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Notice under s66 of the Commerce Act 1986

Application by Transpacific Industries Group (NZ) Limited

CONTENTS

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

14 December 2006

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
P0 Box 2351
Wellington

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

Glossary

The following terms are used in this Notice.

CWS	Canterbury Waste Services Limited.
DIY (Do-it–yourself)	Household or business waste taken by the household or business itself to the local transfer station or other disposal point, whether by car, trailer or owned or hired truck.
ESL	Enviro Waste Services Limited.
Excavated earth	Clean soil, earth. This does not need to go to a landfill site. This waste stream is generally used for roading, filling valleys etc for land development.
Fulton Hogan	Fulton Hogan Limited.
Hazardous waste	Waste that exhibits any of the following characteristics: ignitability, reactivity, corrosivity, toxicity, infectiousness and radioactivity.
IM	Information Memorandum issued by Fulton Hogan in relation to the sale of shares in ESL.
Ironbridge	Ironbridge Capital Pty Limited and, where the context requires, Barra Bidco Limited being the company purchasing the shares in ESL from Fulton Hogan.
Joint Venture Companies	Canterbury Waste Services Limited, Midwest Disposals Limited and Pikes Point Transfer Station Limited.
MGB	Mobile Garbage Bin. Plastic garbage bin on wheels (60, 80, 120,140, 240 and 410 litre bins available).
MidCentral region	Kapiti Coast, Horowhenua, Manawatu, Palmerston North.
OSWS	Otago Southland Waste Services Limited (a joint venture between TPI and Trojan Holdings Limited).
PPTSL	Pikes Point Transfer Station Limited.
Proposed Transaction	The acquisition of the assets and businesses listed in paragraph 1.1 of this Notice.
Special waste	Any waste generated from a commercial or industrial activity that requires special handling, pretreatment or testing before it can be accepted as a non-hazardous waste for landfilling.
TPI	Transpacific Industries Group (NZ) Limited.
Transpacific	Transpacific Industries Group Limited, the listed Australian parent company of TPI.
Transpacific Group	Transpacific and all companies ultimately wholly owned by Transpacific.
TPA	Tonnes of waste per annum.
Waste Care decisions	Commerce Commission Decision 355 (14 May 1999) and 359 (9 June 1999) – relating to Waste Management (NZ) Limited's acquisition of shares in Waste Care Limited. (Reference to Waste Care decision (singular) refers to Decision 355).
WAM	Waste Management NZ Limited, now amalgamated with Transpacific Industries Group (NZ) Limited.

PART I: TRANSACTION DETAILS

1. What is the business acquisition for which clearance is sought?

1.1 Clearance is sought for the acquisition by Transpacific Industries Group (NZ) Limited *(TPI)* or a wholly owned subsidiary of TPI of:

(a) the South Island assets and businesses of Enviro Waste Services Limited (*ESL*); and

(b) up to 50% of the shares in Manawatu Waste Limited,

(the *Proposed Transaction*).

1.2 ESL's South Island assets and businesses comprise:

(a) solid waste collection businesses in Nelson, Blenheim, Christchurch, Timaru, and Dunedin;

(b) a 50% shareholding in Canterbury Waste Services Limited (*CWS*). CWS owns and operates a transfer station in central Christchurch; has a 50% shareholding in Transwaste Canterbury Limited (which owns the Kate Valley landfill north of Christchurch); and manages and operates the Kate Valley landfill;

(c) contracts in relation to transfer stations, a resource recovery centre and the landfill, all in Timaru; and

(d) a landfill (Fairfield) and transfer station in Dunedin.

1.3 As at the date of this Notice, ESL is owned by Fulton Hogan. However, Fulton Hogan has entered into an agreement to sell all of the shares in ESL to Barra Bidco Limited, a company ultimately wholly owned by Ironbridge Capital Pty Limited. It is intended that the Proposed Transaction will take place following the transfer of the shares in ESL to Barra Bidco Limited.

1.4 The Proposed Transaction does not include any of ESL's businesses in the North Island. ESL will continue to operate as a standalone integrated solid waste business in the North Island.

1.5 A summary (in slide form) of the Proposed Transaction and the areas of aggregation is set out in Appendix 1. For the reasons outlined in this application, TPI believes the Proposed Transaction will not result in a lessening of competition in any affected market.

2. Who is the person giving this notice?

2.1 This notice is given by:

Greg Campbell
Managing Director
Transpacific Industries Group (NZ) Limited
86 Lunn Avenue
Mt Wellington

Telephone: (09) 574 0880
Facsimile: (09) 274 5254

2.2 All correspondence and notices in respect of this Notice should be directed in the first instance to:

Chapman Tripp Sheffield Young
Level 35
ANZ Tower
23-29 Albert Street
Auckland

Telephone: (09) 357 9020
Facsimile: (09) 357 9099

Attention: Lindsey Jones
(09) 357 9020

Huw McKinlay
(09) 357 9254

3. Confidentiality

3.1 Do you wish to request a confidentiality order for the fact of the proposed acquisition?

No. Confidentiality is not required for the fact of the proposed acquisition.

3.2 Do you wish to request a confidentiality order for specific information contained in or attached to the notice? If so, for how long? Why?

(a) Yes. Confidentiality is sought in respect of the information contained in or attached to this Notice, which is set out in square brackets and shaded. Confidential information has been deleted from the Public Copy of this notice.

(b) Confidentiality is sought under section 100 of the Commerce Act 1986 and under section 9(2)(b) of the Official Information Act 1982 on the grounds that:

(i) the information is commercially sensitive and contains valuable information which is confidential to TPI, Ironbridge and ESL; and

(ii) disclosure of it is likely to give an unfair advantage to TPI and ESL's competitors and unreasonably prejudice their commercial positions.

(c) TPI also requests that it is notified of any request made to the Commission under the Official Information Act for the confidential information, and that the Commission seeks TPI's views as to whether the information remains confidential and commercially sensitive at the time those requests are being considered.

4 Who are the participants (i.e. the parties involved)?

4.1 The Applicant

Transpacific Industries Group (NZ) Limited

86 Lunn Avenue
Mt Wellington
Auckland

Telephone: (09) 574 0880
Facsimile: (09) 274 5254
Attention: Greg Campbell

4.2 The Target

Enviro Waste Services Limited

Level 2
345 Nielson Street
Onehunga
Auckland

Telephone: (09) 622 8458
Facsimile: (09) 636 3561
Attention: Paul Bishop

All correspondence and enquiries in relation to ESL should be directed in the first instance to:

Simpson Grierson
Lumley Centre
88 Shortland St
Auckland

Telephone: (09) 358 2222
Facsimile: (09) 307 0331
Attention: Peter Hinton

4.3 **Other related parties**

Ironbridge Capital Pty Limited

Level 27, PwC Tower
188 Quay Street
Auckland

Telephone: (09) 363 2972
Facsimile: (09) 363 2727
Attention: Kerry McIntosh

All correspondence and enquiries in relation to Ironbridge should be directed in the first instance to:

Russell McVeagh
Vero Centre
48 Shortland Street
Auckland

Telephone: (09) 367 8000
Facsimile: (09) 367 8163
Attention: Andrew Peterson

5 Who is interconnected to or associated with each participant?

TPI

5.1 TPI is wholly owned by Transpacific Industries Group Finance (NZ) Limited, which, in turn, is wholly owned by Transpacific Industries Group Limited *(Transpacific)*, an Australian company listed on the Australian Stock Exchange. Corporate structure diagrams for the Transpacific Group and TPI are set out at Appendix 1.

ESL

5.2 As at the date of this Notice, ESL is a wholly owned subsidiary of Fulton Hogan. The corporate structure diagram for the ESL group as provided by Fulton Hogan (containing all of ESL's wholly owned subsidiaries and other shareholdings) is set out at Appendix 1.

5.3 At settlement of the Proposed Transaction, ESL will be a wholly owned subsidiary of Barra Bidco Limited, a special purpose vehicle newly incorporated for the purpose of effecting Ironbridge's acquisition of ESL. Barra Bidco Limited is 100% owned by Barra Holdco Limited. The shareholders in Barra Holdco Limited will be funds advised by Ironbridge as follows:

- Ironbridge Fund II A & B - 34.16%
- Ironbridge Fund II LP - 65.84%

Further details about Ironbridge are available at www.ironbridge.com.au (and copies of website information are set out in Appendix 1).

6 Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?

6.1 Neither TPI nor any of its interconnected bodies corporate has any beneficial interest in shares or any other pecuniary interest in Ironbridge, ESL or any of their interconnected bodies corporate other than the Joint Venture Companies.

6.2 As far as TPI is aware, neither Ironbridge, ESL nor any of their interconnected bodies corporate have any beneficial interest in shares or any other pecuniary interest in TPI or any of its interconnected bodies corporate other than ESL's interest in the Joint Venture Companies. However, through Transpacific, TPI is ultimately a publicly listed company and it is possible that Ironbridge, ESL or one of their interconnected bodies corporate may have a beneficial interest in shares in Transpacific. TPI is not, however, aware of that being the case.

7 Identify any links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.

7.1 Other than the arrangements between TPI and Ironbridge relating to the Proposed Transaction and except for those items listed in paragraph 7.2 below, TPI does not have any links, formal or informal, with ESL or Ironbridge or any other competitor in any of the markets affected by the Proposed Transaction.

7.2 Arrangements between TPI and ESL or other competitors in the regional markets affected by the Proposed Transaction are as follows:

(a) Joint ventures between TPI and ESL (or its subsidiaries), which are discussed further in section 9 in relation to business activities:

(i) *Canterbury Waste Services Limited*: a 50-50 joint venture with ESL; and

(ii) *Midwest Disposals Limited:* a 50-50 joint venture with Manawatu Waste Limited (in which ESL has a 50% shareholding).

(b) Waste disposal arrangements whereby TPI's collection competitors deposit waste at transfer stations or landfills owned by TPI or in which TPI has an interest.

(c) Waste Services Agreement between Midwest Disposals Limited and Horowhenua District Council relating to the operation of, and waste disposal at, the Council's landfill at Hokio Beach - and a subcontracting arrangement with Manawatu Waste Limited to carry out operational works.

(d) Operations contract between Midwest Disposals Limited and Manawatu Waste Limited for operational works at Bonny Glen landfill.

(e) Arrangements with Ash Cairns and various companies owned by him or his related interests (*Cairns*) in relation to TPI's use of the Cairns transfer station in Palmerston North on a tolling basis, disposal of waste by Cairns at a TPI landfill, provision of haulage services to TPI by Cairns; [ ].

(f) Membership of the Waste Management Institute of New Zealand.

(g) Though not strictly arrangements with competitors, where TPI has a waste collection contract with a customer with several branches it sub-contracts to local collectors in areas where TPI does not have its own collection operation.

(h) TPI has the other joint ventures referred to in section 9.

7.3 Except for those items listed in paragraph 7.4 below, TPI is not aware of any links, formal or informal, that ESL or Ironbridge has with any other competitor in New Zealand in any of the markets affected by the Proposed Transaction.

7.4 Arrangements between ESL and any other competitors are as follows:

(a) The joint ventures referred to in paragraph 7.2 (a) above.

(b) Manawatu Waste Limited: a 50-50 joint venture with Colmar Holdings Limited.

(c) Waste disposal arrangements whereby ESL's collection competitors deposit waste at ESL’s transfer stations or landfills.

(d) Membership of the Waste Management Institute of New Zealand.

(e) Other arrangements as referred to in paragraph 7.2 above.

8 Do any directors of the 'acquirer' also hold directorships in any other companies which are involved in the markets in which the target company operates?

8.1 No directors of TPI hold directorships in any other companies that operate in the markets in which ESL operates, other than in:

(a) the Joint Venture Companies or other joint venture companies identified in section 9;

(b) All Brite Industries Limited; and

(c) wholly owned subsidiaries of TPI.

9 What are the business activities of each participant?

Transpacific Group

9.1 The Transpacific Group operates across five principal divisions:

(a) *Liquid and Hazardous Waste:* This involves the collection, transportation, processing, recycling and disposal of liquid, and hazardous waste generated by the agriculture, manufacturing, construction, mining and government sectors.

(b) *Solid Waste:* Refer below.

(c) *Energy:* Transpacific's new energy division specialises in collecting, treating and recycling oil related waste streams in Australia, and in collecting oil related waste streams in New Zealand.

(d) *Industrial Solutions:* This division specialises in providing industrial cleaning and facilities to customers operating in a range of industries including the manufacturing, mining, construction and various government sectors in Australia and New Zealand.

(e) *Commercial Vehicles:* This division imports and distributes heavy-duty trucks and associated parts as well as MAN bus chassis, marine engines and industrial engines. It operates in Australia, New Zealand and parts of Asia.

Solid Waste

Collection

9.2 TPI provides waste collection services through nineteen branches:

(a) Fourteen branches in the North Island: Whangarei, Auckland, Hamilton, Rotorua, Tauranga, Whakatane, Taupo, Gisborne, Napier/Hastings, New Plymouth, Palmerston North/Feilding, Wanganui, Kapiti and Wellington; and

(b) Five branches in the South Island: Nelson, Christchurch, Timaru, Queenstown/Wanaka (through the Otago Southland Waste Services Limited joint venture with Trojan Holdings Limited) and Dunedin.

Disposal

9.3 TPI has ownership interests in a number of transfer stations and operates others under contract to their Council owners. It owns a landfill at Redvale, north of Auckland [ ].

Joint Ventures

9.4 TPI is a party to the following joint ventures:

(a) *Canterbury Waste Services Limited (CWS):* A 50-50 joint venture with ESL. CWS is a 50% shareholder in Transwaste Canterbury Limited which owns the landfill at Kate Valley near Christchurch. CWS owns and operates a transfer station and recycling facility and is contracted to manage and operate the Kate Valley landfill and transport waste from the Canterbury transfer stations to the landfill.

(b) *Living Earth Limited:* A 50-50 joint venture with Forte Holdings Limited. Living Earth Limited holds a contract with the Wellington City Council to operate a purpose-built, fully-enclosed bio-solids and green waste composting facility in the city. It also has a green waste composting operation in Auckland. The company produces high quality compost and garden products that are sold into the agricultural and residential markets.

(c) *Midwest Disposals Limited*: A 50-50 joint venture with Manawatu Waste Limited. Midwest Disposals owns the Bonny Glen landfill and the Levin transfer station and has an operations and disposal contract for the Levin landfill owned by the Horowhenua District Council.

(d) *Otago Southland Waste Services Limited:* A 50-50 joint venture with Trojan Holdings Limited (Northern Southland Transport). Otago Southland Waste Services has a municipal contract with the Queenstown Lakes District Council which involves the development and operation of transfer stations, hauling waste from transfer stations and the supply of residential waste collection services. It also operates commercial collections in Queenstown and Wanaka.

(e) *Pikes Point Transfer Station:* A 50-50 joint venture with ESL in relation to the transfer station located at Pikes Point in Onehunga, Auckland.

(f) *Waste Disposal Services:* An unincorporated joint venture with the Manukau City Council. The joint venture operates the Whitford landfill and the East Tamaki transfer station. TPI is responsible for performing all the operational functions of the relationship.

(g) *All Brite Industries Limited:* TPI has recently formed a joint venture with All Brite Industries Limited to own and operate All Brite's existing resource recovery business. TPI has an 80% interest in the joint venture and All Brite has the remaining 20%.

Other Services

9.5 TPI also provides a number of other services to commercial and domestic customers that are complementary or related to the core collection and disposal businesses. These services include site remediation and special waste handling, consultancy, landfill aftercare and landfill gas utilisation.

ESL

Collection

9.6 ESL provides solid waste collections services through ten branches:

(a) four branches in the North Island: Auckland, Franklin, Tauranga and Hamilton; and

(b) six branches in the South Island: Nelson, Blenheim, Christchurch, Timaru, Oamaru and Dunedin.

