:
 - a. SIP's business is not sustainable;
 - b. SIP is a quasi-failing firm – while it may be cash-flow positive this could rapidly change;
 - c. relatedly, the small size of the Treatment Market means that the minimum efficient scale only supports one player; and
 - d. as a result, there are unlikely to be any other valid purchasers.

³ *Medical Waste Group and San-i-pak*, 16 March 2000 (Decision 386), paragraph 40.

⁴ See []

⁵ *Medical Waste Group and San-i-pak*, 16 March 2000 (Decision 386), paragraphs 164 and 166.

6. [] IWL's new facility in Christchurch is of a considerably higher standard than SIP's in terms of health and safety and environmental efficiency which is likely to put SIP under increased pressure. Any perceived lessening of competition in the short term between the time [] would not be substantial given that short time frame. It would also ignore the following constraints:
- a. **Customers have significant countervailing power:** An estimated [] of medical and quarantine waste in the upper South Island by value, is produced by a small number of large sophisticated customers: DHBs, private hospitals, international airports and ports. The three largest customers which account for over [] of turnover in the region, have a high degree of countervailing power that will constrain the merged entity.
 - b. **Prices are contractually "locked in" over the medium term:** Customers accounting for over [] of IWL's business have signed medium-long-term contracts with IWL, generally in the order of [] and this is likely to be similar for SIP. The merged entity would be unable to increase prices post-acquisition for these customers.
 - c. **National customers benchmark and contract on a national basis:** [] of IWL's Christchurch branch's [] largest customers are national customers who negotiate prices on a national basis. SIP does not operate on a national basis so does not act as a material constraint in respect of such customers.
 - d. **National rate sheets apply to smaller customers:** IWL sets national retail rate sheets that apply to smaller customers including general practitioners, dentists and pharmacies and this will not change post merger. These customers generally spend about [] a month on waste disposal. IWL's Christchurch branch has around [] customers and its [] smallest customers only account for around [] of revenue. Approximately [] are medical and quarantine waste customers of which the top [] account for [] of the medical and quarantine turnover. Any movement in prices for the smallest [] medical and quarantine waste customers would clearly not substantially lessen competition in the market.
 - e. **DHBs increasingly organising disposal for smaller medical customers:** Of the Christchurch branch's [] customers, [] are medical customers of which approximately [] spend less than [] per year. These customers ultimately receive funding from the government or DHBs. DHBs are increasingly organising waste disposal on behalf of medical customers. For example DHBs organise the disposal of pharmaceutical drugs for pharmacies and supply sharps containers and subsequent disposal for diabetics.⁶ This trend is likely to persist with continued budget pressures in the health sector.
 - f. **Barriers/conditions to entry support a one player market:** Barriers to entry are low. But without sponsorship from a DHB greenfields entry is considered unlikely due to the low margins and small market size. However besides securing sufficient volumes entry is easy. [] Such sponsorship would effectively replace the incumbent with the new entrant as IWL has done to SIP. Autoclave treatment plants can cost from [] up and can be ordered, consented and installed within 3-6 months.

⁶ See http://www.nzherald.co.nz/wairarapa-times-age/news/article.cfm?c_id=1503414&objectid=11106975; <http://www.pharmacytoday.co.nz/news/2015/january-2015/28/wellington-pharmacies-sharpen-up-needles-disposal.aspx>.

- g. **Waste disposal is not always viewed as a necessity:** What is, and is not, “medical waste” for the purposes of treatment is a subjective assessment. IWL estimates that as much as [] of medical waste goes untreated.⁷ IWL would expect that if prices were raised above competitive levels a sufficient additional volume of medical waste would be disposed of as general waste making any material price increase uneconomic.
7. There would be significant public benefits as well, although IWL is not seeking authorisation because it does not consider it to be either necessary or economic to seek for such a small transaction. Among other things the benefits include the immediate realisation of economies of scale, removal of unnecessary duplication and the benefit to the vendor who is nearing retirement.

⁷ See, for example <http://www.stuff.co.nz/dominion-post/news/local-papers/hutt-news/8430920/Medical-waste-dumped-in-Hutt-River>.

REQUIRED INFORMATION

1. APPLICANT'S DETAILS

Provide the name of the applicant(s) for clearance, and the name of the individual(s) responsible for the notice. In addition, please include the:

- *postal address, physical address, telephone number and web address of the applicant(s);*
- *email address, telephone number and position of the contact person(s); and*
- *names of any relevant related entities (showing shareholdings).*

1.1 This notice is given by Tennex Capital Limited (**Tennex**).

1.2 The contact details for Tennex are:

Postal address: PO Box 53099, Auckland Airport 2150
 Physical address: 2 Hape Drive, Auckland Airport 2150
 Telephone: 0800 102 131
 Web address: <http://www.interwaste.co.nz>

1.3 The individual responsible for this notice is:

Name: Lincoln Falconer
 Position: Director
 Email: []
 Telephone: []

1.4 All correspondence with and inquiries of Tennex in relation to this notice should in the first instance be directed to:

Matthews Law
 PO Box 2579
 Shortland Street
 Auckland 1140

Attention: Andrew Matthews / Nicko Waymouth
 Telephone: +64 9 972 3754 / +64 9 972 3753
 Email: andrew.matthews@matthewslaw.co.nz
nicko.waymouth@matthewslaw.co.nz

Description of the applicant's business

1.5 IWL is a 100% owned New Zealand company which operates nationwide. IWL was originally established in 2003 and specialises in the collection, treatment and disposal of medical and quarantine waste as well as secure product destruction and recycling of fluorescent lamps.

1.6 In respect of the collection and treatment of medical and quarantine waste, IWL operates:

- a. thirteen vehicles in Auckland, Wellington, Christchurch and Dunedin for the collection of medical and quarantine waste, as well as working with a range of sub-contracted transport companies and third party medical waste collection companies throughout New Zealand; and

- b. twelve industrial autoclaves in Auckland, Wellington, Christchurch and Dunedin for the treatment of medical and quarantine waste.

2. OTHER MERGER PARTY'S DETAILS

Provide the other merger party's (parties') name(s) and provide the:

- *Postal address, physical address, telephone number and web address of the party; and*
- *Email address, telephone number and position of the contact person(s) for that party.*

2.1 The other merger party is San-i-pak Limited (**SIP**).

2.2 The contact details for SIP are:

Postal address: Cyrus Williams Quay, Christchurch 8082
Physical address: Cyrus Williams Quay, Christchurch 8082
Telephone: 03 328 9430
Web address: <http://www.sanipakltd.co.nz>

2.3 The contact person for SIP is:

Name: Paul Whitehead
Position: Managing Director
Email: []
Telephone: 03 328 9430

2.4 All correspondence with and inquiries of SIP in relation to this notice should in the first instance be directed to:

Mitchell Mackersey Lawyers
PO Box 2657
Queenstown 9349

Attention: Tess Wethey
Telephone: 03 450 9540
Email: twethey@mitchellmackersy.co.nz

Description of the other merger party's business

2.5 SIP is also a 100% New Zealand owned waste company involved in medical and quarantine waste collection and disposal, as well as general/domestic waste services. Based in Lyttleton, SIP has been owned and operated by the current owner for 15 years operating primarily in the greater Canterbury region.

2.6 SIP operates three vehicles for waste collection and two autoclaves for treatment. In terms of scale its current turnover is approximately [].

3. TRANSACTION DETAILS

Set out the transaction details including, where relevant:

- *the type of transaction (such as a merger or joint venture), what is to be acquired and how the transaction is structured (such as whether assets or shares are to be purchased);*
- *the rationale for the merger;*
- *how this transaction changes the control of the company, and a diagram(s) of how the structure of ownership and affiliated companies are to change; and*
- *a description of relevant ancillary agreements associated with the merger, such as long-term supply agreements between the target and the acquirer.*

Details on what is to be acquired & how the transaction is structured

- 3.1 Clearance is sought by Tennex Capital Limited (**Tennex**) or any interconnected body corporate of Tennex, to acquire up to 100 percent of the medical and quarantine waste collection and treatment assets of San-i-pak Limited (**SIP**). Tennex supplies medical and quarantine waste collection and treatment services through its subsidiary International Waste Limited (**IWL**).
- 3.2 The medical and quarantine waste collection and treatment assets IWL intends to acquire from SIP include:
- a. plant and equipment (including a San-i-pak 342 Auto Series autoclave);
 - b. vehicles and stock; and
 - c. customer supply contracts.
- 3.3 IWL will not acquire SIP's:
- a. existing leases with Port of Lyttleton (**Pol**) and Clough Developments for its operating premises; and
 - b. assets or business in relation to general waste collection and disposal which the vendor will continue to operate.

Rationale for the merger

- 3.4 Given high fixed costs, treatment plants have a minimum efficient scale. Without adequate volumes of waste a plant is unlikely to be sustainable.
- 3.5 IWL agrees with the Commission's conclusions in *Medical Waste/San-i-pak* in respect of scale and throughput:

"Economic Volumes

159. Incinerators and autoclaves appear to share two similar cost characteristics: both types of equipment benefit from economies of scale as the size of the unit is scaled up, and both experience substantial throughput economies with a given size of unit. The first means that at full-capacity working, the costs in cents per kilogram of treated waste falls sharply as the size of the unit is scaled up. For example, Medical Waste states that its Auckland facility is more than twice the size and throughput of the other plants, "giving considerable savings in running costs." This scale argument is also supported by Health South Canterbury Limited (the HHS which

operates the public hospital at Timaru) and other HHSs and smaller ports, which regard themselves as being too small to be able to run their own waste disposal facilities.

160. The throughput economies arise because of the large proportion of the operating costs that are fixed. Fixed costs are cost elements for which the total does not change as the throughput of waste is increased or decreased. As throughput is increased, the fixed cost is spread progressively more thinly, resulting in average cost falling significantly.

161. These two cost characteristics are likely to impose an entry barrier⁸ for the would be entrant. To be competitive, it must gain sufficient volumes of waste to allow it both to build a plant of an economic size, and to operate it with a high throughput. This would require it to gain contracts against the competition of an incumbent which, through its large market share, is able to benefit from economies of scale and of high throughput... In fact, the market could be shrinking...

164. The Commission considers that economies of scale and of throughput for the treatment of medical and quarantine waste are such that an entrant using an autoclave would require access to a substantial volume of waste to make entry viable...

166. The Commission concludes that the economies of scale and of throughput combined with the small size of the relevant market, together with the fact that the great bulk of the market is currently in the hands of the main incumbent who is therefore able to gain such economies, constitutes a barrier to entry.

174....the difficulty of accessing sufficient volumes of waste to make an economic operation feasible in the context of a small market."

- 3.6 The Commission's conclusions above continue to apply to Christchurch and the South Island market. Both parties operate at sub-optimal scale. IWL's Christchurch plant has approximately [] excess capacity and IWL estimates that SIP's plant has around [] excess capacity. Such levels of excess capacity are not sustainable.
- 3.7 Christchurch is somewhat of an anomaly. Having two treatment plants in a city the size of Christchurch is unusual. The size of the current catchment area (ie generally the upper South Island) is not sufficient to sustain two processing plants in Christchurch. The current situation where turnover is split roughly evenly between the two players means neither is financially viable due to the level of excess capacity and lack of scale. [

.]

⁸ IWL notes the Commission's views set out in footnote 97 of its *Mergers and Acquisition Guidelines July 2013* in relation to the High Court's comment in *Air New Zealand/Qantas v Commerce Commission* (No 6) (2004) 11 TCLR 347 (HC) at para 102, when the Court stated: "In any event, the question of whether conditions in a market which have the potential to prevent, impede or slow entry and expansion, are or are not barriers to entry or expansion, may be less important than whether or how they will affect the likelihood, extent and timeliness of entry – the LET test – in the factual as compared to the counterfactual." But IWL notes that the Court also stated: "Before us, it was debated whether costs faced by a new entrant which an incumbent does not now have to bear but in the past had to bear, constituted a barrier to entry. The Commission argued that the Southern Cross formulation, which refers to "a cost or limitation which an established incumbent does not face", excludes costs already incurred. The appellants refer to the definition in the leading text, *Carlton and Perloff, Modern Industrial Organisation* (3rd ed, 2000) p 77, that **a barrier to entry is "a cost that must be incurred by a new entrant that incumbents do not (or have not had to) bear"**. In *Brambles* (*supra*) this Court preferred the latter interpretation. The application of the Southern Cross test leads us to a clear view of what amount to barriers to entry or expansion in this case." (emphasis added). In this context, the absence of "economies of scale" is a cost that IWL has borne similar to any new entrant ie it is not a cost that a new entrant incurs that IWL has not incurred. In other words there are no asymmetric costs between incumbents and new entrants. Put more simply, the size of the market only supports one player.

- 3.8 Excess capacity has plagued the industry for some time. The Commission noted in 2000 that “[a] feature of the quarantine and medical waste industry is the presence of substantial excess capacity, both in percentage and in tonnage terms, in the operations of major suppliers of treatment services.”⁹
- 3.9 Metropolitan areas the size of Christchurch, and much larger, generally have one supplier of treatment services. For example Adelaide, Perth and Canberra only have one treatment plant, as does Wellington. While Wellington city is smaller than Christchurch, it services the lower half of the North Island.
- 3.10 Even the Auckland region only had one medical waste treatment provider until IWL established a medical treatment business in Auckland. IWL’s business was originally 98% quarantine waste by volume.

3.11 **Table 1: Number of treatment plants per capita in a selection of Australasian cities**

CITY	POPULATION	NO. OF TREATMENT PLANTS*	NO. OF TREATMENT PLANTS PER CAPITA
Melbourne	4,250,000	2	1 per 2,125,000
Perth	1,900,000	1	1 per 1,900,000
Sydney	4,650,000	3	1 per 1,550,000
Adelaide	1,250,000	1	1 per 1,250,000
Brisbane	2,200,000	2	1 per 1,100,000
Auckland	1,415,000	2	1 per 708,000
Canberra	370,000	1	1 per 370,000
Wellington**	381,000	1	1 per 381,000
Wollongong	295,000	1	1 per 295,000
Christchurch	341,469	2	1 per 170,735
Dunedin	120,246	1	1 per 120,246

* There could be other minor players in the Australian cities listed that IWL is not aware of. ** Including Upper Hutt, Lower Hutt and Porirua.