Disposal

9.7 ESL owns or has interests in several transfer stations and operates transfer stations owned by the Timaru and Franklin District Councils. It has interests in two joint ventures which own landfills and transfer stations in Manawatu and Canterbury respectively and one joint venture which owns a transfer station in Auckland.

9.8 ESL directly owns and operates two landfills: Hampton Downs (70 kilometres south of Auckland) and the Fairfield landfill in Dunedin.

Joint Ventures

9.9 ESL is party to the following joint ventures:

(a) *Canterbury Waste Services Limited (CWS):* A 50-50 joint venture with TPI. CWS is a 50% shareholder in Transwaste Canterbury Limited which owns the landfill at Kate Valley near Christchurch. CWS owns and operates a transfer station and recycling facility and is contracted to manage and operate the Kate Valley landfill and transport waste from the Canterbury transfer stations to the landfill.

(b) *EnviroWay:* A 50-50 joint venture with Cleanaway. EnviroWay is a joint venture created to obtain work from the Auckland City Council via its collection contract. It is managed operationally by Cleanaway with the financial reporting functions undertaken by ESL.

(c) *Manawatu Waste Limited (MWL):* A 50-50 joint venture with Colmar Holdings Limited. MWL provides waste services in Taupo, Palmerston North, New Plymouth, Wanganui, Levin and Kapiti. MWL owns and operates transfer stations in New Plymouth, Wanganui and Palmerston North, and operates the Bonny Glen landfill, in which MWL is a 50% shareholder with TPI through Midwest Disposals Limited.

(d) *Northern Waste Handling (NWH):* A 50-50 joint venture with JJ Richards & Sons (NZ) Limited. NWH was set up to own and operate a large transfer station in Wiri Station Rd in Manukau City in Auckland. The transfer station is administered by ESL, with waste going to Hampton Downs.

(e) *Pikes Point Transfer Station Limited:* A 50-50 joint venture with TPI. ESL is the managing partner for the venture, and carries out management and financial functions.

(f) *Refill Transport (RTL):* A 50-50 joint venture with R J Doughty Limited. RTL is a trucking company set up in 2005 to transfer waste from Auckland transfer stations to the Hampton Downs and Redvale landfills. It comprises 16 trucks specially designed for waste haulage. The company holds contracts with ESL, Northern Waste Handling and Pikes Point Transfer Station.

Other services

9.10 ESL also provides a number of other services to commercial and domestic customers that are complementary or related to the core collection and disposal businesses.

Fulton Hogan

9.11 TPI understands that Fulton Hogan carries out the following services:

(a) *Roading:* Fulton Hogan is a leader in the road building industry with over 70 years experience and has pioneered many new engineering and construction techniques.

(b) *Quarrying & Aggregates:* Fulton Hogan is a major supplier of quarry products to the construction industry. Roading materials, concrete aggregates, sand, sealing chips, asphalt aggregates and railway ballast are distributed from over 30 locations.

(c) *Bitumen Products:* Fulton Hogan has made a substantial investment in manufacturing facilities at strategic locations including port installations. These plants produce a wide range of bituminous materials. Several spraying and mixing grade products have been developed by Fulton Hogan and are now extensively recommended and used in roading systems throughout New Zealand, Australia and the Pacific Islands.

(d) *Facilities Management:* Fulton Hogan offers a facilities management service to a wide range of business sectors.

(e) *Specialist Services:* Fulton Hogan also carries out land development activities and a range of specialist services: (a) road marking; (b) engineering; (c) sign manufacture; (d) roller compacted concrete construction; (e) concrete; and (g) civil construction.

Ironbridge

9.12 Ironbridge is an Australian provider of private equity into growth businesses in the Australasian marketplace. Ironbridge is focused on investments in medium to large sized management buyout and expansion capital transactions in Australia and New Zealand.

9.13 Other Ironbridge investments in New Zealand include Auckland Central Backpackers and Qualcare Group Holdings Limited.

10 What are the reasons for the proposal and the intentions in respect of the acquired or merged business?

10.1 Fulton Hogan implemented a strategic review of its investment in ESL to determine whether the company had more value to a third party than it had to Fulton Hogan.

10.2 Following a competitive bid process, Fulton Hogan entered into an agreement to sell the shares in ESL to Ironbridge. Ironbridge entered into an arrangement with TPI under which specified assets in ESL would be sold to TPI, leaving Ironbridge with a significant waste business in the North Island.

10.3 Transpacific's business strategy is to expand in New Zealand through organic growth and targeted acquisitions. Its business model is based on the provision of tailored services to meet the needs of its customer groups and to provide a comprehensive range of integrated total waste management and facility management services. The Proposed Transaction is consistent with both this strategy and business model.

10.4 TPI has recently entered the solid waste management business following its amalgamation earlier this year with Waste Management. ESL's business includes similar activities to TPI, but in several areas those activities are complementary to TPI's existing activities.

10.5 The Proposed Transaction is a logical transaction for TPI given its existing investments in the Canterbury Waste and Midwest Disposals joint ventures.

PART II: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11 Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?

MARKET DEFINITION

Commerce Commission views to date

11.1 TPI considers the waste market definitions adopted by the Commission in its decisions on the application by Waste Management for clearance to acquire Waste Care, and in subsequent investigations into the waste industry, remain appropriate market definitions against which to assess the competition implications of the Proposed Transaction.

Product market

11.2 TPI agrees with the Commission's conclusion in the *Waste Care* decision that hazardous and non-hazardous waste comprise separate markets:

> "... from both demand-side and supply side perspectives it is appropriate to treat the collection, treatment and transportation of hazardous waste as belonging to a separate product market." [para 48]

11.3 TPI also agrees with the view, recently restated in the Commission investigation into TPI's merger with Waste Management earlier this year, that solid waste and liquid waste comprise separate markets.

11.4 ESL does not have any hazardous or liquid waste businesses. Accordingly, the focus of the competition assessment is solid non-hazardous waste.

11.5 In the *Waste Care* decision, the Commission dismissed the suggestion that there might exist a product market for commercial waste separate from that for residential waste. It decided that the relative homogeneity of those two types of waste justified treating them together. However:

(a) for the purposes of defining the *collection* market, excavated earth was excluded; and

(b) for the purposes of the *landfill disposal* market, excavated earth, recyclables and construction and demolition waste were excluded.

Functional levels

11.6 The Commission identified three functional levels affected by the Waste Management/Waste Care transaction: waste collection and delivery; waste transfer stations; and waste disposal.

11.7 While Waste Care and Waste Management were vertically integrated across all functional levels (collection, treatment and disposal), and some or all of these levels could be integrated, the Commission noted the prevalence of smaller non-vertical players at each level. It considered that "vertical integration was not so all-pervasive as to require an integrated market or markets to be defined." [para 58]

11.8 There has been no change in the market since 1999 that warrants a different conclusion today. (See regional summaries in section 16 for lists of collection competitors and sections 17 and 18 for transfer station and landfill operators.)

Collection and delivery

11.9 In the *Waste Care* decision, the Commission defined collection and delivery as:

> "the collection of non-hazardous, solid waste at the point of generation and its delivery to a transfer station, or direct to a landfill. Collection may include sorting for subsequent recycling. Large commercial waste generators may set up their own recycling schemes, with waste products being returned to them for recycling." [para 57]

11.10 While the Commission considered there to be differences at the collection level from a demand-side perspective (e.g. the difference between MGBs/bags for regular residential waste and skips/bins for commercial waste), the Commission considered the supply-side factors were conclusive:

> "... there appears to be a substantial degree of overlap in the supply characteristics of the two areas. For example, in Auckland WMNZ has four MGB vehicles on LTA collection contracts which are also used for commercial collections; skips are commonly used both for commercial and household collections; and some commercial waste is collected in bag form as for most household waste. Rear loading trucks can also easily be modified to undertake front-end loading. This degree of supply-side substitutability suggests that the two areas constitute one market." [para 56]

Disposal

11.11 In relation to the transfer station level of the market, in the *Waste Care* decision the Commission noted:

> "for some waste, mainly household and small business waste delivered by the generators themselves, or commercial collections in small trucks, there is an intermediate point at which small lots of waste are aggregated into large lots for onward haulage (often after being compacted) to a landfill. Such users are often denied access to landfills (as in Auckland), and so have to deposit waste at transfer stations if they wish to dispose of waste themselves. In some cases, a transfer station may be located adjacent to a landfill in which case the waste is not compacted prior to burial. Much waste by passes transfer stations by being hauled directly to the point of disposal from the collection point. Hence, transfer stations compete to some extent with this by-pass traffic." [para 57]

11.12 TPI accepts that, for the purposes of assessing the competition implications of the Proposed Transaction, it is appropriate to consider transfer stations and landfills as two separate markets.

Geographic dimension

11.13 For the purposes of assessing the Proposed Transaction, TPI has adopted the Commission's approach to the geographic boundaries of the various functional levels of the waste market adopted in the *Waste Care* decision. The Commission noted:

> "... the geographic extents of the markets in question are likely to be either local (town- and city-based) or regional, given certain characteristics of the industry: that waste has to be collected from individual businesses and households; that the transport costs involved in collection are likely to be significant (the 'product' is relatively bulky to transport) in relation to landfill fees (which are relatively 'low'); and that the transfer and disposal points are in consequence located in or close to population centres." [para 60]

11.14 More specifically, the Commission determined the geographic dimension of the waste collection and delivery market as follows:

> "... the collection of waste at the point of generation, and conveying it to the transfer station or point of disposal. This market is regarded as being local/regional in extent." [para 63]

11.15 The transfer station market was considered to be local in nature:

> "all small towns appear to have a waste transfer station, and large cities may have two or more. Where there is only one transfer station, and no geographically close alternatives, each is likely to operate within its own geographic market. In larger cities which may have two or more transfer stations, likely overlaps in the collection areas of adjacent stations mean that those would compete in the same geographic market. Here, the city area and its immediate environs is likely to constitute the geographic market. The relevant market therefore can loosely be characterised as local. As the present application involves an aggregation in Auckland only, the relevant market is that in Auckland." [para 62]

11.16 The landfill market was regarded as regional:

> "all larger towns and cities appear to have landfills. These typically service both the population centre and the outlying districts. .... The Commission has concluded that, broadly speaking, the geographic extent of the disposal market is regional. It is recognised that it is possible for there to be competition between landfills in some densely populated regions, such as greater Auckland. As the present application involves aggregation only in the Auckland region, the relevant market is that for the Auckland region." [para 62]

11.17 In summary, the Commission concluded that collection and delivery is local/regional in nature, transfer stations are local and disposal is regional.

Confirmation of approach to market definition

11.18 In addition to the *Waste Care* decisions, TPI is aware of five other Commission investigation reports into the waste industry since 1999. These are:

(a) Investigation Report into agreements relating to Horotiu Landfill involving Waste Management, Hamilton City Council and Perry Waste Services Limited, 15 December 1999;

(b) Investigation Report into the Canterbury Regional Landfill project, 10 May 2000;

(c) Investigation Report into proposed Joint Venture Landfill involving Waste Management NZ Limited and Perry Waste Services Limited, 29 March 2001;

(d) Investigation Report into Auckland City Council Waste Contracts, 20 December 2003; and

(e) Investigation Report into Transpacific Industries' Acquisition of Waste Management, 21 July 2006.

11.19 In each of these investigations, the Commission adopted the same approach to market definition as in the *Waste Care* decisions. Having regard to the consistency with which the Commission has approached market definition in the waste industry over the last 7 years (and as recently as 2006) TPI considers it appropriate that the same approach be taken in relation to the Proposed Transaction.

Ancillary activities

11.20 The overview of the activities of TPI and ESL in the solid waste markets set out in section 9 notes that there is a range of activities in the solid waste market that are ancillary to collection, transfer station or landfill activities. While in some cases, they may comprise separate 'markets', TPI has addressed them within the context of the analysis of the collection, transfer station or landfill markets. These activities (most of which were carried out by Waste Management and Waste Care in 1999 and were not addressed by the Commission as separate markets in the *Waste Care* decisions) include the following.

Landfill and transfer station management

11.21 This involves the operation of transfer stations or landfills on behalf of their third party owners (generally local authorities). This is discussed further as part of the transfer station and landfill disposal markets at sections 17 and 18.

Waste haulage

11.22 This involves the haulage of waste from transfer station to landfill. The Commerce Commission commented on haulage briefly in the *Waste Care* decision:

> "Simultaneous entry into haulage of waste to landfills *[where entering the transfer station market]* would not be essential as that part of the business can be tendered out to haulage contractors." [para 99]

There is a large number of haulage contractors throughout New Zealand who can provide waste haulage services to transfer station owners and accordingly TPI has not addressed this aspect further. TPI is happy to do so if the Commission so wishes.

Site remediation and special waste handling

11.23 Site remediation is the identification and treatment of contamination in areas such as old industrial areas, where the primary concerns surround the environment and safe handling of contaminated waste. There are several steps in the process:

1. *identification and testing*: consultants are engaged to test and identify contamination and consider the appropriate course of action for treatment of the contaminated site;

2. *treatment*: this may include leaving the contamination on site and securing it in some way; treatment at a hazardous waste facility followed by disposal at a landfill or special site; or removal for disposal without special treatment;

3. *transportation*; and

4. *disposal*.

11.24 Identification and testing may be undertaken by waste companies or by specialist environmental consultants. Treatment (including the handling of special waste) is able to be undertaken by general contractors under instruction from the consultants. Transportation can be carried out by any haulage contractor, and landfill disposal is addressed by the landfill operators.

11.25 Having regard to the range of functions or services involved and the availability of providers of those services, TPI has not addressed remediation and special waste handling separately from its consideration of collection, transfer station and disposal activities.

Consultancy Services

11.26 Consultancy services involves advising industry participants on regulatory, operational and other issues relating to the waste industry. These are ancillary to collection, transfer station and landfill activities and accordingly have not been addressed separately.

Aftercare

11.27 Landfill aftercare involves the preparation for closure, and monitoring of landfill sites for groundwater, stormwater, leachate and gas migration. This is part of landfill activity generally and has not been separately addressed.

Market definition summary

11.28 Having regard to the above, TPI considers the appropriate markets against which to assess the competition implications of the Proposed Transaction are:

(a) local/regional markets for the collection and delivery of solid, non-hazardous waste *(collection market)*;

(b) local markets for the provision of waste disposal services at waste transfer stations *(transfer station market)*; and

(c) regional markets for the disposal of solid, non-hazardous waste *(disposal market)*.

AREAS OF AGGREGATION BETWEEN TPI AND ESL

Using the above market definitions, the following table identifies the solid waste activities of TPI and ESL (including through joint ventures) in terms of geographic areas and functional levels. The highlighted areas identify the markets where the Proposed Transaction will give rise to some aggregation of activity.

Table 1: Solid Waste Activities of TPI and ESL.

	Collection		**Transfer Stations**		**Landfill**	
Region	**TPI**	**ESL**	**TPI**	**ESL**	**TPI**	**ESL**
Northland	Yes	No	Yes*	No	No	No
Auckland	Yes	Yes	Yes	Yes	Yes	Yes
Waikato/Coromandel	Yes	Yes	Yes	Yes		
Bay of Plenty	Yes	Yes	Yes*	No	No	No
Taupo	Yes	Yes (through Manawatu Waste)	No	Yes* (through Manawatu Waste**)	No	No
Gisborne	Yes	No	Yes (Allbrite)	No	No	No
Hawkes Bay	Yes	No	No	No	No	No
Manawatu/ Palmerston North	Yes	Yes (through Manawatu Waste)	No	Yes (through Manawatu Waste)	Yes	
Taranaki	Yes	No	No	Yes (through Manawatu Waste)	No	Yes*
Wanganui	Yes	Yes (through Manawatu Waste)	Yes	Yes (through Manawatu Waste)	No	No
Wairarapa	No	No	No	No	No	No
Horowhenua/Kapiti	Yes	Yes (through Manawatu Waste)	Yes*	No	Yes (through Midwest)	
			Yes (through Midwest)			
Wellington	Yes	No	No	No	Yes*	No
Tasman	Yes	Yes	No	No	No	No
Marlborough	No	Yes	No	No	No	No
Westland	No	No	No	No	No	No
Canterbury	Yes	Yes	Yes (through CWS)		Yes (through CWS)	
Timaru	Yes	Yes	No	Yes*	No	Yes*
Otago (Dunedin)	Yes	Yes	No	Yes	No	Yes
Southland	Yes	No	Yes* (through OSWS)	No	No	No

* Operation only (does not own the facility)

** Subcontracted to Stuart Walker Contractors Limited

Differentiated Product Markets

12	**Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price).**

12.1 TPI does not consider that the solid waste markets involve any element of product differentiation. The product here is waste (although there is an increasing trend toward recovery of waste rather than landfill disposal) and customers are driven predominantly by price.