- 3.12 When IWL acquired the Christchurch operations of Medismart in 2006 it initially continued to operate Medismart’s small autoclave. However IWL decommissioned that plant as it was uneconomic and transported some of its waste to Dunedin, contracting SIP to treat its remaining waste.
- 3.13 IWL has viewed its Christchurch branch as having some strategic value enabling IWL to present itself as offering a national service to key customers. It has viewed Christchurch as part of its network. However the branch has operated [].
- 3.14 IWL has only ever viewed the Christchurch region as sufficiently large in scale to support one plant. It always anticipated that its entry would only be sustained through acquiring San-i-pak or awaiting San-i-pak’s exit.
- 3.15 Following the Canterbury earthquakes and resulting damage the number of cruise ship visits and international passengers transiting through CIAL have decreased considerably.¹⁰ PoL has not reopened its cruise ship terminal and international visitor arrivals at CIAL dropped by 18% between 2010 and 2013 and are still 9% below 2010 levels.¹¹ Volumes of medical waste also fell

⁹ Medical Waste Group and San-i-pak, 16 March 2000 (Decision 386), paragraph 40.

¹⁰ See <http://www.radionz.co.nz/news/regional/265781/cruise-ship-visits-in-doubt>; <http://dh.canterbury.ac.nz/the-record/2013/10/08/unhappy-tourism-operators-call-on-port/>; <http://www.stuff.co.nz/the-press/business/9983651/Lyttelton-cruise-ship-facilities-needed>.

¹¹ Market reports available at <http://www.christchurchairport.co.nz/en/>.

due to a reduction in elective surgery in Christchurch hospitals following the earthquakes and in general.

- 3.16 These declining waste volumes have only exacerbated the pre-existing excess capacity for waste treatment. This is not expected to change in the foreseeable future. Each party by itself has more than enough capacity to service the existing volumes of waste – this was true even before the reduction in volume following the earthquakes.
- 3.17 In July 2014 IWL took over the medical waste disposal contract for CDHB as part of a nationwide tender by Health Benefits on behalf of all of the DHBs.¹² Given that medical waste is deemed hazardous and DHBs do not have absolute discretion over the volumes of waste produced, DHBs require a high level of collection and treatment security.
- 3.18 Accordingly the CDHB contract was conditional on IWL installing an industrial autoclave at Christchurch to service the contract. The plant was commissioned in January 2015. The award of the CDHB contract underwrote the installation of the new plant which also better positioned IWL to be able to service its national client base. This client base includes [].
- 3.19 Nevertheless the volume of waste from the CDHB contract and IWL’s other customers is still insufficient to make IWL’s Christchurch branch economic. As noted both IWL’s Christchurch business and SIP are marginal. IWL’s Christchurch plant is running at [] of capacity and it estimates that SIP’s plant is running at approximately [] of capacity.
- 3.20 [.]
- 3.21 Therefore the proposal represents an efficient means to:
- a. reduce redundant excess capacity; and
 - b. enable IWL to quickly realise significant economies of scale which are clearly needed for its branch to remain viable.
- 3.22 IWL has calculated that the proposal will realise significant savings in plant maintenance, rent, labour, insurance and other overheads. IWL estimates that merging SIP and IWL’s Christchurch operations would produce efficiencies of around [] per annum. These efficiencies would not be achievable without the proposal.

¹² See <http://www.treasury.govt.nz/commercial/portfolio-entities/sector/healthcare/health-benefits/>.

3.23 Table 2: Estimated efficiencies from merging IWL and SIP businesses

EBITD & COST SAVINGS	(\$000'S)	(\$000'S)
IWL Christchurch EBITD	[]	[]
SIP EBITD	[]	[]
Total EBITD		[]
<i>Less avoidable SIP costs</i>		
Rent	[]	
Shareholder salaries	[]	
Insurance	[]	
Plant R&M	[]	
Other (utilities, overheads etc)	[]	
<i>Total Cost savings</i>		[]
Less - reduction in net profit (CDHB)		[]
<i>Net Cost Savings</i>		[]
<i>Combined EBITD</i>		[]

3.24 [

.]

4. DOCUMENTS BRINGING ABOUT THE PROPOSED MERGER

Provide copies of the final or most recent versions of any documents bringing about the proposed merger such as the sale and purchase agreement, contracts, or offer documents.

- 4.1 The following document is attached to this application as **confidential appendix 1**: Heads of Agreement.

5. INTERNATIONAL NOTIFICATIONS

If this merger forms part of an international transaction, list the other competition agencies that are being notified and the date on which those agencies were or will be notified.

5.1 Not applicable.

6. HORIZONTAL AGGREGATION

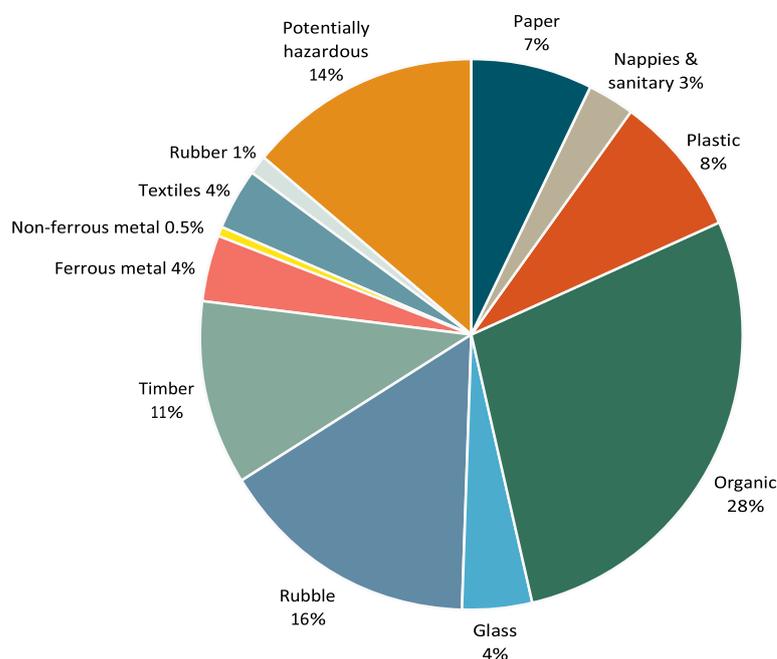
If the merger results in horizontal aggregation, outline the overlapping products and/or services and provide the following for each:

- *a copy of, or link to, the most recent annual report, audited financial statements and management accounts for the relevant business unit(s);*
- *each party's total sales revenues, volumes, and, where relevant, capacity and excess capacity figures;*
- *the names and contact details for the parties' main competitors, and any trade or industry associations in which one or both of the merging parties participate;*
- *for a merger between competing sellers, the names and contact details for each party's key customers, and the revenue earned from each in the last financial year; and*
- *for a merger between competing buyers, the names and contact details for each party's key suppliers, and the amount paid to each in the last financial year*

Description of the relevant industry

6.1 According to Statistics New Zealand, approximately 3.2M tonnes of waste was sent to municipal landfills in 2007.¹³ IWL estimates that the New Zealand waste industry generates revenues in excess of \$650M per annum. The New Zealand waste industry's dominant players include Waste Management Limited and Enviro Waste Services Limited. Both Waste Management (owned by Beijing Capital)¹⁴ and Envirowaste (owned by CKI Group Hong Kong) are very large entities controlled by large Chinese multinational companies.

6.2 Figure 1: Waste composition proportions for the national indicator sites, 2007–2008



Source: Ministry for the Environment¹⁵

6.3 Waste is generally categorised as non-hazardous or hazardous. Medical and quarantine wastes are classified as hazardous waste material and subject to strict regulatory and other

¹³ See http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/Measuring-NZ-progress-sustainable-dev-%20approach/sustainable-development/waste.aspx.