13	**For differentiated product markets:** ☐ **Please indicate the principal characteristics of products that cause them to be differentiated one from another.** ☐ **To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?** ☐ **Of the various products in the market, which are close substitutes for the products of the proposed combined entity? - which are more distant substitutes?** ☐ **Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected?**

Not Applicable

14 Vertical integration

Introduction

14.1 Table 1 in section 11 of this application illustrates the various functional levels of the market at which TPI and ESL are involved within each region. From that it can be seen that the Proposed Transaction will give rise to vertical considerations in the following respects:

(a) In New Plymouth, ESL (through Manawatu Waste/Budget Waste) owns and operates a transfer station and operates a landfill. TPI has a collection business but Manawatu Waste does not.

(b) In seven regions, TPI and ESL have collection businesses and one or more of them also operates at the transfer station or landfill level of the market. The Proposed Transaction will increase the vertical linkages between these levels for TPI.

14.2 In the first of the *Waste Care* decisions the Commission commented on vertical integration as follows:

> "Where there is competition between adjacent landfills in the larger centres, such as Auckland, competition for the ownership of waste streams becomes important. Landfill operators are likely to become vertically integrated to ensure that their landfills maintain their share of the market, either by ownership or by contract, as rival operators will almost always take their waste to their own landfills. In this context, appropriately located transfer stations are crucial strategically in capturing a share of the waste stream." [para 37]

> "It would appear that entry into [the transfer station market] is not conditional upon the entrant being vertically integrated with a landfill disposal business. A well located transfer station which can command a large and stable volume of waste is likely to be able to negotiate favourable access prices to a landfill, providing that there are competing landfills to which its waste could be sent. However, private landfill operators often see a strategic advantage in being vertically integrated with transfer stations." [para 100]

> "In the present application, a large number of parties have expressed concern that the combined entity - by virtue of the vertically integrated nature of the two constituent companies - would control a significant share of collected waste, which would then be directed to its landfills. Moreover, it has also been claimed that were such an entity to have market power, it would be able to price discriminate in favour of its collection operations and against those of rival operators. Some market power is likely, even where there are two competing - but spatially separated - landfills in a market, to the extent that for individual customers, transport costs will dictate that the closer landfill will be preferred. This could be used to further extend its control of the waste streams, adding to the difficulty of a potential entrant in the landfill market of securing sufficient volumes to make entry viable." [para 165]

14.3 In granting clearance to the transaction in *Waste Care,* the Commission was obviously satisfied that no 'dominance' concerns arose as a consequence of the increased degree of vertical integration in the Auckland market (being the only area where vertical considerations arose). Similarly, TPI considers no 'substantial lessening of competition' concerns arise from the vertical (or any other) aspect of the Proposed Transaction.

Effects of vertical integration in each of the regions

14.4 Table 2 at the end of this section contains an overview of the activities of TPI and ESL in each region and comments on the effect of vertical integration in those areas where:

(a) the Proposed Transaction will give rise to vertical integration; or

(b) if there is existing vertical integration, where there is horizontal aggregation that should be examined for any vertical effects.

14.5 Further commentary relevant to the vertical effects is set out in Section 16: Collection Markets; Section 17: Transfer Station Markets; and Section 18: Landfills.

14.6 In summary, the commentary illustrates that the Proposed Transaction will not give rise to foreclosure of competitors at any of the vertical levels of the market, will not increase barriers to entry or give rise to any access concerns.

	this region.	
Auckland	None. TPI and ESL have collection businesses, transfer stations and landfills but the Proposed Transaction does not involve any of ESL's assets in this region.	N/A
Waikato/ Coromandel/ Bay of Plenty	None. TPI and ESL have collection businesses, transfer stations and landfills serving this region but the Proposed Transaction does not involve any of ESL's assets in these regions.	N/A
Taupo	TPI and Manawatu Waste have collection businesses, Manawatu Waste has the contract to operate transfer stations in the District on behalf of Taupo District Council (but sub-contracts this to Stuart Walker Contractors Limited).	The Proposed Transaction will not have any effect on collection competitors' ability to access transfer station services. TPI understands that Manawatu Waste is an operator only and does not have decision making power as to disposal rates, access rights or the disposal destination of the waste. These decisions are made by Taupo District Council.
Gisborne	None. ESL does not have business in this region.	N/A
Hawkes Bay	None. ESL does not have business in this region.	N/A
MidCentral (Manawatu/ Palmerston North/ Horowhenua/ Kapiti)	TPI and Manawatu Waste have collection businesses. TPI manages Foxton and Shannon transfer stations on behalf of Horowhenua District Council and Otaki transfer station on behalf of Kapiti Coast District Council.	▪ TPI's management of the Otaki, Foxton and Shannon transfer stations and Midwest's management of Hokio Beach landfill will not have any effect on collection competitors' ability to access these services. Neither TPI nor Midwest has decision making power as to disposal rates, access rights or, in the case of the transfer stations, disposal destination of the waste. These decisions are made by District Councils.
	Manawatu Waste owns a transfer station in Palmerston North.	▪ In Palmerston North, collection competitors will still have access to a transfer station owned by Cairns and the transfer station in nearby Ashhurst owned by the Palmerston North City Council.

	District Council.	counterfactual as TPI and Manawatu Waste already jointly own a landfill in the area (Bonny Glen) and have committed their waste from the region to this landfill (except waste from the Levin transfer station which is currently committed to the Council's landfill at Hokio Beach – but absent that arrangement it would go to Bonny Glen).
Taranaki (New Plymouth)	TPI has a collection business (but Manawatu Waste does not). Manawatu Waste (through Budget Waste) has a transfer station in New Plymouth and operates the New Plymouth landfill on behalf of its Council owner.	▪ Budget Waste already controls access to the transfer station and could readily have entered the collection market. There is no reason why TPI ownership should change the terms of access. If it did attempt to deny competitor access or grant access only on discriminatory terms, collection competitors could build their own transfer station (as has occurred in Tauranga). ▪ Budget Waste does not have decision making power as to disposal rates or access rights at the landfill. These decisions are made by Council.
Wanganui	TPI and Manawatu Waste have collection businesses, transfer stations and a joint interest in a landfill (Bonny Glen) serving the area.	▪ Other collectors or users could build their own transfer station (as has occurred in Tauranga). ▪ ESL/Manawatu Waste's Wanganui waste is already committed to Bonny Glen.
Wellington	None. Neither Manawatu Waste nor ESL has business in this region.	N/A
Tasman	None. TPI and ESL have collection businesses but no other activities in this region.	N/A
Marlborough	None. TPI does not have any business in this region.	N/A
Canterbury	TPI and ESL have collection businesses, and through CWS a joint transfer station and a joint interest in the Kate Valley landfill; and TPI operates some transfer stations on behalf of Council owners.	▪ TPI's management of transfer stations will not have any effect on collection competitors. They are operations contracts only and TPI does not have decision making power as to disposal rates, access rights or destination of waste. These decisions are made by the Council owners. ▪ CWS has some influence over disposal rates and access at the Kate Valley landfill, but that influence exists already and will not be increased as a result of acquisition of ESL's

		already committed its waste to Kate Valley. Councils have control over a large portion of the waste stream in any event. ▪ TPI and ESL already have influence over the pricing and access terms of the CWS transfer station and the Proposed Transaction will not change that. Collection competitors also have the choice of Council owned transfer stations so TPI/ESL would risk loss of business if it tried to impose terms of access that discriminated against collection competitors. Collection competitors could also build their own transfer stations.
Timaru	TPI and ESL have collection businesses and ESL manages transfer stations and the Redruth landfill on behalf of the Council.	TPI understands that ESL is an operator only and does not have decision making power as to disposal rates, access rights or, in the case of the transfer stations, the disposal destination of the waste. These decisions are made by the Council.
Dunedin	TPI and ESL have collection businesses and ESL owns and operates its own transfer station and landfill.	▪ Competing collectors have the choice of going to the competing Dunedin City Council transfer station or landfill so TPI/ESL would risk loss of business if it tried to impose terms of access that discriminated against collection competitors. ▪ TPI and ESL presently take around [ ] of their waste to the Dunedin City Council disposal facilities. This amounts to around [ ] tpa from TPI and [ ] tpa from ESL (not including municipal tonnes – in respect of which the Council can direct the disposal destination). Loss of [ ] tpa (were that to occur) is unlikely to threaten the viability of the competing Council facilities (and, in any event, the only change that would be brought about by the TPI/ESL transaction would be that the ESL's disposal facilities would have control over the destination of an additional [ ] tpa).

15	**In respect of each market identified in question 11 identify briefly:** ☐ **all proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case,** – **the outcome of the notification (e.g. cleared, authorised, declined, withdrawn)** – **whether the proposed acquisition has occurred.** ☐ **any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.**

TPI

15.1 TPI has undertaken a number of acquisitions in the New Zealand market over the last three years. A number of these were advised to the Commission in the context of the Commission's investigation into the merger of TPI and Waste Management earlier this year. These are not repeated here. Since the TPI/Waste Management merger, TPI has undertaken the following acquisitions:

Table 3: Recent acquisitions by TPI

Entity acquiring business	Acquired entity/business	Description of business acquired	Approx Acquisition date
Transpacific Industries Group (NZ) Limited	Onyx residential collection business in Christchurch	Solid waste collection in Christchurch	1 September 2006
Transpacific Industries Group (NZ) Limited	Environmental Green Bins	Solid waste collection in Tauranga	1 September 2006
Transpacific Industries Group (NZ) Limited	Kapiti Wheelie Bins	Solid waste collection in Kapiti Coast	1 September 2006
Transpacific Industrial Solutions (NZ) Limited	80% interest in new joint venture which has purchased the business and assets of All Brite Industries Limited.	Resource recovery in Napier, Palmerston North, Gisborne, Tauranga, Auckland and Wellington.	20 November 2006
Transpacific Industrial Solutions (NZ) Limited	Industrial Water-Jetting (N.Z.) Limited,	Industrial cleaning services in Bay of Plenty/Waikato	1 December 2006

ESL

15.2 So far as TPI is aware, ESL has not undertaken any business acquisitions in the last three years. The Commission may wish to request further information from Fulton Hogan.

Ironbridge

15.3 TPI is aware of the following acquisitions undertaken by Ironbridge in New Zealand in the last three years:

(a) in June 2004, Ironbridge led the NZ$50million management buy out of Auckland Central Backpackers; and

(b) in December 2005, Ironbridge invested in a number of aged care facilities, now incorporated under Qualcare Group Holdings Limited.

THE FOLLOWING SECTIONS ADDRESS PARTS III, IV AND V: CONSTRAINTS ON MARKET POWER BY EXISTING AND POTENTIAL COMPETITION AND OTHER POTENTIAL CONSTRAINTS IN RELATION TO EACH OF THE IDENTIFIED PRODUCT MARKETS

16. Collection markets

Introduction

16.1 The market definition adopted by the Commerce Commission in its inquiries and investigations to date in relation to waste collection markets has been local/regional collection and delivery of solid, non-hazardous waste, encompassing all non-hazardous solid waste (with the exception of excavated earth and DIY collection) collected in any receptacle or vehicle.

16.2 Market shares in the collection markets are almost impossible to determine with any accuracy simply because of the range of waste that is collected: unsorted household refuse, sludge, unsorted business refuse, residential recyclables, municipal waste, glass, scrap metal, plastics, sawdust, cardboard, paper, C&D waste, greenwaste etc.

16.3 While many transfer stations and landfills have weighbridges that can measure the tonnes of waste being deposited at the facility, there is a large portion of the collected waste stream that does not go through a transfer station or to a landfill:

(a) Increasingly, rather than being buried in a landfill, glass, scrap metal, plastics, cardboard, paper and greenwaste is being recycled. Efforts are being made to identify other elements of the waste stream that can be reused.

(b) C&D waste is collected by the same cross section of collectors that collect other waste but it is frequently deposited in cleanfills.

16.4 Accordingly, it would be artificial to assume that waste disposed of through transfer stations or landfills represents the "solid waste collection" market or that shares of landfilled waste are representative of solid waste collection market shares. Accordingly, TPI has not provided market share estimates.

16.5 Collection competitors by region are set out at the end of this section. (Copies of the relevant Yellow Pages entries are contained in Appendix 2).

16.6 TPI does not consider that the absence of reliable market share data should affect the analysis. As the Commission has often observed, market share alone is not an indicator of market power. An acquisition is unlikely to result in a substantial lessening of competition if the businesses in that market continue to be subject to real constraints from the threat of market entry.

16.7 Although information has been provided in relation to all regions in which either TPI, Manawatu Waste or ESL has collection operations, the Proposed Transaction is limited to the South Island and the central North Island regions within which Manawatu Waste operates. It does not affect the markets in Northland, Auckland, Waikato/Coromandel, Bay of Plenty, Gisborne, Hawkes Bay, Wairarapa or Wellington.

Potential competitors – barriers to entry and expansion

16.6 In the *Waste Care* decision, the Commission considered the barriers to entry for the collection market to be moderately low:

> "The applicant has argued that entry barriers are low. Substantial investment is not required to enter on a modest scale. There is a ready market for second-hand collection vehicles. Second-hand rear-loading trucks can be purchased for as little as $30,000. Industry knowledge appears to be readily available, especially for former employees of the larger operators. The apparent continual turnover of small businesses tends to suggest that entry is fairly easy, and that there is a ready supply of new entrants, even if many do ultimately fail." [para 87]

16.7 The likelihood and ease of entry was reinforced by the Commission in its recent Investigation Report into Transpacific's acquisition of Waste Management:

> "There is also a significant number of small regional/local players in the collection market, varying from one truck to ten truck operations. Barriers to entry are low, with the cost of entry being as low as $40,000 to purchase a collection truck. One industry participant estimated that within a year an entrant would have up to 100 customers"

16.8 TPI notes that, since 1999, there has been trend in some areas for MGBs for residential and small commercial refuse collections (whether Council funded or private). However, TPI considers that, even in areas where MGBs are preferred, entry could be achieved for private refuse collection with 200 MGBs for under $65,000. This is clearly not prohibitive of new or expanded entry and there are numerous examples of new entry with MGBs (refer regional summaries at the end of this section 16).

16.9 Another change since 1999, is that some Councils have introduced a requirement that anyone collecting waste in the Council's area must have a licence do to so. Presently, TPI is aware of only seven Councils with a requirement for waste collectors to be licensed. The licence fees are minor (in the Auckland region between $50 and $300 per year). In these regions collectors are also required to place a bond with Council to cover the Council's costs in the event of business failure. The amount of the bond required will be relative to the size and risk of the particular business, for example, TPI's bond for the three cities which comprise the 'Northwest Waste Region' (Waitakere City, North Shore City and Rodney District) is $[ ].

16.10 So, while in some areas a licensing and bond requirement represents an entry condition that was not present in 1999, these requirements do not represent a material barrier to entry.

16.11 In its Mergers and Acquisitions Guidelines, the Commission states that "an acquisition is unlikely to result in a substantial lessening of competition in a market if the businesses in that market continue to be subject to real constraint from the threat of market entry" and then identifies various entry barriers. Table 6 at the end of this section (before the regional summaries) lists the various entry barriers that the Commerce Commission has identified and comments on their application to the solid waste collection market. This analysis reinforces the Commission's view of entry barriers.

16.12 For those areas where there was aggregation in the collection market in the Waste Management/Waste Care merger, TPI has compared the list of collection competitors provided in that application (derived from 1999 Yellow Pages listings) with the current Yellow Pages listings. In all those areas there are competitors who were present in the market in 1999 and there are a number of new competitors in nearly every region. This is illustrated in the regional summaries that follow at the end of this section.

16.13 Furthermore, the entry of JJ Richards into the New Zealand waste collection market illustrates that entry on a very significant scale is possible. In Auckland, JJ Richards has gone from greenfields entry to a market position which TPI believes is [ ] in around 5 years. TPI understands that JJ Richards has recently entered the Hamilton and Tauranga markets.

16.14 Consideration has also been given to other decisions of the Commerce Commission where the Commission has granted clearance where the cost of entry or expansion would, in TPI's view, be considerably higher than entry to the waste collection market and where (unlike the waste collection markets) there were only a small number of players. These examples include:

- *Vehicle Testing/On Road New Zealand (Decision 539, 2004)*: The Commission found that the barriers to entry to the Class A Certificate of Fitness market were low, that new entry would take 6 – 12 weeks and that the only other potential entrant in some areas was the AA.

- *Southern Capital/Hirepool (Decision 493, 2003)*: The Commission granted clearance even though there would be only one small competitor remaining in the Wellington region. The Commission concluded that in the Wellington area new entry was likely in the face of an attempt by the merged entity to exercise unilateral market power.

- *Wakefield Hospital/Bowen Hospital (Decision 493, 2003)*: The Commission concluded that in the market for the provision of hospital facilities and related non-specialist services for elective secondary surgery, the barriers to entry were not high - with the key requirement being attracting *surgeons*.

- *Provet/National Veterinary Supplies (Decision 549, 2005):* In the markets for the wholesale supply of premium pet food, companion animal remedies, and livestock animal remedies the Commission considered that the requirements for entry were warehousing and logistical support, access to customers, the regulatory environment, and access to manufacturers. It did not consider these to be significant barriers. While access to manufacturers was considered a moderate barrier, the Commission considered, on balance, that it was not so high as to deter potential entry. This was evidenced by the recent entry of Provet in 2002.

16.15 Against this background, TPI has little doubt that the 'second player' slot that ESL or Manawatu Waste fills in most regions affected by the Proposed Transaction will be rapidly filled by either:

(a) one of the existing waste collection competitors in the region; or

(b) a collector that has already established a foothold in another region (eg JJ Richards or Metropolitan Waste); or

(c) an off-shore player that achieves entry in the same manner as JJ Richards; or

(d) a new local entrant.

16.16 Comments made in the context of some of the Commerce Commission decisions about the opportunities that a merger can represent for the remaining players are pertinent here:

Southern Capital Limited and Hirepool Limited – Decision No. 493

"As in the heavy construction market, no building equipment hire companies spoken to opposed the acquisition. ***Rather, most considered it would have a pro competitive effect by removing a competitor from the market and opening up increased business opportunities.***" [para 104]

"DIY equipment hire companies in the greater Wellington region considered the acquisition would create a monopoly in the Wellington Central market. ***However, they did not oppose the acquisition; rather, they considered that it would have a pro competitive effect by removing a competitor from the market and opening up increased business opportunities.***" [para 120]

Pyne Gould Guinness Limited and Wrightson Limited – Decision No. 556

"The Commission received very few complaints in regard to competition concerns for rural supplies. In contrast, ***a number of industry participants including existing competitors [ ] viewed the proposed merger as an opportunity for them to attract customers away from either PGG or Wrightson***." [para 354]

DIY

16.17 In the *Waste Care* decision, the Commission considered the substitutability of commercial collection services for own-collection and delivery of waste by households and businesses (DIY). The Commission said that:

> "the equivalent charges per tonne at transfer stations are relatively high compared to those for commercial operators, suggesting that commercial operators are likely to be preferred for sizeable volumes." [para 91]

16.18 That may be the case in many areas, but TPI notes that there are some larger commercial waste generators in the South Island who collect and deliver their own waste for disposal, notably DB Breweries and Talleys Fisheries.

Municipal contracts

16.19 ESL, Manawatu Waste and TPI each hold contracts with local authorities for the provision of regular municipal waste collection services. The regional summaries at the end of this section and the tables of municipal contracts in Appendix 2 indicate TPI's understanding of which parties hold municipal contracts in the various regions.

16.20 In the South Island, the picture that these summaries give is that TPI (or its joint venture interests) and ESL hold:

- ten of around 33 municipal contracts;
- three of the four contracts in regions with over 20,000 households and six of the nine contracts with over 10,000 households (two of which were acquired by TPI from Onyx when Onyx sought to exit the contracts).

16.21 In the North Island, TPI and ESL (or its joint venture interests) hold:

- about half of around 61 municipal contracts;
- 11 of the 24 contracts in regions with over 20,000 households and 20 of the 37 contracts with over 10,000 households.

16.22 There are clearly other contenders for municipal contracts of all sizes and accordingly TPI does not consider that the exit of ESL or Manawatu Waste as a competitor for municipal collection contracts in the regions affected by the Proposed Transaction will result in a substantial lessening of competition for these contracts.

16.23 TPI is aware that the Christchurch municipal collection contract, one of the most significant collection contracts in New Zealand, will be coming up for tender next year. Both TPI and ESL have bid for this contract in previous contract rounds.

16.24 Table 4 below lists the tenderers in the last contract round and TPI's view of the likely tenderers (in the counterfactual) in the next contract round.

Table 4

Tenderers for Christchurch City Municipal Collection contracts

Tendered for current contract	Likely to tender in 2008
WAM/Waste Care	[ ]
ESL	[ ]
Onyx	[ ]
MetroWaste	[ ]
Waste Control	[ ]
City Care (Christchurch City Council Controlled Entity)	[ ]
	[ ]
	[ ]
	[ ]
	[ ]
	[ ]
	[ ]
	[ ]

16.27 Assuming TPI's view of the likely tenderers for the next Christchurch contract is correct, there will continue to be sufficient competitive tension in the contract round notwithstanding the exit of ESL.

16.28 In this regard, TPI points to Decision 572 *(Valley Diagnostic Laboratories/Wellington Pathology)* where the Commission granted clearance for a merger which would reduce the number of bidders for a five year sole supply contract for the provision of pathology services funded by District Health Boards from, at most, four potential bidders to three. The Commission was clearly satisfied that the competitive tension in that contract round would remain despite the reduction in number of bidders.

16.29 Having regard to the above and the fact that there are identifiable parties that TPI considers are likely to be realistic and competitive bidders (which in itself represents a constraint on TPI's pricing of its bids, even if those parties do not actually bid), TPI considers that the Commission can be satisfied that the exit of ESL as an independent competitor for the larger municipal contracts would not substantially lessen competition for those contracts.

Scope for coordination

16.30 Table 5 below assesses the features of the solid waste collection market against the various factors that the Commission considers indicate the scope for coordinated conduct and whether the Proposed Transaction is likely to increase that scope.

Table 5

Scope for collusion and detection in collection markets

Factor	Present	Effect of Proposed Transaction
Scope for collusion		
High concentration of sellers	Not in most areas	Increases concentration by one
Undifferentiated product	Yes	No change
Price inelastic market demand	No	No change
Entry by new firms is slow	No	No change
Few fringe competitors	No	No change
Loss of an aggressive competitor	ESL has generally not been more aggressive than others	There are other aggressive competitors for all regions
Static production technology	Some scope for new initiatives, particularly in resource recovery.	No change
History of anti-competitive behaviour	No	No change
Purchasers have countervailing power	Yes – in most areas customers have an extensive choice of supplier.	No change
Scope for detection		
High concentration of sellers	Not in most areas	Increases concentration by one
Frequent sales	Yes	No change
Stable, slow growth in demand	No	No change
Price transparency	In some sectors, not in others	No change
Cost similarities between businesses	No. There are a range of firms in the market with a range of different cost structures	No change
Multi-market contact	Yes. collection competitors are also customers of transfer station and landfill owners	No change
Lack of vertical integration	Limited vertical integration (a few regions only)	Remains limited

16.31 TPI does not consider that the waste collection market is susceptible to collusion. Even if it were, there is little scope for detection of deviation.

16.42 Given the large number of waste collection operators in most areas, and the low barriers to entry into this market, TPI considers that the Proposed Transaction is unlikely to give rise to coordinated market power.

Table 6
Consideration of conditions for entry into waste collection markets

Potential barrier	Comment
Substantial economies of scale or scope in production	Some – but not substantial
Sunk costs from investing in tangible assets or intangible assets	Limited. Tangible assets required are: • Truck and bins: Entry could be achieved with a second hand truck at $40,000. • Premises: Area to store bins while not in use. Unlikely to be significant cost. • Computer systems: not necessarily required – but cost not prohibitive. Intangible assets (such advertising and R&D): Low costs. Advertising would be regional and paper (letter box drops or local papers) or e-mail based.
Higher costs of capital often associated with a new business lacking a track record.	Unlikely.
Presence of consumer switching costs.	No. Customers do not make any capital investment. Residential contracts tend to be short term (from month by month to annual). Commercial contracts are generally between 1 and 3 years.
Difficulty in accessing distribution channels, infrastructure, technology or raw materials.	No. Trucks, bins, access to transfer station or landfill and some advertising is all that would be required. Readily accessed.
Existence of any first mover advantage for incumbent businesses.	Unlikely. Waste collection is a fairly basic function and customers needs will be met if it is collected safely, on time and at a good price.
Entry licensing.	Licences required in a few council areas: Papakura, Waitakere, North Shore, Rodney, Auckland, Tauranga and Western Bay of Plenty. Licence fees are not prohibitive and providing Councils are satisfied that the collector is adopting proper processes there is no impediment to obtaining a licence.
Quality standards.	No statutory requirements for collection (other than compliance with health & safety rules)
Environmental controls.	None at collection level, other than licences required in a small number of Council areas.
Intellectual property rights.	None.
Likelihood and effect of incumbent businesses:	
▪ investing in excess capacity	Unlikely, given ease with which customers can be lost.
▪ advertising heavily to raise customer loyalty, brand reputation, sunk costs.	Unlikely, customers are driven by cost.
▪ raising customer switching costs, e.g. by offering volume discounts.	Unlikely. Customer base is also very fragmented.
▪ signaling that entry would be responded to aggressively or in a predatory fashion.	Unlikely. Market is fragmented with large numbers of disaggregated customers.

Collection Markets

Regional Summaries

1. Otago (Dunedin)

1 Both TPI and ESL's activities in this region are confined to Dunedin City.

2 Competing suppliers of waste collection services in Dunedin, as listed in the Yellow Pages, are set out in the following table.

Dunedin - Collection competitors

Name	Type of service offered	Area	Present in 1999
Otago Metal Industries Limited	Commercial and Domestic Skips	Dunedin	√
Duffy's Skip Services	Skips	Dunedin	
Tidy Bins Services	Tidy Bins & Rubbish Removal	Dunedin	√

Municipal collection contracts

3 The municipal collection contracts in the Otago region are described below.

Area	Contractor	Bag / MGB
Dunedin	ESL	Bags
Milton/Balclutha	Works Infrastructure	MGBs
Waitaki District	Whitestone Contracting (Council owned)	Bags
Clutha District	Works Infrastructure	MGBs
Alexandra	Eco Waste Limited (Pratty's Bins)	MGBs
Cromwell/Ranfurly	Eco Waste Limited (Pratty's Bins)	MGBs

2. Timaru

1 Competing suppliers of waste collection services in Timaru, as listed in the Yellow Pages, are set out in the following table.

Timaru - Collection competitors

Name	Type of service offered	Area
Garbo Rubbish Removals	MGBs, Bin Trailers, Front Load Skips & Bins	Timaru
Awamoa Bins & Skips	Domestic and commercial Bins and Skips	Oamaru
Peter Murdoch Transport Limited	Skips	Oamaru

Municipal collection contracts

2 The municipal collection contracts in the Timaru area are described below.

Area	Contractor	Bag / MGB
Timaru	ESL	MGBs
Temuka	ESL	MGBs

3. Canterbury

1 Competing suppliers of waste collection services in Canterbury, as listed in the Yellow Pages, are set out in the following table.

Canterbury - Collection competitors

Name	Type of service offered	Area	Present in 1999
City Care (Council Controlled Trading Organisation)		Christchurch	?
Waste Control			√
A Line Bin Services		Christchurch	
AA Rubbish Disposals	Domestic trailer bin hire, commercial refuse removed	Spreydon	√
Aaron Services Ltd		Christchurch	√
Abba Skip Hire	Skip hire – residential and commercial waste disposal	Christchurch	
About Skips	Skips	Christchurch	
Ace Bins Limited	MGBs and drums	Christchurch	√
Action Tidy Bins Canterbury	MGBs and drums		√
Affordable Bins	Rubbish bin hire	Christchurch	√
All Round Services	Commercial and domestic rubbish removals, drum hire	Christchurch	√
Allwaste	Skips	Christchurch and surrounds	
Always Bin Reliable	44 gallon drums, MGBs	Christchurch	
Bankiers Trailer Skip Hire	Skips	Christchurch	
Bassco Bins	Drums	Christchurch	√
Bays Bins		Lyttelton	
BB Bins		Motukarara	
Better Skip Hire/ Mike's Bin Hire	Skips and bins	Kaiapoi	
Bin Co	MGBs and drums, lockable bins, mini skips		√
Bin It Bin Hire	MGBs and drums	Christchurch	
Bin There Done That Rubbish Removals		Christchurch	
Blake R.M & K.S		Christchurch	

Name	Type of service offered	Area	Present in 1999
Booth Bins and Waste Removal	Skips	Christchurch	
Brighton Bins		Christchurch	
Budget Bins Limited		Christchurch	
Buzzin Bins	44 gallon drums	Christchurch	√
Canterbury Economy Waste Bins		Christchurch & Oxford	
Canterbury Mini Skips	Skips	Christchurch	√
Canterbury Waste Bins	Drums and MGBs for solid and greenwaste	Christchurch, Banks Peninsula, Rangiora, Oxford and surrounding towns	
Citywide Bins	Drums with lids	Christchurch	√
Clean Up Rubbish Removals	Rubbish removals, Skip/bin hire	Christchurch	√
Clearaway Bins	Drums with lids & liners		√
Concut Skips	Skips	Sockburn	
Container Waste	Skips with easy load door, MGBs, hook load service	Christchurch	
Devondale Skips	Waste and Scrap removal Skips		
DJ's Bin Hire		Kaiapoi	
Eastern Bin Hire 2002	MGBs and drums	Eastern suburbs and Belfast, Redwood	√
Ellesmere Bins	44 gallon drums, MGBs, trailers	Ellesmere	
Ezy Bin Hire	Drums, MGBs for greenwaste, mixed/household waste and recyclables	Christchurch and suburbs (all areas covered)	
Friendly Bins	MGBs and drums	Christchurch	
Garden City Waste & Bin Hire	Drums with lids	Christchurch	?
Giant Rubbish Bags Service	Large Bags	Christchurch	√
Grouches Cheap Bins	Bins & MGBs, bulk rubbish		
Hygienic Trailer Bins	5.5m3 easy-load trailers	Christchurch	√
JJ's Bins		Christchurch	
Ken's Bins Limited		Christchurch	√
Laffey's Bin Hire			√

Name	Type of service offered	Area	Present in 1999
Malvern Bins			
Mastagard (Genwest Corporation Ltd)	Skips and MGBs General waste, greenwaste and hardfill "purchased a number of other waste collection operators...servicing over 5,000 households and businesses"	Christchurch	√
Mr Bins Limited	MGBs and drums	Christchurch	√
MT Bins		Christchurch	
Phil a Skip	General Demolition & Green Waste Skips and hardfill. Walk-in skips	Christchurch, Rolleston, Rangiora	
Propertidy		Christchurch	
Quick Skips	Skips for commercial and residential waste, garden waste, general waste and hardfill.	Christchurch	
Rangiora Rubbish Removals		Rangiora	√
Rubbish Removals		Ashburton	√
Skip-2-Dump	Skips	Christchurch	
Summit Bin Hire		Lyttelton	√
TC Bins		Rangiora	√
Tidy Bins Christchurch	MGBs and drums	Christchurch	√
Waimak Bins			√
Waste-Away Bins	MGBs and drums	Christchurch	√
Wheel Away Weeds	Large bags - Green Waste	Christchurch	√

Municipal collection contracts

2 The municipal collection contracts in the Canterbury region are described below.

Area	Contractor	Bag / MGB
Christchurch City Council Waste & Recycling	TPI (purchased from Onyx in 2006)	Bag Crate
Selwyn District Council Waste & Recycling	TPI	MGB Crate
Waimakariri District Council Waste & Recycling	TPI	Bag Crate
Banks Peninsula	G Preston	Bag
Hurunui District Council	Waste Control	Bag
Ashburton District Council	G Preston	Bag

4. Tasman

1 Competing suppliers of waste collection services in Tasman, as listed in the Yellow Pages, are set out in the following table.