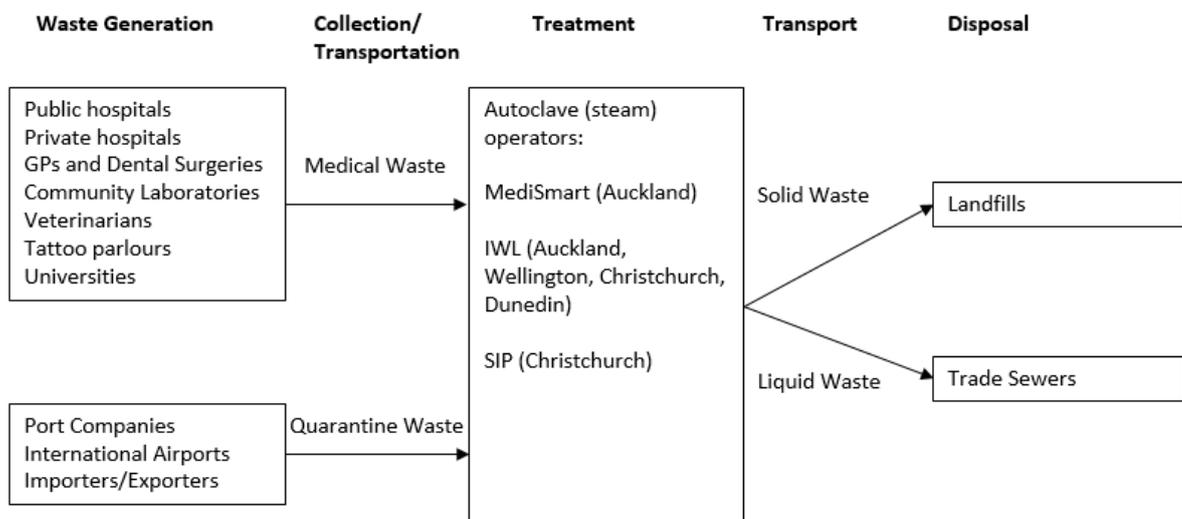
¹⁴ See http://www.nzherald.co.nz/waste-management-nz-ltd/news/article.cfm?o_id=238&objectid=11335862.

¹⁵ See <http://www.mfe.govt.nz/more/environmental-reporting/waste/solid-waste-disposal-indicator/solid-waste-composition>.

requirements governing their containment, transportation, storage, treatment and disposal. Medical and quarantine is included in the potentially hazardous waste segment of figure 1 above.

- 6.4 Of the 3.2M tonnes of waste disposed of in landfills, around 11,000 tonnes is medical and quarantine waste (ie 0.34% of all waste disposed in landfills). The medical and quarantine waste segment generates revenues of approximately [] per annum or [] of all waste revenues.
- 6.5 Medical waste includes a wide range of clinical and related waste generated by public and private hospitals, private medical laboratories, dentists, universities, GP surgeries and other medical practitioners. Typically, it includes anatomical waste, blood, body parts and infected animal carcasses; disposables, including hypodermic needles, scalpels and syringes (**sharps**); soiled dressings and swabs; laboratory waste; and pharmaceutical and chemical waste.
- 6.6 Quarantine waste comprises the refuse originating from overseas flights landing at New Zealand airports, and from ships arriving in New Zealand from overseas ports as well as items potentially representing a biosecurity risk to New Zealand such as waste within a fruit fly exclusion zone. This primarily includes organic material, food, food wrappings, beverages and contaminated goods. Such waste must be handled and disposed of in accordance with standards specified by the Ministry for Primary Industries (**MPI**).
- 6.7 Figure 2 below provides an overview of the medical and quarantine waste collection and disposal chain.

6.8 **Figure 2: The medical and quarantine waste process and disposal chain**



- 6.9 Medical and quarantine (biosecurity) wastes are separate waste streams, governed by different legislative requirements, but utilise the same treatment technologies to render them inert for disposal. They are both small niches in the wider waste market but due to the risks associated with their handling require high levels of security in their containment, transport and treatment.

Regulatory – Medical

- 6.10 The management of medical waste in New Zealand is principally governed by NZ Standard 4304:2002, Management of Healthcare Waste. It is a voluntary standard but in practice is often referenced in operating consents (under the Resource Management Act 1991) for landfills, processing facilities, local authority waste bylaws, and by the Department of Labour in terms of

meeting workplace health and safety requirements. Adherence to the standard is also a requirement of all DHBs and most major customer contracts.

- 6.11 Healthcare wastes include hazardous wastes, controlled wastes and non-hazardous wastes (general and recyclable waste). Hazardous wastes are generally the smallest component of the three waste streams by volume.
- 6.12 Hazardous wastes include both sharps and non-sharps waste that is either infectious (class 6.2), cytotoxic (class 6.1), radioactive (class 7) and other hazardous items including pharmaceutical and chemical wastes.
- 6.13 Controlled waste is waste from a healthcare facility which may be contaminated or soiled with potentially infectious human or animal body fluids or may be considered culturally or aesthetically offensive. Controlled waste does not require treatment prior to landfilling and can be handled by all waste contractors.
- 6.14 The containment and transport of all hazardous (and controlled) waste streams are governed by NZS5433:2012, Transport of Hazardous Substances on Land. NZS5433 is expressly referenced in the Land Transport Rules, Dangerous Goods 1999.
- 6.15 In New Zealand infectious wastes are treated utilising steam sterilisation (autoclaves), and cytotoxic wastes are exported to Australia for incineration. For further generic information on autoclave (steam) treatment plants refer to *Medical Waste/San-i-pak*.
- 6.16 In 2005 the last commercial incinerator in operation at Auckland Airport was closed, and only Greymouth hospital still has an operating incinerator. Incineration of hazardous materials is now prohibited in New Zealand. Anatomical waste and body parts are generally cremated through funeral homes.

Regulatory – Biosecurity/Quarantine

- 6.17 Biosecurity waste is strictly governed by the Biosecurity Act 1993 and its associated regulations. The Act identifies 'at risk' waste streams and how they must be disposed of. It specifically requires that all international ports of entry (ports and airports) provide disposal facilities for their users, and that all 'at risk' waste is treated by steam sterilisation or incineration prior to disposal.
- 6.18 Biosecurity waste is not hazardous in terms of NZS5433, but transport, particularly through rural areas, is strictly regulated by MPI to an extremely high standard.
- 6.19 The treatment of biosecurity waste is critical to protecting New Zealand's agricultural industry against bio-security incursions such as the recent fruit fly outbreaks.

Containment, transport and treatment

- 6.20 Due to its hazardous nature medical waste needs to comply with NZS 5433, and in particular:
 - a. waste must be packed and contained in rigid walled vehicles with two levels of containment;
 - b. vehicles must be packed and placarded in accordance with the hazard classes being transported; and

- c. drivers must be DG licensed and carry accurate DG documentation for the products being carried.
- 6.21 IWL utilises its own transport capacity as well as a number of third party transport providers and service sub-contractors. There are multiple transport companies nationwide that specialise in the transport of dangerous goods and IWL uses a range of these parties to transport waste throughout New Zealand.
- 6.22 The transport of biosecurity waste needs to be in accordance with MPI regulations which include MPI approval of vehicles, containment devices and transport routes. This involves either specialist trucks or specialist containment devices which are not widely available outside of the quarantine waste companies servicing this sector. IWL provides MPI approved containment devices to third party transport companies where it uses their services.
- 6.23 Due to the light weight and high level containment requirements the cost of transporting medical and quarantine wastes is relatively higher than for most other waste streams and comprises a considerable component of the total cost of waste collection and disposal. Transport costs are directly linked to volume, distance and route density.
- 6.24 IWL utilises industrial autoclaves to treat medical waste, cooking the waste at 135 degrees Celsius for 31 minutes to achieve a reduction in the waste bioburden of 99.9999%. Biosecurity waste is processed in the same autoclaves to achieve a core temperature of 100 degrees Celsius for 30 minutes.