Tasman - Collection competitors

Name	Type of service offered	Area
About Waste Disposal About Recycling	Trailer Skip Hire, Garden Bags	
Bingo Skip Hire		Motueka Valley, Marahau, Kaiteriteri, Upper Moutere, Mapua
Can Plan	MGBs, Bags, front load bins, skips	Nelson Motueka
E Voight		Motueka
GB Rubbish Collection Ltd		
Lawns & More	Trailer Skip Hire, Garden Bags, Rubbish Removal	
Motueka Bin Hire		
Nelmac Limited	Bags, MGBs	
Scott's Hir-A-Bin	Tin bins, MGBs, Mini skips	
Streetsmart		
Trailer Rubbish Removal	Skip size trailer	

Municipal collection contracts

2 The municipal collection contracts in the Tasman region are all weekly bag collection contracts. The following table shows who the contracts are currently held by.

Area	Contractor
Nelson City	Nelmac
Richmond	Streetsmart
Motueka	Streetsmart
Tasman	Streetsmart

5. Wellington

1 ESL does not have a collection business in Wellington.

2 Competing suppliers of waste collection services in Wellington, as listed in the Yellow Pages, are set out in the following table.

Wellington - Collection competitors

Name	Type of service offered	Area	Present in 1999
A Bin 2 U Limited		Wellington	
A1 Mini Skips	Skip	Wellington, Petone, Lower Hutt, Upper Hutt, Wainuiomata, Whitby, Porirua & Pukerua Bay	√
Al's Litta Binz	Wheelie bins and drums		√
Apex Waste (Owyak Waste Limited)	Mini Skips		√
Better Bins Limited	Mini, maxi, thrifty, dumbo, jumbo and concrete skips	Lower Hutt	√
Bin Hire Limited	Jumbo bins	Upper Hutt	√
Bob's Bins (NZ Waste)	4 bin sizes ("Big Bob", "Heavy Bob", "Mini Bob", "Baby Bob")		√
Bookabin.co.nz			
Citrus Fresh Limited		Wellington	
Corporate Bin Services	Skips	Wellington	
Daily Karts	Wheelie bins	Wellington	
Daily Waste	Jumbo bins, mini bins, front lift bin services, on-site compaction unit, hook load bins, liquid waste, wheelie bins	Wellington, Hutt Valley, Porirua	√
DIMAC Bins Limited	Wheelie bins, mini skips, jumbo bins, front loader bins	Wellington	
Document Destruction Service		Wellington	√
Fullcircle (Paper Chain)			√
Gordies Bins Limited	Wheelie bins	Johnsonville to Pukerua Bay	√
Grays Holdings		Wellington	√
Greg's Rubbish Removal		Wellington	

Name	Type of service offered	Area	Present in 1999
Hutt Waste Removal	44 gallon drums and truck hire	Wellington	
Junk-2-go	We load up your rubbish and take it away	Wellington	
Karori Bins	Rubbish removal/pickup, garden waste, section clearing	Wellington	
Low Cost Bins Wellington	MGBs	Wellington	
Mini Skips Wellington Limited	Skips	Wellington, Hutt Valley	√
Owyak Waste Limited	Skips, mini skips, low-side	Wellington City & suburbs, Hutt Valley & Kapiti Coast	
Porirua Refuse Disposals Limited		Wellington	√
Porirua Waste	Wheelie bins, skips, front loading	Wellington	
Richmond Industries Limited		Wellington	
Tich's Trash Service		Wellington	√
Total Recycling Limited (Metals)		Wellington	√
Unlimited Rubbish Removal	Bulk rubbish, rubbish removal, commercial and residential, construction waste, garden waste	Wellington	
V.I.P Home Services	Garden bags, big bags, bulk rubbish, household/garden, full section clearing		√
Waste Services Ltd		Wellington	√
Winstone Aggregates	Commercial clean fill	Wellington	
Woods Waste Disposal & Transfer Station	High and low sided bins, wheelie bins, high sided trucks	Wellington	√
0800-Junk-Easy	Household junk, commercial waste, garden waste		

3 In addition, TPI is aware that in October 2006, Low Cost Bins Wellington entered the Wellington collection market. This was set up by former employees of a collection competitor in the Wellington market.

Municipal collection contracts

4 The municipal collection contracts in the Wellington region are all weekly bag collection contracts. The following table shows who the contracts are currently held by.

Area	Contractor	Bag / MGB
Wellington City	Wellington City Council Works Department	Bag
Porirua City	Allbrite (TPI)	Bag
Hutt City	TPI	Bag
Upper Hutt	TPI	

6. MidCentral region (Kapiti Coast / Horowhenua, Manawatu / Palmerston North)

1 Competing suppliers of waste collection services in MidCentral, as listed in the Yellow Pages, are set out in the following table.

MidCentral - Collection competitors

Name	Type of service offered	Area
Kapiti Coast / Horowhenua		
All Waste Drums	44 gallon drums with lids and liners	Levin
Foxton Bins (Cairns Bins)	Wheelie bins, side-load bins, rubbish skips, 'huka' bins	Levin, Foxton, Tokomaru, Shannon & Himatangi
Levin Container Rubbish	Wheelie bins, drums, skips & maxi skips	Levin
Levin Mini Bins		Levin
Owyak Waste Limited	Skips, mini skips, low-side	Wellington City & suburbs, Hutt Valley & Kapiti Coast
Ryan's Wheelibins Ltd	Wheelie bins and drums	Levin
Palmerston North / Manawatu		
Budget Plastic Company Limited	Plastic Recyclist	Palmerston North
Cairns Bins	Side-load bins, rubbish skips, 'huka' bins	Palmerston North, Fielding, Ashurst, Linton, Tokomaru & Horowhenua area
Fullcircle (Paperchain)		
M.T. Sebelin & Sons Ltd	Rubbish removed, section clearing, tree topping & removal, driveways & paths relaid	Palmerston North
Mr Garbage	Wheelie bins and drums	Palmerston North
Pacific Plastic Recyclers Limited		Otaki
Rangitikei Hire Bin Services		Marton
Rangitikei Waste Disposal		Marton

Municipal collection contracts

2 The municipal collection contracts in the MidCentral region are described below.

Area	Contractor	Bag / MGB
Rangitikei District (Taihape & Marton)	Manawatu Waste	Bag
Manawatu District (Feilding)	Manawatu Waste / Palmerston North City Council/City Enterprises	Bag
Horowhenua District (Foxton, Horowhenua, Levin) Refuse Recycling	 Levin Container Rubbish Levin Container Rubbish	 Bag Bin
Palmerston North District Refuse Recycling	 Palmerston North City Council/City Enterprises Palmerston North City Council/City Enterprises	 Bag Bag
Kapiti Coast District (Kapiti & Otaki)	Manawatu Waste	Bag

7. Wanganui

1 Competing suppliers of waste collection services in Wanganui, as listed in the Yellow Pages, are set out in the following table.

Wanganui - Collection competitors

Name	Type of service offered	Area
Dave Hoskin Carriers	Mini – jumbo bins	Wanganui
Fullcircle (Paper Chain)		
J.A.B Enterprises	Rubbish bin hire	Wanganui
Moccasins Recycling		Raetihi
River City Recyclers		Wanganui
Trashpak Rubbish Removal		Wanganui

Municipal collection contracts

2 There are no municipal collection contracts in Wanganui.

8. New Plymouth / Taranaki

1 Neither ESL nor any of its joint venture interests has a collection business in this region.

2 Competing suppliers of waste collection services in Taranaki, as listed in the Yellow Pages, are set out in the following table.

Taranaki - Collection competitors

Name	Type of service offered	Area
Eazi Bins	From mini bins to 9 cubic metres, including low sided bins	Bell Block
Egmont Refuse & Recycling Limited	Wheelie bins, recycling, 4x4 bins	Hawera
Heydon Priest Limited	Jumbo bins, ½ bins and 4x4 bins	New Plymouth
Inglewood Rubbish Skips	Business & home rubbish removal, mini skips	Inglewood
Ingrams Bin Hire	Jumbo skips and bins	Hawera
Just Rubbish	Mini and jumbo bins, frontloaders with lids and locking bar	Waitara
Silver Drum Hire	Wheelie bins, drums, front load bins, loose waste	New Plymouth, Inglewood, Waitara

Municipal collection contracts

3 The municipal collection contracts in the Taranaki region are all weekly bag collection contracts. The following table shows who the contracts are currently held by.

Area	Contractor	Bag / MGB
New Plymouth District Council – Refuse Collection	TPI	Bag
Recycling Collection	TPI	Bag

9. Hawkes Bay

1 ESL does not have a collection business in Hawkes Bay.

2 Competing suppliers of waste collection services in Hawkes Bay, as listed in the Yellow Pages, are set out in the following table.

Hawkes Bay - Collection competitors

Name	Type of service offered	Area	Present in 1999
Action Rubbish Bins	Wheelie bins and drums	Taradale, Napier, Bay View, Hastings, Flaxmere, Havelock North, Clive	√
Bay Environmental Bins Limited	Wheelie bins	Havelock North, Hastings, Te Awanga, Haumoana, Taradale, Clive	
Bulled Wheelie Bins	Wheelie bins, excavation, digger & truck hire	Hastings, Havelock North, Flaxmere	
Clean Earth Limited	Wheelie bins, hook bins, skips and front load bins	Hawkes Bay	√
Dave's Scrap Metals		Napier	√
Fullcircle (Paperchain)			√
Hawkes Bay Scrap Metal		Hastings	
HB Rubbish Disposal	Wheelie bins and drums, residential and commercial collections	Napier, Hastings, Havelock North, Clive	√
Jim's Bins		Hastings	
Jones Rubbish Bins	Maxi, jumbo, mini skips, commercial or household	Napier-Hastings Districts	√
Kiwi Kanz		Waipukurau	√
Onekawa Metal Recyclers		Napier	√
Pedlars House Partz		Napier	
Ravenwood Products	One stop recycling and rubbish sorting stations	Napier	
Rent A Bin	200 litre bin with liner & lid	Hastings, Havelock, Flaxmere	√
Rubbish & Drum		Hawkes Bay	
Walmsley Contracting Limited	Building recyclers	Hastings	
Waste Disposal H.B. Limited	Front load bins, jumbo bins, mini skips	Hawkes Bay	√
Wasted Bin Co Limited	Skip bins, residential and commercial	Havelock North	

Municipal collection contracts

3 The municipal collection contracts in the Hawkes Bay region are all weekly bag collection contracts. The following table shows who the contracts are currently held by.

Area	Contractor	Bag / MGB
Napier City Refuse Recycling	 TPI Allbrite (TPI)	Bag
Hastings District Refuse Recycling	 TPI Allbrite (TPI)	Bag
Central Hawkes Bay Refuse / Recycling	 Central Hawkes Bay DC Works Department	 Bag / Crate

10. Gisborne

1 ESL does not have a collection business in Gisborne.

2 Competing suppliers of waste collection services in Gisborne, as listed in the Yellow Pages, are set out in the following table.

Gisborne - Collection competitors

Name	Type of service offered	Area
Bay Bins	Jumbo, mini and wheelie bins, drums	Gisborne
D B Judd Holdings Limited	Receivers of Greenwaste	Gisborne
Dial A Drum	Lined 44 gallon drums with lids	Gisborne
Eastland Traders Building Recyclers		Gisborne
Hallrite Building Recyclers 204 Limited		Gisborne
Jukes Carriers	Waste recyclers, mini bin hire, solid waste disposal	Gisborne
Miniskips	Wheelie bins, drums and skips	Gisborne
Wayne's Waste	Bin hire, jumbo bins, low sided mini bins	Gisborne

Municipal collection contracts

3 The municipal collection contracts in the Gisborne region are all weekly bag collection contracts. The following table shows who the contracts are currently held by.

Area	Contractor	Bag / MGB
Gisborne and rural surrounds	Allbrite (TPI)	Bag

11. Bay of Plenty / Rotorua / Taupo

1 Competing suppliers of waste collection services in this region as listed in the Yellow Pages, are set out in the following table.

Bay of Plenty / Rotorua / Taupo - Collection competitors

Name	Type of service offered	Area
Al's Garden Bags		
Bargain Bins Limited	Mini, medium and jumbo skips	Tauranga, Mt Maunganui, Rotorua
Bay City Bins & Skips	Rubbish bins, min skips, bulk removals, domestic and commercial	Tauranga
Baycomp Binbags	Garden bags and bins	Katikati
Bay Scrap Metals Limited		Tauranga
Big Bins	Drum hire	Tauranga, Mt Maunganui, Papamoa
Bin & Skip Hire	A size for all jobs – 3, 4.5, 6, 7.5, 9 cubic metre bins	
Bin Boys	Wheelie bins and drums	Tauranga
Bin Solutions	Skips	Tauranga
Blue Rock Bin Hire		Whakatane
Cale R.G & B.M		Papamoa
Discount Bins	Low-sided skips, high-sided jumbo bins	Tauranga, Te Puke, Mt Maunganui, Papamoa
Ezyway Waste Services	Wheelie bins, drums, garden bags, mini skips	Katikati
Foote Bins	Skip bins, mini skips, front load bins	Whakatane, Kawerau, Matata, Taneatua, Ohope
Fullcircle (a Carter Holt Harvey Business)	Paper & cardboard recycling	
Green Fingers		
Hire A Skip	Mini skip bins	Tauranga, Whakatane
Inter Waste Limited	Hard fill skip bins, jumbo bins	Tauranga
Katikati Bin Hire	Drums, mini skips, garden bins	Katikati
Kleana Bins Limited	Drums, wheelie bins, recycle bins	Pukehina to Omokoroa
Lakeland Porta Bin	Wheelie bins	Taupo
Metal Man Recyclers	Roofing Iron & free car dump, scrap metal, aluminium cans, radiators, batteries, brass, copper, lead	Tauranga
Mini Bins	Skips on wheels, wheelie bins	Tauranga, Rotorua
Mini Skips	Skips for hire	Tauranga, Te Puke, Papamoa, Mt Maunganui, Rotorua

Name	Type of service offered	Area
Mount Metal Recyclers	Buyers of scrap steel and non ferrous metals. We will pick up	Mt Maunganui, Rotorua, Whakatane, all other areas
Ring A Bin	Wheelie bins, skips, jumbo bins	Tauranga
Tweed Trading	Demolition & Recycling	Tauranga
Yellow Bins 2005 Limited	2 and 3.5 cubic metre bins	Tauranga

2 TPI understands that JJ Richards has recently entered the collection market in Tauranga.

Municipal collection contracts

3 The municipal collection contracts in the Tauranga/Western Bay of Plenty region are described below.

Area	Contractor	Bag / MGB
Tauranga City Council	TPI (acquired with acquisition of Environmental Green Bins	Bag
Western Bay of Plenty District Council (Mt Maunganui & Te Puke)	TPI (acquired with acquisition of Environmental Green Bins)	Bag
Taupo District Council Waste collection and recycling	Manawatu Waste (ESL JV) Manawatu Waste (ESL JV)	Bag Bag

12. Waikato and Thames/Coromandel

1 Competing suppliers of waste collection services in the Waikato/ Coromandel area (including Hamilton), as listed in the Yellow Pages, are set out in the following table.