Current market trends

- 6.25 As with all waste streams an increased focus on sustainability and cost control has led to a reduction in waste generated in both the health sector and at ports of entry into New Zealand and worldwide. In general waste generation and disposal has reduced via the mantra of “reduce, reuse, recycle”.
- 6.26 With regard to healthcare waste there has been a greater focus on segregating wastes into hazardous, controlled or non-hazardous streams in an attempt to minimise volumes of the highest costing hazardous waste streams. Funding constraints in the public health sector in particular have increased the focus on reducing waste generation at all levels.
- 6.27 In the biosecurity sector while incoming passenger and vessel numbers have steadily increased, greater focus on segregation and reclassification of wastes has led to a considerable reduction in biosecurity waste requiring treatment in New Zealand. Between 2007 and 2015 total biosecurity waste generated at Auckland Airport and Ports of Auckland []].
- 6.28 The twin focus of cost savings and environmental sustainability are impacting all parts for the wider waste industry and how waste generators manage their own operations and disposal requirements, and in the health sector in particular where general waste and recycling volumes can be many times the volume of hazardous waste. This has led to a greater focus on bundling total waste requirements, rather than supplying services on an individual basis.
- 6.29 There has also been an emergence of specialist third parties managing the waste requirements of large organisations in order to negotiate lower prices and improved services.

6.30 All public health (DHB) waste contracts are now negotiated on a national basis through Health Alliance which is a government appointed buying group for the health sector. [

.]

6.31 Major national customers increasingly demand bundled services including both hazardous wastes and general waste requirements. This requires small companies like IWL and SIP to partner with the larger multinationals often impacting the smaller partner's negotiating strength. [

.]

6.32 Small customers are generally contracted on the basis of standard terms and conditions based on standard pricing sheets without specified contract lengths.

Participants in the medical and quarantine waste markets

Medismart Limited

6.33 Waste Management's subsidiary MediSmart operates a medical and quarantine waste business in Auckland. Medismart is the only other company operating a treatment facility in the North Island and its focus is on servicing medical customers in the upper North Island. Medismart sold its southern operations in Wellington, Christchurch and Dunedin to IWL in 2006 and is not currently active in the lower North Island or South Island. Waste Management is the largest integrated waste company in New Zealand and is wholly owned by Beijing Capital. It is heavily involved in all aspects of the waste industry in New Zealand including landfills, general waste collection, recycling and hazardous waste treatment and disposal.

Medismart has a joint venture with the Daniels Corporation in New Zealand for the supply of reusable sharps containers to the healthcare sector. Sharps containers are emptied and cleaned, and their contents treated for disposal by Medismart in Auckland and sub-contracted to IWL in the lower North Island and South Islands.

Nitrogenix Limited

6.34 Nitrogenix is involved in the supply of medical gases and other consumables to the healthcare sector in Auckland (only), as well as collecting medical waste and providing document destruction services. Treatment and disposal of medical waste is contracted through Medismart in Auckland.

*Dental & Medical Equipment Limited/Biohazard Transport*¹⁶

6.35 Dental & Medical Equipment is engaged in the collection of medical waste from doctors' and dental surgeries in the Otago and Southland regions, and is also a sub-contractor to IWL for the collection of medical waste. Treatment and disposal of the material is at IWL's plant in Dunedin.

Town Trucks Limited

6.36 Town Trucks is engaged in the collection of medical waste from doctors and dental surgeries in the Hawkes Bay region, and undertakes sub-contracted medical and quarantine waste collections for IWL. Treatment and disposal of the material is undertaken by IWL in Wellington.

6.37 Nitrogenix, Dental and Medical Equipment and Town Trucks' activities in collecting medical waste is estimated to be in the range of [] per annum in total, and ancillary to other lines of business for these companies.

Market definition

6.38 The Commission last considered these markets in *Medical Waste Group and San-i-pak*, 16 March 2000, Decision 386 (***Medical Waste/San-i-pak***).

6.39 In that decision the Commission defined South Island markets for:

- a. the collection of medical and quarantine waste (the **Collection Market**); and
- b. the treatment of medical and quarantine waste (the **Treatment Market**).

6.40 For the purposes of this application IWL has followed the Commission's approach in *Medical Waste/San-i-pak*, although IWL notes that there may be alternative market definitions including defining the market from the supply side. This is particularly the case when considering the resources and scope of Waste Management and Envirowaste's operations.

Each party's total revenues, volumes, capacity and excess capacity figures

6.41 **Table 3: IWL and SIP's revenue, volume and capacity**

PARTY	REVENUE (\$000'S)	VOLUME OF WASTE TREATED TONNES	CAPACITY TONNES	EXCESS CAPACITY
IWL	[]	[]	[]	[]
SIP	[]	[]*	[]*	[]*

* IWL's estimate

¹⁶ <http://www.dentmed.co.nz/>

Names and contact details for the parties’ main competitors & relevant trade/industry associations

6.42 Table 4: Contact details for the main parties in the waste industry

PARTY	PHONE	EMAIL	CONTACT
Waste Management/ Medismart Limited	[]	[]	[]
Enviro Waste Services Limited	[]	[]	[]
Nitrogenix Limited	[]	[]	[]
Dental & Medical Equipment Limited	[]	[]	[]
WasteMINZ (Waste Management Industry Association)	[]	[]	[]

Names and contact details of the parties’ key customers & revenue earned in the last financial year

6.43 Table 5: Contact details for IWL’s Christchurch’s key customers and revenue earned

CUSTOMER	REVENUE (\$000'S)	PHONE	EMAIL	CONTACT	ADDRESS
[]	[]	[]	[]	[]	[]
[]	[]	[]	[]	[]	[]
[]	[]	[]	[]	[]	[]
[]	[]	[]	[]	[]	[]
[]	[]	[]	[]	[]	[]
[]	[]	[]	[]	[]	[]

Financial statements and management accounts

6.44 The following document is attached to this application as **confidential appendix 2**: IWL's draft financial statements to 31 March 2015 and management accounts for IWL's Christchurch branch.

7. WHY THE MERGER IS UNLIKELY TO RESULT IN A SUBSTANTIAL LESSENING OF COMPETITION

Describe why you consider the merger is unlikely to result in a substantial lessening of competition in any market having regard to the factors set out in the Merger and Acquisition Guidelines. You should address:

- *the merging parties' existing competitors, including approximate market shares, and the extent to which they will constrain the merged firm;*
- *the likelihood, extent and timeliness of entry and expansion by potential competitors (including conditions of entry and expansion) and the extent to which such entry or expansion will constrain the merged firm;*
- *the countervailing power of customers and the extent to which that countervailing power will constrain the merged firm; and*
- *any other relevant factor.*

7.1 Given the nature of the Collection Market, namely the low barriers/conditions of entry and expansion, the competition analysis focuses on the Treatment Market. This approach seems consistent with the Commission's conclusion in *Medical Waste/San-i-pak*. IWL can provide further information on the Collection Market if the Commission would find that helpful.

Counterfactual

7.2 As set out at paragraphs 3.4 - 3.23 above the status quo is unsustainable. There will be only one player in the market under the counterfactual. There may be a timing issue, but the difference is not material.

7.3 SIP's business is under pressure. IWL has been increasingly winning business from SIP and will continue to do so. There are not be sufficient waste volumes to support two treatment facilities as the business is subject to a minimum efficient scale. [

.]

7.4 While SIP is not yet a failing firm, [

].

7.5 IWL considers this situation to be directly analogous with the *Southern Cross/QE Health* clearance, 28 September 2007, Decision 620 (***Southern Cross/QE Health***). In that decision the Commission noted generally in respect to section 47 of the Commerce Act:¹⁷

"When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case."

7.6 IWL does not consider the merged entity would be able to materially and sustainability raise prices and given the characteristics of the market a time frame of at least two years is appropriate. IWL also notes that the Court of Appeal in *New Zealand Bus Ltd v Commerce*

¹⁷ Paragraph 8.

Commission [2008] 3 NZLR 433 (CA) considered a period of three years was appropriate from the date of the relevant acquisition to examine the likely effect of that acquisition.¹⁸

7.7 The Commission also concluded in *Southern Cross/QE Health*:¹⁹

“Taking all these factors into account, the Commission considers that, while neither private hospital in Rotorua is a failing firm, it is likely that that one of these hospitals [] would not continue to operate in the short term. The likely exit of one hospital, possibly in the next 12 months, would allow the other hospital to absorb its customers, staff and surgeons. Therefore, the Commission considers that, either with or without the proposed acquisition, there would likely be little difference in the level of competition in the relevant markets.” (emphasis added)

7.8 In reaching this conclusion the Commission received views from industry participants including one participant who stated:²⁰

“...that the Commission’s determination would not actually matter because, one way or the other, in three years’ time there would only be one private hospital in Rotorua. This is because if the Commission granted clearance, the rationalisation of private hospitals would happen by design and planning, and if it declined to grant clearance then QE Health would simply close its doors.” (emphasis added)

7.9 IWL expects that industry participants would hold similar views in respect of the Treatment Market and in particular that there would []].

7.10 Between 2011 and 2015 SIP’s:

- a. turnover has decreased by around []; and
- b. net profit before tax has decreased by around [].

7.11 The table below shows the steady decline of SIP’s business.

Table 6: Financial performance of SIP and IWL 2011 - 2015 revenue earned

	FY2011 (\$000’s)	FY2012 (\$000’s)	FY2013 (\$000’s)	FY2014 (\$000’s)	FY2015* (\$000’s)
SIP					
Revenue	[]	[]	[]	[]	[]
EBITD	[]	[]	[]	[]	[]
NPBT	[]	**	**	[]	[]
IWL					
Revenue	[]	[]	[]	[]	[]
EBITD	[]	[]	[]	[]	[]
NPBT	[]	[]	[]	[]	[]

*SIP includes []. **[]

¹⁸ Paragraph 74.

¹⁹ Paragraph 83.

²⁰ Paragraph 75.

7.12 SIP is privately owned and the vendors are nearing retirement and are generally facing succession issues. The vendors only employ four staff meaning the business relies on substantial input from them. Without such input it is difficult to see how the business could operate.

7.13 There are unlikely to be any other valid purchasers due to:

- a. the small size of the business and market;
- b. declining waste volumes and general economic outlook for the business;
- c. the inability to obtain the necessary scale in such a small market; and
- d. the high regulatory compliance requirements.

7.14 [

.] The reason why IWL is interested in acquiring the business is because it is already in the market.

7.15 The Commission also noted in *Medical Waste/San-i-pak* that:

- a. it had "...been told that many hospitals adopt a cautious approach towards the disposal of medical waste and are unlikely to switch suppliers, **unless** of course the price were to rise substantially, or **service levels were to deteriorate**...; and²¹
- b. ...there is a marked tendency for buyers to stay with their existing contractor **as long as a reasonable standard of price and service is maintained**....²²

7.16 [

.]

7.17 IWL has invested in a state of the art processing facility in Christchurch which has raised the bar in terms of quality and service offered. It is fully warehoused (indoors) and has an industrial extraction system and biofilter to eliminate discharges to the atmosphere. [

.]

7.18 [

.]

7.19 Therefore there is no material difference between the factual and counterfactual
].

²¹ *Medical Waste Group and San-i-pak*, 16 March 2000 (Decision 386), paragraph 53.

²² As above, paragraph 143.

Competition assessment

- 7.20 Section 47 of the Act prohibits the acquisition of assets of a business or shares if the acquisition would have, or would be likely to have, the effect of **substantially lessening competition in a market**.
- 7.21 Section 2(1A) of the Act defines substantial as meaning “real or of substance”. The Court of Appeal has stated that:
- “Even though a strict proportionality approach is likely not required, ‘substantially’ is ... nevertheless used in a relative rather than absolute sense ... Thus, the issue of whether there is a substantial lessening of competition must be assessed in terms of the particular circumstances, including the market involved in the particular case.”²³*
- “We take the view that what constitutes a substantial lessening competition must in the end be a matter of judgment,... In the present context we are not prepared to commit ourselves to equating price increases of a particular level (or other precise metric in relation to other dimensions of competition) with a substantial lessening of competition.”²⁴*
- 7.22 Similarly the NZCC’s Mergers and Acquisition Guidelines July 2013 state “...no bright line separates a lessening of competition that is substantial from one which is not”.²⁵
- 7.23 In this case there can be no “real” or “relative” lessening of competition between the factual and the counterfactual. Assessing the terms of the particular circumstances here, SIP’s business is clearly not sustainable. It would be difficult to find a sustainable business model that would support two businesses operating at less than [] capacity with little prospect of market growth. Any comparison between a single provider market (ie the factual) and an alternative market structure would be artificial.
- 7.24 As noted the market is small. The sale price is only []. The parties’ Christchurch businesses generates revenues of less than []. Granting clearance for mergers that result in two-to-one mergers in markets which only support one supplier is a pragmatic recognition that there can be no substantial lessening of competition. For example, the Commission granted clearance in *Southern Cross/QE Health* and for a two-to-one merger in the Paraparaumu Jet A1 market in *Shell New Zealand Limited and Mobil Oil New Zealand Limited*, 10 October 2008, Decision 655. IWL agrees with the Court of Appeal that “*what constitutes a substantial lessening of competition must in the end be a matter of judgment*”.
- 7.25 Moreover it would be misleading to describe the existing competition in the market as “workable or effective competition”. “Workable or effective competition” implies real and ongoing competition. Competition in the Treatment Market can be more accurately characterised as “unworkable”, “ineffective” and highly inefficient. In fact, it could be argued that some of these inefficiencies are reflected in prices and service levels, particularly []. In this sense the existing market structure is distorted and the competition abnormal.
- 7.26 Any benchmarking between prices in the factual and counterfactual needs to be compared against prices in a competitive market. That is, prices and service levels in a one player market rather than comparing prices in an unsustainable two player market. Relatedly if the Commission was to form the view that [] for a slightly longer period (eg six months longer) than the “appropriate” timeframe for conducting the competitive assessment, this would not meet the “substantial” threshold.