Waikato/Thames Coromandel - Collection competitors

Name	Type of service offered	Area	Present in 1999
Ace Rubbish Removal		Hamilton	√
Acron Waste	Wheelie bins, prepaid stickers, general refuse	Covering the greater Waikato - Coromandel	√
Al's Garden Bags			√
AP Developments Limited		Hamilton	
Bargain Bins Limited Est 1993	Skips – mini, medium, jumbo	Hamilton	
Better Bins	Skips, mini skips, wheelie bins	Hamilton	
Bin Hire Hamilton	Skips, mini skips, bins	Hamilton, Huntly, Ngaruawahia, Te Awamutu, Cambridge, Morrinsville, Matamata	
Cambridge Hire Bins	Wheelie bins, skips	Cambridge, Te Awamutu and surrounding district	√
Cambridge Recycling Centre		Cambridge	
Construction Demolition Landfill Limited	Construction & Demolition waste	Huntly	
Cunliffe Hire Bins		Tokoroa	√
D & T McDonald Limited	Recycled materials	Hamilton	
DUSBINS			
Ezy Binz	Wheelie bins and skips	Hamilton, Morrinsville, Cambridge, Ohaupo, Te Awamutu, Ngaruawahia, Huntly	
Frasers Vegetation Management Limited	Organic rubbish removal. Self loading crane truck.		
Fullcircle (Paper Chain)			√
Garden Wise		Hamilton	
Greenfingers Garden Bags & Bins	Garden bags, wheelie bins		
Green Waste Recycling Limited		Paeroa	

Name	Type of service offered	Area	Present in 1999
Hamilton Garden Bags & Bins	Wheelie bins	Hamilton	
Huntly Refuse		Huntly	
JJ Richards		Hamilton	
Juno Engineering & Manufacturing Ltd		Matamata	
Materials Processing Limited		Hamilton, Cambridge, Tokoroa	√
Melgren Waste Systems	Jumbo Bins	Cambridge, Ngaruawahia, Hamilton	√
Mini-Skip Hire Company	Skips (low & high sided)	Raglan	
National Waste New Zealand Limited	Wheelie bins, prepaid stickers, general refuse	Covering the greater Waikato - Coromandel	
Ngaruawahia Bin Hire	Wheelie bins, skips	Ngaruawahia	
Perry Environmental		Hamilton	√
Pete's Bin		Tirau	√
Recycle Men			
Ruapehu Waste Services		Taumarunui	
Rudies Rubbish Removal		Hamilton	
Section Maintenance	Commercial and domestic rubbish removal and clean-up.	Hamilton	√
Tawa Construction & Demolition		Hamilton	
Te Awamutu Bin Hire Limited	Skip Bins	Te Awamutu	√
Total Recycling Ngaruawahia		Ngaruawahia	
Tribro Bins Limited			
Valley Bin Services		Thames	√
Vanders Bins		Otorohanga	
Waikato Concrete Crushing Limited		Hamilton	
Wastepro Solutions Limited		Tokoroa	
Whangamata Bin Services		Whangamata	√
Wheelie Bin Services		Matamata	√
Wightman Contractors		Waihi Beach	√

2 TPI understands that JJ Richards has recently entered the collection market in Hamilton.

Municipal collection contracts

3 The municipal collection contracts in the Waikato/Thames Coromandel region are described below.

Area	Contractor	Bag / MGB
Hamilton City Council Waste collection Recycling	 TPI TPI	 Bag Crate
Waikato District Council (Huntly & Ngaruawahia)	TPI	Bag
Waipa District Council (Cambridge & Te Awamutu)	No council contract	Bag
Otorohanga District Council	Supa Bins	Bag
Waitomo District Council (Te Kuiti)	Supa Bins	Bag
Thames/Coromandel District Council	Streetsmart	Bag, MGB
Hauraki District Council (Kerepehi, Paeroa, Waihi)	Streetsmart	Bag
Matamata/Piako District Council (Te Aroha, Morrinsville, Matamata)	ESL	Bag
South Waikato District (Putaruru & Tokoroa)	Excell Corporation	Bag

13. Auckland

1 Competing suppliers of waste collection services in Auckland, as listed in the Yellow Pages, are set out in the following table.

Auckland - Collection competitors

Name	Type of service offered	Area	Present in 1999
AAA ABC Bins Limited	2,3,4,6,9m bins	Ponsonby, Eden, Massey, Pt Chevalier, Henderson etc	
A Aardvark Bin	Multiple size bins	Auckland	
AA Coastwide Limited Bin Hire	Skips	Rodney	
AA Load-N-Go	Load and clean up any rubbish – house/office etc. They take what bins don't	Auckland	
AAAAHA Bins 4 U		South Auckland & Pukekohe	
A B & W Rubbish Contractors	Rubbish removal	Auckland	
About Bins	Jumbo, trailer bins and mini skips	Eastern Suburbs, Central City, West Auckland, South Auckland, North Shore/Hibiscus Coast	√
Absolute Rubbish Removers Limited	Office, Commercial, Residential	Papatoetoe	
Absolute Waste Services (recent entrant)	Frontload Bins & Skips	Auckland	
Ace Rubbish Removal	Office waste managers, recyclers	Auckland	
Ace Service	Bin hire, wheelie bins and cages for paper recycling	Auckland	
ACM Property Services	Rubbish removal/clean-ups	Auckland City, North Shore	
Affordable Rubbish Services Limited	Load and remove all rubbish and green waste	Auckland	
Albany Bin Hire	Skips	North Shore City & Rodney	√
All the Rubbish Movers	Load and remove any type of rubbish	Auckland	
Alpha Refuse Collectors	Municipal & Commercial waste collection	Greenmount	√
Astron Plastics	Plastic waste collection	East Tamaki	√
A1+ Clean-up/Removal	"We do everything"	Auckland	
Are-U2BZ Landscape	Rubbish removal and	Auckland	

Name	Type of service offered	Area	Present in 1999
& Design	section clearing		
Arcus Bins	1-9m bins or trucks	Auckland	
Arrow Mini Bins	Skips	Auckland	
Auckland Bin Hire Central	Bins, mini & jumbo skips	Auckland City, West, North	
Auckland Contracting Services	Commercial & residential loading and removal	Henderson	√
Auckland Glass Recyclers	Glass waste collection	East Tamaki	√
Auckland Rubbish Movers	Load and remove all types of rubbish	Auckland	√
Auckland Wide Cut Price Bins	Mini, medium, jumbo, mega skips and hardfill bins	Auckland	
Baker Bins	Trailer Bins	North Shore	√
Bargain Bins Limited	Mini, medium and jumbo skips	Auckland	√
Big Red Bin Company	Skips	North Shore	
Bins R Us (Bin Services)	2m3-12m3 bins, dirt and concrete bins, small trucks	Auckland	√
Bookabin	Skips	Auckland wide	
City Bins	Skips/bags	Auckland	√
City Wide Rubbish Removal	Bins, skips, jumbo skips	Auckland	√
Cleanaway	Commercial & domestic waste service	Auckland	√
Clean New Zealand	Skips & MGBs	Auckland	√
Counties Bin Hire	Skips	Pukekohe	
Commercial Metals Ltd	Skips (scrap steel)	Auckland	√
Cut Price Bins	Skips	Auckland	√
David Millar Bins	Mobile Bins	Auckland	
Discount Bins Limited	All sizes of bins	South Auckland	
Donaldson Transport	Collection	Pukekohe	
Echo Recycling	Central Auckland collections – plastic, glass, cardboard, aluminium	Auckland	
Envirofert Limited	Cleanfill and greenwaste disposal	Pukekohe	√
Floorcare Limited	Collection	Auckland	
Freeth Disposals Limited (Freeth & Sons)	Mini skips, jumbo bins, hardfill skips, wheelie bins	Auckland	√
Fullcircle (Paper Chain)	Paper & Cardboard collection	Auckland	√

Name	Type of service offered	Area	Present in 1999
Gamma Bins	Hook Bins	Auckland	√
Glass Reclaim	Bottle and jar collections	Auckland	√
Green Clean Limited	3m3 bins – super jumbo bins, tip truck	North Shore City	
Heards	Waste disposal bins	Papakura	
Hewes Metals Limited	Scrap steel collection	Pukekohe	
Instant Rubbish Removals	Collection	Auckland	
JJ Richards & Sons	Frontload & wheelie Bins	Manukau City	
J's Rubbish Removals	Collection	Auckland	
Junk 2 Go	Load and remove rubbish	Central and North Shore	
Just Bins Limited	Bins, mini skips, skips	North Shore, Whangaparoa, Central, West, South, East Auckland	√
Mason Bins	Skips, Hooker bins, Frontload, MGBs, bins & bags	Warkworth	√
Metro Mini Bins	Skips, bins, small lightweight trucks	Auckland	√
McCamish Metals	Scrap metal	Auckland	√
Metal Man NZ	Skips (Scrap metal)	East Tamaki	√
Metalcorp Recyclers NZ Pty Limited	Scrap metal	Auckland	
Mini Skips Hibiscus Coast	Skips	Hibiscus Coast	√
Miniskips Auckland	Skips and small lightweight trucks	Auckland	√
Miniskips Green	Green Waste Cages	Auckland	
Miniskips West	Skips	West Auckland	√
Mr Binz (Clamshell Bulk Rubbish Removal)	Skips, Hiab Bins, Bulk removal	Nor-west region	√
Neat & Tidy Bins Limited	Collection	Browns Bay	√
Nikau Contractors Limited	For all bin hire	Auckland	√
NZ Plastic Recyclers Co Limited	Plastic Waste collection	Auckland	
New Zealand Plastic Recycling Limited	Plastic waste baling & export	Auckland	
Paper N Place	Home paper and recycling	Auckland	
Payless Bins	Skips, hardfill bins, hooker bins, small trucks, Front Load Bins	Auckland	√
Pick-up Artist	Collection	Auckland	

Name	Type of service offered	Area	Present in 1999
Piha Bin Service	Skips	Piha	√
Pink Bin Co Limited (Pink Rubbish Bags)	Skips, hook bins, hard fill, glass bins		√
Provincial Recyclers Limited	Glass collection	Auckland	√
Resource Recovery Limited	Rock crushing	Pokeno, Auckland	√
Rubbish Direct Limited	Wheelie bins & recycling		√
Rubbish Disposals Co	Collection	Auckland	√
Scrap Metal Recyclers Limited	Skips – scrap steel recycling	Onehunga	√
Sharjo Holdings Limited	Recyclables collection	Drury	√
Smart Recycling Limited	Municipal & commercial collection	Otahuhu	√
South City Bins Limited	Skips	Pakuranga, Howick	√
South to City Bin Hire	Skips	Auckland	√
TBS Farnsworth	Hook bins, tip trucks, labour hire	Auckland	√
The Rubbish Company	Commercial & residential wheelie bins	Waiheke Island	
Total Wheelie Bin Services	Wheelie bins	Wellsford	√
Trash Control Limited	Mini and jumbo skips, hardfill bins, small lightweight trucks	Auckland	√
Tribro Bins	Skips	Auckland	
Visy Recycling NZ Limited	Glass beneficiation	Auckland	√
Warren Metals Limited	Purchasers of ferrous and non-ferrous metals	Auckland	
Waste Away Limited	Skips, hardfill bins, front loading bins	Auckland	√
Wastex	Collection	Auckland	
Western Waste Contractors Limited	Collection	Swanson	√
Wheeliebins Limited	Wheeliebins		√
White Bins Limited	Skips	Clevedon	
0508 Hire Me	Skips	North Shore	

Municipal collection contracts

4 The municipal collection contracts in the Auckland region are mixed between bag and MGBs. These contracts are set out in the following table:

Area	Contractor	Bag / MGB
Papakura District Council Refuse Recycling	 TPI Streetsmart	 Bag Crate
Franklin District Council Refuse Recycling	 ESL All Brite	 Bag & MGB Crate
Manukau City Council Refuse Recycling	 Alpha Streetsmart	 Bag Crate
North Shore City Council Refuse Recycling	 Onyx Onyx/CHH	 Bag MGB
Waitakere City Council Refuse Recycling	 Onyx Onyx/CHH	 Bag MGB
Auckland City Council Refuse Recycling Waiheke Refuse Waiheke Off-Island Haulage	 Cleanaway/Metro Streetsmart Cleanstream TPI	 MGB Crate Bag N/A
Rodney District Recycling	Streetsmart/CHH	Crate

14. Northland

1 ESL does not have a collection business in Northland.

2 Competing suppliers of waste collection services in Northland, as listed in the Yellow Pages, are set out in the following table.

Northland - Collection competitors

Name	Type of service offered	Area	Present in 1999
Barnair Garden Bins		Kawakawa	
Dargaville Tidy Bins	Rubbish Collection, crane hire, recyclers and bin hire	Dargaville	√
Demolition Supermarket		Whangarei	
East West Waste Limited		Bay of Islands to Whangaroa	√
Easyway Bins	Wheelie bins to jumbo size	Kaitaia	√
Kamo Scrap Metals	Scrap Metal	Whangarei	
Mega Metals	Scrap metals, collection of unwanted vehicles, disposal of whiteware	Whangarei	
Northland Scrap & Coal Limited	Buyers of all metals	Whangarei	
Northwaste Limited	Hooker bins, front load bins, certified crane bins, residential and commercial	Whangarei	(Previously Onyx)
Paper Reclaim Group	Collect paper, cardboard, plastic film. Bin service available.	Whangarei	√
Pioneer Engineering		Whangarei	
Quest Metals	Scrap metals	Whangarei	
Stan Semenoff Transport	Hook bins	Whangarei	Previously Parkes Hook Bins
TD Haulage	Sawdust	Whangarei	
The Wheelie Bin Company	Wheelie bins and small bins	Wellsford	
Tranzcrane Limited		Kaitaia	
Waste Works Limited	Wheelie bins, front load bins, jumbo bins	Whangarei, Kaikohe	√ (previously KRRC)

Municipal collection contracts

3 The municipal collection contracts in the Northland region are mixed between bag and MGB collection contracts. The following table shows who the contracts are currently held by.

Area	Contractor	Bag / MGB
Whangarei District Council Urban Collection	Waste Works	Bag
Whangarei District Council Rural Collections	Waste Works	Bag
Whangarei District Council Kerbside Recycling	Streetsmart	Bin
Whangarei District Council Beach Bins	Waste Works	Bin
Whangarei District Council City Litter Bins	Ramjet	Bin
Whangarei District Council Sewage sludge and grit bins	TPI	N/A
Whangarei District Council Litter control – state highways	Fulton Hogan	N/A
Far North District Council Litter Control	Impact Services	Bin
Kaipara District Council User-pays Residential Bag Collection	Kaurilands Skills Centre/ Waste Works	Bag

17. Transfer station markets

Introduction

17.1 The relevant markets here are the local markets for transfer stations for solid, non-hazardous waste.

17.2 Transfer stations serve two customer groups:

- *The general public*: transfer stations are a convenient location for members of the public to dispose of their own household and garden waste. Increasingly, the general public is not permitted to dispose of waste directly at the landfill.