- 7.27 Relatedly, Paul Scott has noted in respect of New Zealand, including references to the works of other authors:²⁶

“...As for inefficient production in small economies, ...a large fraction of output may be produced in sub-optimal volumes and in sub-optimal plants.[6] Firms may not be able to obtain minimum efficiency of scale, nor be able to take advantage of economies of scale. Further, New Zealand’s size may mean that demand is such that only a few firms, or one or no firms can operate at a productively efficient level.[7] Empirical studies certainly suggest this.[8] ...

New Zealand’s size does not permit a focus on the fate of individual competitors. If it did that would allow inefficient firms to prosper.”

IWL’s customers

- 7.28 The tables below provide various breakdowns of IWL’s customers.

- 7.29 **Table 7: IWL’s turnover according to customer groups for its Christchurch branch (including fluorescent customers)**

CUSTOMER GROUP	% OF IWL TOTAL REVENUE
Largest 2 customers	[]
Largest 10 customers	[]
Largest 20 customers	[]
Largest 100 customers	[]
Smallest 150 customers	[]

- 7.30 **Table 8: IWL’s customers by type & revenue for its Christchurch branch**

TYPE OF CUSTOMER	TYPE OF WASTE	NUMBER OF CUSTOMERS	REVENUE (\$000’S)	% OF MEDICAL & QUARANTINE REVENUE
DHB	Medical	[]	[]	[]
Private hospitals	Medical	[]	[]	[]
Laboratories & CRIs’	Medical	[]	[]	[]
GP Clinics & Dentists	Medical	[]	[]	[]
Other Medical	Medical	[]	[]	[]
Veterinarians	Medical	[]	[]	[]
Ports	Quarantine	[]	[]	[]
Other quarantine	Quarantine	[]	[]	[]
Medical and Quarantine Total	Medical	[]	[]	[]
Electrical – fluoros	Fluorescent	[]*	[]	
Total			[]	

*Some fluorescent customers are also medical waste customers.

²³ ANZCO Foods Waitara Ltd v AFFCO NZ Ltd [2006] 3 NZLR 351; (2005) 11 TCLR 278 (CA), paragraph 240.

²⁴ CC v Woolworths Ltd (2008) 12 TCLR 194 (CA), paragraph, 191.

²⁵ Paragraph 2.23.

²⁶ See <http://www.regulatorytoolkit.ac.nz/resources/papers/book-2/chapter-5-competition-law-and-policy-can-a-generalist-law-be-an-effective-regulator>.

7.31 As Tables 7 and 8 show, IWL’s Christchurch branch:

- a. primarily treats medical waste; and
- b. is heavily reliant on revenues from a few large customers including two DHBs.

7.32 The range of prices within the regions and inter region is influenced primarily by volume and transportation requirements. For example, in respect to the [] is for transport costs.

7.33 **Table 9: IWL’s five largest customers for its Christchurch branch**

CUSTOMER	CITY	PRICE PER KG
[]	Christchurch	[]
[]	Christchurch	[]
[]	Christchurch	[]
[]	Christchurch	[]
[]	Christchurch	[]

7.34 As Tables 10 and 11 show, IWL’s pricing for treatment for small and medium sized customers is consistent across the country. There is no material difference for regional customers (ie non-national customers) whether they are located in a region with one or two treatment plants. This will not change post merger as these customers account for a small percentage of turnover and developing and maintaining separate price lists is inefficient. Variances in pricing is generally due to transport costs, which IWL often contracts to third parties.

7.35 **Table 10: Five medium sized IWL customers by city and price (these customers are not in the top 10 or bottom 150)**

CUSTOMER	CITY	PRICE PER KG
[]	Auckland	[]
[]	Auckland	[]
[] Quarantine Waste	Auckland	[]
[]	Auckland	[]
[] Quarantine Waste	Auckland	[]
[]	Wellington	[]
[]	Wellington	[]
[] Quarantine Waste	Wellington	[]
[]	Wellington	[]
[]	Wellington	[]
[]	Christchurch	[]
[]	Christchurch	[]
[]	Christchurch	[]
[]	Christchurch	[]
[]	Christchurch	[]
[]	Dunedin	[]
[]	Dunedin	[]
[]	Dunedin	[]
[]	Dunedin	[]
[]	Dunedin	[]

7.36 Table 11: IWL's five smallest customers by city and price

CUSTOMER	CITY	PRICE PER KG
[] Quarantine Waste	Auckland	[]
[] Quarantine Waste	Auckland	[]
[]	Auckland	[]
[]	Auckland	[]
[]	Auckland	[]
[] Quarantine Waste	Wellington	[]
[] Quarantine Waste	Wellington	[]
[] Quarantine Waste	Wellington	[]
[]	Wellington	[]
[]	Wellington	[]
[] Quarantine Waste	Christchurch	[]
[]	Christchurch	[]
[]	Christchurch	[]
[] Quarantine Waste	Christchurch	[]
[] Quarantine Waste	Christchurch	[]
[]	Dunedin	[]
[]	Dunedin	[]
[] Quarantine Waste	Dunedin	[]
[] Quarantine Waste	Dunedin	[]
[]	Dunedin	[]

The proposal will not substantially lessen competition in any market

7.37 Any perceived lessening of competition in the short term between [] the factual and counterfactual [] would not be substantial given that short time frame. It would also ignore the following constraints set out below.

Significant countervailing buyer power from customers

7.38 Over [] of medical and quarantine waste in the upper South Island is produced by a small number of large sophisticated customers, of which []. These large customers have a high degree of countervailing power.

7.39 Some of those customers have self-supplied in the past, and have the ability to recommence self-supply using lower cost autoclave technology if incentivised. However there is increasing collaboration between DHBs, who are able to combine their waste volumes in order to sponsor new entry at the expense of the incumbent, or more generally as a means of demand-side bundling. Therefore it is more likely that DHBs would use their countervailing power to sponsor new entry than recommence self-supply.

7.40 In 2012 Health Benefits took over the procurement of waste services for all 20 DHBs nationally in an effort to use their collective volumes/requirements to reduce costs. Health Benefits was tasked with reducing costs in the public health sector by \$750M over five years. This function has now been transferred from Health Benefits to Health Alliance. As a result of Health Benefits'

demand-side bundling IWL []].

- 7.41 If IWL attempted to exercise any (assumed) market power Health Alliance could easily sponsor new entry on the basis of awarding the volume of all 20 DHBs nationally to a new entrant. If incentivised Waste Management and Envirowaste could easily enter the market given their existing operations.
- 7.42 Relatedly, DHBs have budgetary limitations setting a ceiling on what they are able to pay and suppliers must match their demands. DHB's seem to be under increasing financial pressures and will not pay prices above competitive levels.²⁷

Prices are contractually "locked-in" over the medium term

- 7.43 Customers accounting for approximately [] of IWL's business have signed medium-long-term contracts with either SIP or IWL, generally in the order of []. This is likely to be similar for SIP. Therefore the merged entity would be unable to increase prices post-acquisition for customers that account for the majority of revenue.
- 7.44 With or without the proposal SIP would not be a competitive option for these customers in the medium term.

National customers benchmark and contract on a national basis

- 7.45 Of the applicant's Christchurch branch's [] largest customers [] are national customers who negotiate prices on a national basis. []].
- 7.46 These [] account for around [] of turnover. SIP does not operate on a national basis so does not act as a material constraint in respect of such customers.
- 7.47 Post-acquisition, the combined entity would continue to be constrained in the treatment market(s) in the North Island by a significant competitor in Medismart. IWL's national pricing policy – and the expectation of customers that their prices should be no higher elsewhere – would restrict the ability of the emerged entity to increase prices in the South Island above the prices it charges in the North Island market.

National rate sheets apply to smaller customers

- 7.48 IWL applies national rate sheets for collection and treatment for smaller non-contracted customers. As smaller customers account for a small fraction of IWL's turnover it is more efficient to apply and maintain a single national rate sheet for such customers.
- 7.49 Smaller customers include general practitioners, dentists, pharmacies, veterinarians, tattoo parlours and importers/exporters. These customers generally spend about [] a month on waste disposal. A large proportion of the cost for smaller customers is the collection of waste as opposed to the treatment of waste. Collection costs range from [] per visit in metro areas to [] in rural areas. If the merged entity sought to increase prices IWL would expect this to incentivise the entry of waste aggregators as has occurred in Auckland. The emergence of aggregators would further constrain the merged entity.

²⁷ See <http://www.scoop.co.nz/stories/PA1508/S00351/cash-strapped-dhbs-struggling-to-find-cuts.htm>; <http://www.stuff.co.nz/national/politics/69465196/southern-district-health-board-dismissed-by-health-minister-over-deficits>.

7.50 IWL's Christchurch branch's largest 100 customers account for [] of turnover while its remaining 150 customers account for [] of its turnover. The branch has approximately [] medical and quarantine customers of which the top [] account for [] of the medical and quarantine turnover. The remaining smallest [] medical and quarantine customers account for around [] of the medical and quarantine turnover.

7.51 Assuming that IWL could and would increase the prices for the smallest [] medical and quarantine customers by [] IWL would only increase its turnover by [] per annum or by around []. This would not meet the 'substantial' lessening of competition in a market threshold for the purposes of the Commerce Act.

Waste disposal is not always viewed as a necessity, and medical waste has price elasticity

7.52 What is, and is not, "medical waste" for the purposes of treatment is a subjective assessment. The Commission acknowledged this in Decision 386 stating one the difficulties in defining the market was "the lack of precision over what constitutes medical waste".²⁸

7.53 IWL estimates that as much as [] of medical waste goes untreated and is disposed of as general waste or otherwise disposed of.²⁹ IWL would expect that if prices were raised above competitive levels a sufficient additional volume of medical waste would be disposed of as general waste making any increase above competitive levels uneconomic. This suggests that there is a degree of price elasticity for such services. This is likely to apply to smaller, less sophisticated customers and those customers without a comprehensive compliance culture.

7.54 Illegal dumping of medical waste is reasonably common on a global scale. There have been reports of medical waste being illegally dumped in numerous jurisdictions including New Zealand, the US and South Africa.³⁰

DHBs are increasingly organising disposal for smaller medical customers

7.55 The smaller medical related customers ultimately receive funding in one form or another from the government or the DHBs. In several instances the DHBs organise waste disposal on behalf of medical customers if the DHB considers that it would be more efficient than the practitioners doing it themselves. For example DHBs organise the disposal of pharmaceutical drugs for pharmacies and supply sharps containers and subsequent disposal for diabetics eg pharmacies in Waitemata district have an arrangement with the DHB to collect pharmaceutical waste.³¹

7.56 IWL sees this trend continuing with continued budget pressures in the health sector.

7.57 The State Services Commission highlights that:³²

"...DHBs and their subsidiaries are interconnected bodies corporate for the purposes of the exemption from Part II of the Commerce Act under section 44(1) (b) of that Act.

²⁸ *Medical Waste Group and San-i-pak*, 16 March 2000 (Decision 386), paragraph 64.

²⁹ See <http://www.stuff.co.nz/dominion-post/news/local-papers/hutt-news/8430920/Medical-waste-dumped-in-Hutt-River>.

³⁰ See <http://www.nytimes.com/1987/08/24/nyregion/the-dangers-of-dumping-medical-waste-are-under-scrutiny.html?pagewanted=all>;

<http://www.stuff.co.nz/dominion-post/news/local-papers/hutt-news/8430920/Medical-waste-dumped-in-Hutt-River> ;

<http://www.ohchr.org/EN/NewsEvents/Pages/MedicalWaste.aspx>; <http://www.livestrong.com/article/177094-the-effects-of-medical-waste-being-dumped-in-the-ocean/>;

<http://www.iol.co.za/news/south-africa/dumped-medical-waste-could-pose-health-risk-1.466145#.Vh8xEvnzqUk>;

<http://www.globalization101.org/medical-waste-challenges-faced-around-the-world-2/>.

³¹ See http://www.nzherald.co.nz/wairarapa-times-age/news/article.cfm?c_id=1503414&objectid=11106975;

<http://www.pharmacytoday.co.nz/news/2015/january-2015/28/wellington-pharmacies-sharpen-up-needles-disposal.aspx>.

³² See <http://www.ssc.govt.nz/node/2247>.

The exemption facilitates co-operative and collaborative arrangements between these public health and disability organisations by ensuring the organisations can talk to each other without fear of breaching the Commerce Act...”

- 7.58 If IWL attempted to exercise any (assumed) market power Health Alliance could easily sponsor new entry on the basis of awarding the volume of all 20 DHBs nationally to a near entrant. If incentivised Waste Management and Envirowaste could easily enter the market given their existing operations.

Barriers/conditions to entry support a one player market

- 7.59 Barriers to entry are low. But without sponsorship from a DHB greenfields entry is considered unlikely due to the low margins and small market size. However besides securing sufficient volumes entry is easy. [.]
Such sponsorship would effectively replace the incumbent with the new entrant as IWL has done to SIP. Autoclave treatment plants can cost from []. Autoclaves can be sold second-hand meaning that their initial costs are not entirely sunk.

Likelihood, extent and timeliness of entry and expansion

- 7.60 Both Waste Management (Beijing Capital) and Envirowaste (CKI Group Hong Kong) are very large entities controlled by large Chinese multinational companies. They both have extensive operations in New Zealand including Waste Management’s existing medical and quarantine business in Auckland. [.]

- 7.61 In respect of timeliness, autoclave treatments plants can be ordered, consented and installed within 3-6 months by competent operators.

8. CONFIDENTIALITY

If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.

- 8.1 Confidentiality is not claimed for the fact of the proposed acquisition.
- 8.2 Confidentiality is sought for:
- a. the information contained in **confidential appendices 1 to 2** to the confidential version of this application. **Confidential appendices 1 to 2** are not attached to the public version of this application;
 - b. the information contained in bold square brackets in the confidential version of this application (i.e. []).
- 8.3 Confidentiality is sought until IWL confirms in writing to the Commission that the particular information is no longer confidential.
- 8.4 This request is made because the information is commercially sensitive and valuable information which is confidential to the participants, and disclosure of it would be likely to unreasonably prejudice the commercial position of the participants. Confidentiality is requested under section 9(2)(b) of the Official Information Act 1982.
- 8.5 IWL requests that it be notified of any request made to the Commission under the Official Information Act 1982 for release of confidential information, and that the Commission seeks its views as to whether the information remains confidential and commercially sensitive, at the time a response to such a request is being considered.
- 8.6 Paragraphs 8.1 – 8.5 of this application also apply in respect of any additional information provided, whether orally or in written form, to the Commission where it has been expressed to be confidential or it is implicit by the nature of that information or communication.

DECLARATION

I, Lincoln Falconer, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

Name and title of person authorised to sign:

Sign

Date

CONFIDENTIAL APPENDIX 1: HEADS OF AGREEMENT

CONFIDENTIAL APPENDIX 2: IWL FINANCIAL STATEMENTS