- *Commercial operators*: transfer stations enable commercial operators to drop off their waste loads at a more convenient location to save a series of trips to the landfill.

17.3 The following table shows where TPI, ESL or Manawatu Waste own or operate transfer stations.

Table 7

TPI and ESL ownership and operation of transfer stations

<table>
<tr><th>Region</th><th>TPI</th><th>ESL / Manawatu Waste</th></tr>
<tr><td>Northland</td><td>Yes*</td><td>No</td></tr>
<tr><td>Auckland</td><td>Yes</td><td>ESL</td></tr>
<tr><td>Waikato</td><td>Yes</td><td>ESL</td></tr>
<tr><td>Bay of Plenty</td><td>Yes</td><td>No</td></tr>
<tr><td>Taupo</td><td>No</td><td>Manawatu Waste *</td></tr>
<tr><td>Gisborne</td><td>Yes
(through All Brite)</td><td>No</td></tr>
<tr><td>Hawkes Bay</td><td>No</td><td>No</td></tr>
<tr><td>Taranaki</td><td>No</td><td>Manawatu Waste)</td></tr>
<tr><td>Wanganui</td><td>Yes</td><td>Manawatu Waste)</td></tr>
<tr><td rowspan="2">MidCentral (Horowhenua/Kapiti Coast, Palmerston North, Manawatu)</td><td colspan="2">Midwest Disposals' Levin station</td></tr>
<tr><td>Yes*</td><td>Manawatu Waste</td></tr>
<tr><td>Canterbury</td><td colspan="2">Yes (through CWS)</td></tr>
<tr><td>Timaru</td><td>No</td><td>ESL*</td></tr>
<tr><td>Otago (Dunedin)</td><td>No</td><td>ESL</td></tr>
</table>

* Operations contract only

17.4 The only areas affected by the Proposed Transaction where both ESL or Manawatu Waste and TPI have interests in transfer stations are the MidCentral region and Wanganui. These areas are considered separately below.

Midcentral region

17.5 TPI's transfer station interests in the MidCentral region are:

(a) its operation of the Foxton and Shannon transfer stations owned by the Horowhenua District Council;

(b) its operation of the Otaki transfer station owned by the Kapiti Coast District Council; and

(c) its 50% interest in Midwest Disposals which owns the transfer station in Levin.

17.6 ESL's transfer station interests in the MidCentral region are through its shareholding in Manawatu Waste:

(a) Manawatu Waste has a 50% interest in Midwest Disposals (the Levin transfer station); and

(b) Manawatu Waste which owns a transfer station in Palmerston North.

17.7 A map showing the location of the transfer stations is contained in Appendix 3.

17.8 Consistent with the Commission's previous approach to such matters, for the purposes of the assessment of the competition aspects of the Proposed Transaction, both TPI and ESL will be treated as if they had control of the Levin transfer station and ESL will be treated as if it had control of Manawatu Waste's Palmerston North transfer station.

17.9 TPI considers that, in relation to transfer stations in the MidCentral region, the Proposed Transaction will not give rise to any lessening of competition for the following reasons:

(a) TPI's interest in the Foxton, Shannon and Otaki transfer stations is as an operator only. It does not have decision making power as to disposal rates, opening hours, access rights or the disposal destination of the waste. These decisions are made by the owners of these facilities, the Horowhenua and Kapiti Coast District Councils.

(b) the Levin, Foxton, Shannon and Otaki transfer stations are 40 – 80 kilometres away from Palmerston North. While they are in the same broad region, they do not in fact compete for the same waste stream. A waste collector in any of these towns is highly unlikely to incur the transportation costs of taking a load of waste through to Palmerston North and return empty. Similarly, a collector in Palmerston North is highly unlikely to incur the transportation costs of taking a load of waste through to Levin, Foxton, Shannon or Otaki. Transfer stations are strategically located in the catchment area of waste streams to facilitate more efficient disposal of waste.

17.10 In any event, the barriers to entry to the transfer station market are not high. In the *Waste Care* decision, the Commission made the following comments about transfer station markets:

> "The market share figures for the operation of transfer stations within the Auckland region fall within the Commission's "safe harbours". Further, competition from other transfer station operators appears to be reasonably strong. *Barriers to entry into the transfer station market are reasonably low.* Given these factors, the Commission is satisfied that the combined entity would not, or would not be likely to, acquire or strengthen a dominant position in the Auckland local market for waste transfer stations for solid, non-hazardous waste." [para 102]

> "Entry conditions do not appear to be difficult. A critical factor would be the choice of a location where the catchment area generates a substantial, relatively untapped, waste stream. Economies of scale suggest that the number of optimally-sized operations are likely to be limited even in large centres such as Auckland. A medium-sized station might cost $1-2 million to build. However, much smaller and less expensive stations are viable for smaller catchment areas. Resource consents appear not to be a major barrier as they are much less stringent than those required for landfills when located in industrial areas. Simultaneous entry into haulage of waste to landfills would not be essential as that part of the business can be tendered out to haulage contractors.

> It would appear that entry into this market is not conditional upon the entrant being vertically integrated with a landfill disposal business. A well located transfer station which can command a large and stable volume of waste is likely to be able to negotiate favourable access prices to a landfill, providing that there are competing landfills to which its waste could be sent. However, private landfill operators often see a strategic advantage in being vertically integrated with transfer stations." [paras 99 & 100]

17.11 That the Commission's 1999 view of barriers to entry to the transfer station market remains valid is confirmed by the opening of two new transfer stations in the Auckland region in 2005 (the ESL/JJ Richards transfer station in Wiri and the ESL transfer station in Patiki Road) and the opening of a transfer station in Tauranga by a group of collection competitors.

17.12 An overview and commentary on entry conditions to the transfer station market is set out in Table 8 at the end of this section.

Wanganui

17.13 There are only two transfer stations in Wanganui: one is owned by TPI and the other by Manawatu Waste. The TPI transfer station is on land leased from a third party but that third party is no more than a lessor. The "business" belongs to TPI.

17.14 The considerations set out above and in Table 8 at the end of this section in relation to entry conditions to the transfer station market apply equally in relation to Wanganui. TPI does not consider that access to suitably zoned sites in the Wanganui region would be an issue for a new entrant transfer station owner.[ ]

Operation of transfer stations for third party owners

17.15 There are a number of local authority owned transfer stations around the country that are operated by independent contractors. For example, as noted earlier, TPI, ESL and Manawatu Waste have operations contracts in relation to the following transfer stations:

(a) *TPI:* Whangarei District Council's (Resort) transfer station; and the Foxton and Shannon transfer stations owned by Horowhenua District Council, and the Otaki transfer station owned by Kapiti Coast District Council;

(b) *ESL:* the transfer stations owned by the Timaru District Council and the transfer station in Waiuku owned by the Franklin District Council;

(c) *Manawatu Waste or its subsidiary, Budget Waste:* the transfer stations in the Taupo area owned by the Taupo District Council (which TPI understands are subcontracted to Stuart Walker Contractors Limited).

17.16 TPI's transfer station operations contracts involve operations functions only. The operations function is a strictly practical one involving, variously, the receipt and organisation of vehicles at the transfer station, managing the weighbridge (if there is one), the movement and compaction of waste and arranging for its transport to landfill, security, vector control etc. and in some cases receiving and accounting to the owner for disposal fees. Under these operations contracts, the operator does not have any responsibility for setting disposal fees, opening hours or the destination of the waste. The operator does not own the business. TPI understands that the ESL and Manawatu Waste operations contracts are similar in principle.

17.17 Table 9 at the end of this section demonstrates that there are a number of independent parties operating transfer stations on behalf of their local council owners.

17.18 As the operations functions at transfer stations do not involve a high degree of skill or much, if anything, in the way of capital (particularly if the equipment is owned by the transfer station owner), the barriers to entry are low. Other potential transfer station operators include local waste collectors, local earthmoving companies, civil works contractors, facilities management companies and local authorities' own works departments.

Table 8
Consideration of conditions for entry into transfer station markets

Potential barrier	Comment
Substantial economies of scale or scope in production	Yes – need to attract sufficient waste volumes. Transfer station needs to be strategically located.
Sunk costs from investing in tangible assets or intangible assets	Tangible assets required are: land and covered buildings; loaders and excavators or compaction equipment; weighbridge; billing systems. Total cost of construction of medium sized station likely to be $3 –5 million assuming a greenfields site. Considerably less if existing warehouse type building used along with top loading trailers. Intangible assets (such advertising and R&D): Negligible.
Higher costs of capital often associated with a new business lacking a track record.	Unlikely to be the case.
Presence of consumer switching costs.	No.
Difficulty in accessing distribution channels, infrastructure, technology or raw materials.	No.
Existence of any first mover advantage for incumbent businesses.	No.
Entry licensing.	No licence required in most areas.
Quality standards.	Will need to meet resource consent conditions and health & safety rules. Nothing too onerous.
Environmental controls.	Pre-requisite is a suitably located site in a zone where transfer stations are a permitted or discretionary activity. Sites likely to be available in Wanganui, MidCentral region, and other regional towns. Air discharge permits also required.
Intellectual property rights.	None.
Likelihood and effect of incumbent businesses:	
▪ investing in excess capacity.	Unlikely.
▪ advertising heavily to raise customer loyalty, brand reputation, sunk costs.	Unlikely. Customers are driven by cost.
▪ raising customer switching costs, e.g. by offering volume discounts.	Unlikely – but other operators can do likewise.
▪ signaling that entry would be responded to aggressively or in a predatory fashion.	Unlikely.

Table 9

Transfer station operators

Transfer Station	Owner	Manager / Operator
Northland		
Resort	Whangarei District Council	TPI
Hikurangi	Whangarei District Council	Waste Works
Kokopu	Whangarei District Council	Waste Works
Uretiti	Whangarei District Council	Waste Works
Tauraroa	Whangarei District Council	Waste Works
Ngunguru	Whangarei District Council	Waste Works
Ruatangata	Whangarei District Council	Waste Works
Parua Bay	Whangarei District Council	Waste Works
Oakura	Whangarei District Council	Waste Works
The Waste Station	Waste Works	Warwick Taylor (owner of Waste Works)
Te Hapua	Far North District Council	CBEC
Te Kao	Far North District Council	CBEC
Houhora	Far North District Council	CBEC
Whatuwhiwhi	Far North District Council	CBEC
Opononi	Far North District Council	CBEC
Pangaru	Far North District Council	CBEC
Kaitaia	Far North District Council	CBEC
Awanui	Far North District Council	CBEC
Kaimaumau	Far North District Council	CBEC
Taipa	Far North District Council	Waste Works
Horeke	Far North District Council	Waste Works
Whitehills	Far North District Council	Waste Works
Kerikeri	Far North District Council	Waste Works
Whangae	Far North District Council	Waste Works
Towai	Far North District Council	Waste Works
Kohukohu	Far North District Council	Waste Works
Herekino	Far North District Council	Waste Works

Transfer Station	Owner	Manager / Operator
Central North Island		
Hamilton	Hamilton City Council	TPI
Tauranga City	Tauranga City Council	Perry Environmental
Tauranga City	Tauranga City Council	Perry Environmental
Tauranga City	(A small group of collectors)	Kleena Bins
Whakatane	Whakatane District Council	TPI
Ashurst	Palmerston North City Council	Cairns Bins
Feilding	J Signal/ Manawatu District Council	Cairns Bins
Shannon	Horowhenua District Council	TPI
Foxton	Horowhenua District Council	TPI

Transfer Station	Owner	Manager/Operator
South Island		
Nelson City	Nelson City Council	Works Infrastructure
Tasman	Tasman District Council	Streetsmart
Christchurch City	Christchurch City Council	Meta Limited
Christchurch City	Christchurch City Council	Meta Limited
Christchurch City	Christchurch City Council	Meta Limited
Waimakariri	Waimakariri District Council	TPI
Hanmer Springs	Hurunui District Council	Waste Control
Culverden	Hurunui District Council	Waste Control
Amberley	Hurunui District Council	Waste Control
Barrys Bay (Banks Peninsula)	Christchurch City Council	Wasteline
Birdlings Flat (Banks Peninsula)	Christchurch City Council	Wasteline
Ashburton Resource Recovery Park	Ashburton District Council	TPI
Rakaia Resource Recovery Park	Ashburton District Council	TPI
Timaru	Timaru City Council	ESL
Timaru	Timaru City Council	ESL
Timaru	Timaru City Council	ESL
Timaru	Timaru City Council	ESL
Queenstown	Queenstown Lakes District Council	OSWS (TPI interest)
Wanaka	Queenstown Lakes District Council	OSWS (TPI interest)
Cromwell	Central Otago District Council	OSWS (TPI interest
Alexandra	Central Otago District Council	Pratty's Bins
Ranfurly	Central Otago District Council	Pratty's Bins
Invercargill	Invercargill City Council	Bond Contracts Limited (50% owned by Invercargill City Council and 50% privately owned)
Te Anau	Southland District Council	Bond Contracts Limited
Lumsden	Southland District Council	Bond Contracts Limited
Riverton	Southland District Council	Bond Contracts Limited

18. Landfill markets

Introduction

18.1 TPI has the following landfill interests in New Zealand:

(a) *Auckland:* TPI owns the Redvale landfill to the north of Auckland and has a 50% interest in the Whitford landfill in Manukau City;

(b) [ ];

(c) *Horowhenua:* TPI has a 50% interest (with ESL) in Midwest Disposals Limited, which owns the Bonny Glen landfill in Rangitikei and has an operations (and disposal) contract with the Horowhenua District Council in relation to the Hokio Beach landfill;

(d) *Wellington:* TPI has an operations contract with the Porirua City Council in relation to the Spicers Landfill. (This contact was acquired with TPI's acquisition of the Onyx Industrial waste business); and

(e) *Canterbury*: TPI has a 50% interest (with ESL) in Canterbury Waste Services Limited, which has a 50% interest in Transwaste Canterbury Limited which owns the Kate Valley landfill.

18.2 ESL has the following landfill interests:

(a) *Auckland/Waikato:* ESL owns the Hampton Downs landfill, to the south of Auckland;

(b) *Horowhenua:* ESL has a 50% interest in Manawatu Waste Limited which has a 50% interest (with TPI) in Midwest Disposals Limited, which owns the Bonny Glen landfill in Rangitikei and has the Hokio Beach operations contract referred to at paragraph 18.1 (c) above;

(c) *Canterbury*: ESL has a 50% interest (with TPI) in Canterbury Waste Services Limited, which has a 50% interest in the Kate Valley landfill; and

(d) *Dunedin*: ESL owns the Fairfield landfill in Dunedin.

18.3 The only region in which the landfill disposal market is affected by the Proposed Transaction is Dunedin, where TPI will acquire ESL's Fairfield landfill. As this will result in no horizontal aggregation in the Dunedin landfill disposal market, TPI has not considered this market further. (Vertical considerations have been addressed in section 14.)

18.4 The implications of TPI acquiring 100% of Canterbury Waste Services Limited and up to 50% of Manawatu Waste Limited (and through those acquisitions, extending its investment in the Kate Valley and Bonny Glen landfills) are discussed in Schedule 1.

Landfills generally

18.5 While TPI and ESL own landfills (either by themselves or in joint venture) they also provide landfill management and operation services. For example:

(a) TPI and ESL through CWS, were responsible for the design, construction and ongoing operation of the Kate Valley landfill under contract to Transwaste;

(b) TPI is responsible for the management and operation of the Whitford landfill under the joint venture arrangement with Manukau City Council; and

(c) Midwest Disposals operates the Hokio Beach landfill near Levin under contract to the Horowhenua District Council (although this has been subcontracted to Manawatu Waste).

18.6 Under a pure operations contract, the operations function is a strictly practical one involving, variously, the receipt and organisation of vehicles, compacting and covering the waste, maintaining and operating stormwater and sedimentation control systems, maintaining and operating leachate collection and treatment systems, receiving and, in some cases, accounting to the owner for disposal fees, security, vector control etc. Some contracts may require the operator to plan, design and build new cells as existing cells are filled. Under this type of operations contracts, the operator does not have any responsibility for setting disposal fees, opening hours or access terms. The operator does not own the business.

18.7 Even where the contract requires cell design and construction, or the design, operation and maintenance of leachate control or landfill gas systems, operations contracts are carried out by companies that are not specialist waste companies (for example Perry Environmental, Whittakers Civil, Excell Corporation and Works Infrastructure). Where expert advice is required, this can be bought in from consultancies such as Beca Carter, URS or Tonkin & Taylor. (Refer information in Appendix 3.)

18.8 There are around 52 landfills in New Zealand. Of these, TPI is aware of 15 that are operated by parties other than their owners or shareholders of the owner. These are listed in Table 10 at the end of this section along with the name of the party whom TPI understands operates the landfill.

18.9 Barriers to entry to landfill management are relatively low. Earthmoving equipment will obviously be required but most operations contracts will factor in recovery of the costs of such equipment into the operations fee. To the extent advice is required in relation to the more specialised aspects of landfill operations (such as leachate control and gas management systems) this expertise is available from civil engineering firms. The most likely contenders for landfill operations contracts are companies with other interests in waste markets and earthmoving and civil construction companies.

Table 10

Landfills operated by Third Parties

Landfill	Owner	Manager / Operator
Hakaru	Kaipara District Council	Roading & Asphalt Ltd
Horotiu	Hamilton City Council	Perry Environmental
Colson Road	New Plymouth District Council	Manawatu Waste
Awapuni	Palmerston North District Council	Stan Boone Trax Hire
Hokio Beach	Horowhenua District Council	Midwest Disposals (subcontracted to Manawatu Waste)
Dannevirke	Tararua District Council	Whittakers Civil
Pahiatua	Tararua District Council	Whittakers Civil
Eketahuna	Tararua District Council	Whittakers Civil
Pongaroa	Tararua District Council	Whittakers Civil
Spicers	Porirua City Council	TPI
Silverstream	Hutt City Council	Excell
Blue Gums	Marlborough District Council	Fulton Hogan
Tasman (Eve's Valley)	Tasman District Council	SICON (owned by Selwyn District Council)
Nelson	Nelson District Council	SICON
Redruth	Timaru District Council	ESL
Balclutha	Clutha District Council	Works Infrastructure
Queenstown	Queenstown Lakes District Council	Scope Resources Limited

THIS NOTICE is given by Greg Campbell on behalf of Transpacific Industries Group (NZ) Limited (*TPI*).

I confirm that:

- all information specified by the Commission has been supplied;
- all information known to TPI which is relevant to the consideration of this notice has been supplied;
- 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.

Dated this 14th day of December 2006.

Signed by Transpacific Industries Group (NZ) Limited:

Managing Director

I am an officer of Transpacific Industries Group (NZ) Limited and am duly authorised to make this notice.

Schedule 1

The Joint Venture Companies

The Joint Venture Companies

Introduction

1 TPI and ESL are party to two joint ventures: Canterbury Waste Services Limited (*CWS*) and Pikes Point Transfer Station Limited (*PPTSL*). ESL's interest in the Pikes Point joint venture is not included in the Proposed Transaction.

2 TPI and Manawatu Waste are in joint venture in Midwest Disposals Limited (*Midwest*).

3 TPI does not consider that the acquisition by TPI of ESL's interests in the CWS joint venture (giving TPI 100% of the shares in CWS) or its acquisition of up to 50% of the shares in Manawatu Waste (giving it directly or indirectly an interest of up to 75% in the Midwest joint venture) would have the effect of substantially lessening competition in any of the affected markets.

4 Further discussion the CWS and Midwest joint ventures follows.

Canterbury Waste Services

Overview

1 The Canterbury Waste Services Limited (*CWS*) joint venture is owned 50-50 between TPI and ESL, and was established to form a joint venture with participating Canterbury councils for the development of a new landfill in the region.

2 CWS owns 50% of Transwaste Canterbury Limited (*Transwaste),* with the remaining 50% being held by six district councils in the Canterbury region. Transwaste owns the Kate Valley landfill, north of Christchurch. The landfill is now operational, with a consented life extending through until around 2035. CWS is responsible for the construction and ongoing operation of Kate Valley but all decisions relating to gate rates and terms of access to the landfill are made by Transwaste.

3 CWS also owns and operates a transfer station in Christchurch. This transfer station is available only for acceptance of waste from commercial collectors. It is not open to the general public.

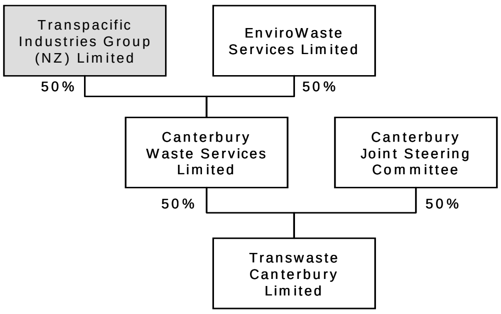
4 ESL and TPI's other solid waste interests and activities in the Canterbury region are:

4.1 *ESL*: solid waste collection.

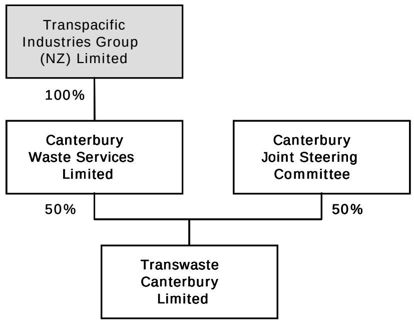
4.2 *TPI:* solid waste collection and transfer station operation (on behalf of the Ashburton and Waimakariri District Councils).

5 The following diagrams illustrate the structure of ownership of Transwaste and CWS currently and how it would look following implementation of the Proposed Transaction.

Before acquisition



After acquisition



TPI and CWS are associated persons

6 TPI is 'associated' with CWS for the purposes of section 47 of the Commerce Act:

6.1 TPI holds 50% of the shares in CWS; and

6.2 TPI currently holds three directorships (of six) on the Board of CWS, with the remaining three directorships held by ESL. The TPI directors are able to exert "a substantial degree of influence" over what CWS does as the Transwaste constitution grants each director one vote in meetings of the Board.

7 TPI and Transwaste may also be considered to be 'associated':

7.1 The constitution of Transwaste provides for there be no more than 4 directors each from CWS and the combined councils.

7.2 The TPI directors may also be considered to be able to exert "a substantial degree of influence" over what Transwaste does as the Transwaste constitution grants each director one vote in meetings of the Board.

7.3 The constitution of Transwaste also allows directors to act in the best interests of the *shareholder* of Transwaste (i.e. to vote in a manner that best suits CWS) rather than in the best interests of Transwaste.

7.4 As a general rule, TPI and ESL directors are unlikely to disagree in their voting on the Transwaste Board given their joint interests in CWS. Under the CWS Memorandum of Understanding, TPI and ESL agreed to:

[ ]

8 Consequently, based on the approach adopted by the Commerce Commission to date, TPI, CWS and Transwaste would already be considered as ‘one head’ in the market – so the acquisition by TPI of ESL’s interest in CWS would not constitute the removal of a competitor (and hence there would be no lessening of competition).

Midwest Disposals

Overview

1 Midwest Disposals Limited (*Midwest*) is a 50-50 joint venture between TPI and Manawatu Waste Limited (*Manawatu Waste*). Midwest's activities/assets are:

1.1 ownership and operation of the Bonny Glen landfill near Palmerston North;

1.2 ownership and operation of a transfer station in Levin;

1.3 contractual disposal rights at Palmerston North City Council's Awapuni landfill in Palmerston North (scheduled to close early 2007 and therefore ignored for the purposes of this analysis);

1.4 a waste services agreement in relation to the Hokio Beach landfill near Levin (owned by the Horowhenua District Council) under which Midwest contracts to carry out the day to day operational aspects of the landfill and which provides Midwest with certain disposal rights at the landfill. The operational aspects of this agreement are sub-contracted to Manawatu Waste; and

1.5 a proposed arrangement (yet to be formalised) with [ ].

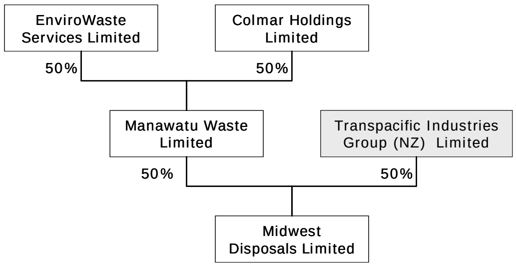
2 Manawatu Waste is itself a 50-50 joint venture between ESL and Colmar Holdings Limited.

3 Manawatu Waste and TPI's other solid waste interests and activities in the region are:

3.1 *Manawatu Waste*: solid waste collection; and transfer station ownership and operation in Palmerston North;

3.2 *TPI:* solid waste collection and transfer station operation (but not ownership) at Levin, Foxton, Shannon and Kapiti Coast.

4 The following diagram illustrates the current structure of ownership of Midwest.



TPI and Midwest are associated persons

5 TPI is ‘associated’ with Midwest for the purposes of section 47 of the Commerce Act:

5.1 TPI holds 50% of the shares in Midwest; and

5.2 TPI currently holds three directorships (of six) on the Board of Midwest. The three remaining directors are from Manawatu Waste.

5.3 The TPI directors are able to exert “a substantial degree of influence” over what Midwest does as the constitution grants each director one vote in meetings of the Board. Certain matters such as the purchase of major assets or the giving of a guarantee by Midwest require a written resolution of all directors (i.e. unanimous approval).

6 Consequently, based on the approach adopted by the Commerce Commission to date, TPI and Midwest are likely to be considered as ‘one head’ in the market – so the acquisition of up to 50% Manawatu Waste’s interest in Midwest would not constitute the removal of a competitor (and hence there would be no lessening of competition).

Schedule 2

Recycling / resource recovery

Recycling or resource recovery

Introduction

1 TPI has recently formed a joint venture with All Brite Industries Limited to own and operate All Brite's existing resource recovery business. TPI has an 80% interest in the joint venture and All Brite has the remaining 20%.

2 All Brite is a recycling specialist that collects, processes and markets recycled paper and cardboard, glass and plastic bottles, and tin and aluminium cans. It also provides recyclables recovery services from mixed solid waste.

3 The All Brite business is complementary to TPI's existing solid waste business. Historically, TPI's focus in the solid waste industry has been the collection of mixed solid waste for ultimate disposal at landfill. Its activities in the recyclables sector to date are as follows:

3.1 TPI collects recyclables as a subcontractor on behalf of large end users: Carter Holt Harvey (kraft/paper); Sims Metals (scrap metal); and ACI (glass).

3.2 TPI operates recyclable processing on behalf of one Council (Whakatane).

3.3 TPI operates two small fibre baling operations (Rotorua and Whakatane).

3.4 TPI has recently introduced a recyclable glass MGB service in the Auckland area.

4 With the All Brite joint venture, TPI now has an interest in a full scale recyclables operation. The All Brite business employs 180 staff and operates material recovery/processing facilities in Napier, Palmerston North, Gisborne, Tauranga, Auckland and Wellington.

5 TPI understands that ESL's involvement in the recyclables sector has been largely limited to recyclables operations at transfer stations that it owns or manages on behalf of Council owners (such as the resource recovery facility in Timaru). ESL is not a significant player in this sector. Manawatu Waste is not involved in this sector.

Market definition

6 There are several aspects to resource recovery:

6.1 *Collection:* Consistent with the Commerce Commission's treatment of waste market definitions, recyclables collection has been treated as part of the wider solid waste collection market.

6.2 *Purchase of recyclables:* Recyclables are purchased from third party providers.

6.3 *Processing:* This involves transporting recyclables to, or receiving recyclables at, processing depots and depending on the particular material, sorting, grading or baling for on-supply.

6.4 *On-sale:* This involves the marketing and sale of recyclables to customers in New Zealand or off-shore.

Areas of aggregation

7 Aggregation in the solid waste collection market has been addressed in section 16.

8 So far as TPI is aware, neither ESL nor Manawatu Waste has a recyclables processing and on-sale operation that competes with the All Brite operations. All Brite does not have a recyclables processing operation in the South Island.

9 Accordingly, the only aggregation, aside from collection, that will occur as a consequence of the Proposed Transaction is that, through ESL and Manawatu Waste's collection and transfer station operations, the All Brite business may, in theory, have access to a greater volume of recyclables (paper, glass, plastic and tin and aluminium cans) which it can then process and on-sell.

10 Of the six regions in which All Brite/TPI has recyclables processing operations (Napier, Palmerston North, Gisborne, Tauranga, Auckland and Wellington), only one, Palmerston North, is affected by the Proposed Transaction. Neither ESL nor Manawatu Waste has operations in Napier, Gisborne or Wellington and the Tauranga and Auckland activities of ESL are not included in the Proposed Transaction. The market for the acquisition of some recyclables is, conceivably, wider than the individual regions. Purchasers may purchase on a North Island/South Island basis, or nationally.

Effect on competition

11 Irrespective of the geographic boundaries of the market, for the reasons set out at below, TPI does not consider that this aggregation will give rise to a substantial lessening of competition in the affected markets.

11.1 The competitiveness of the collection markets means that Allbrite/TPI cannot be assured of continued volumes of recyclables.

11.2 Throughout the North and South Islands, there will remain independent competitor transfer stations and recycling facilities that can supply to third party purchasers. In any event, the volume of recyclables collected through transfer stations is quite small.

11.3 Purchasers of recyclables can and do contract directly with large generators of recyclable material. For example, supermarket chains contract directly with Carter Holt FullCircle to supply used cardboard packaging.

11.4 Similarly, where local authorities elect to provide residential recyclable collection services, the local authority or the party contracted to collect and dispose of the recyclables, is able to contract directly with a range of buyers. For example, refer to the copy of the Rodney District Council website page in Annexure 3 which identifies how the collected recyclables are dealt with:

(a) paper is taken directly to Carter Holt Harvey's Penrose mill;

(b) glass is delivered to Visy Glass for treatment then sold to ACI;

(c) tin is picked up from the sorting line by magnet and sold to NZ Steel and taken to the Glenbrook Steel mill;

(d) aluminium is baled by Streetsmart and either used locally or sent to Australia; and

(e) some plastics are used by Council's JV partner in the making of playground equipment or by Advance Plastics and others are sold directly by Streetsmart into foreign markets (eg India or China).

12 These options, together with others in most categories, are also available to other Councils and larger businesses that produce sale volumes of recyclable materials.

Greenwaste

13 TPI understands that ESL owns and operates a greenwaste recycling/compost production facility in Timaru. Through its interest in Living Earth (refer section 9) TPI holds a contract with the Wellington City Council to operate a purpose-built, fully-enclosed bio-solids and green waste composting facility in the city. It also has a greenwaste composting

operation in Auckland. Living Earth produces high quality compost and garden products that are sold to agricultural and residential customers.

14 Internet searches under “compost” and “fertiliser” reveal a large number of compost producers and other fertiliser suppliers around New Zealand. TPI considers that any aggregation in this market arising from the Proposed Transaction will be *de minimis* and accordingly has not addressed this item further.

15 In relation to the purchase of greenwaste for production of compost, some greenwaste is deposited at transfer stations and some transfer station owners contract with third party compost producers for the supply of greenwaste. In this regard, there is no difference between the factual and the counterfactual. Neither of the two areas where TPI (through Living Earth) has greenwaste composting facilities (Wellington and Auckland) is affected by the Proposed Transaction.

16 Accordingly, TPI does not consider that the Proposed Transaction will result in a substantial lessening of competition in relation to greenwaste supply or the compost/fertiliser market.