

[REDACTED]

From: Ray Lambert [REDACTED]
Sent: Tuesday, 22 June 2021 3:57 PM
To: Registrar
Subject: [[CONFIDENTIAL]] CAN PLAN NELSON LIMITED/NELMAC LIMITED: SUBMISSIONS FROM NORTHLAND WASTE ON THE STATEMENT OF UNRESOLVED ISSUES [REDACTED]

Contains confidential information

By email: registrar@comcom.govt.nz

1. Introduction

- 1.1 We write in response to the Commerce Commission's Statement of Unresolved Issues dated 31 May 2021 in relation to Can Plan Nelson Limited's application for clearance to acquire certain assets from the waste collection business of Nelmac Limited in Nelson.
- 1.2 The Commission has concluded the following in relation to the constraint from the threat of councils moving to rates-based collection contracts:
- (a) "109. Based on current evidence, we agree that the risk of the NCC (and/or the TDC) going to a full bag and wheelie bin rates-based single contractor collection model provides some constraint on pricing in the market. However, the risk of the NCC (and/or the TDC) going to rates-based wheelie bin collection is a threat that already exists and [REDACTED]. Given this, we are currently not satisfied that any constraint from councils moving to rates-based collection would be a sufficient constraint to prevent an SLC. We note that:
 - (i) 109.1 a number of waste companies operating in Nelson-Tasman and in other regions see councils moving to a rates-based model as a large risk to residential collection markets (which as noted above discourages, and has an impact on the likelihood of, entry/expansion by some suppliers);
 - (ii) 109.2 in 2009 the TDC consulted on a rates-based wheelie bin collection (moving to a three-bin system), but abandoned the plan in response to significant public opposition. Can Plan strongly opposed the TDC's proposal, and dropped pamphlets across the Tasman region which urged the public to oppose the TDC's plan, because of the threat it posed to local waste collection businesses, including its own. The TDC [REDACTED].
 - (iii) 109.3 if the NCC did move to a rates-based collection model and Can Plan was unsuccessful in winning this contract, its business (which is solely waste and recycling collection services in Nelson-Tasman) would be destroyed;
 - (iv) 109.4 The NCC stated to us that [REDACTED]. However, we consider that if the merged entity was to raise prices over time in a gradual and subtle way, this may be less likely to cause the NCC (or the TDC) concern and prompt them to consider rates-based collection;
 - (v) 109.5 As Nelmac submitted, if the NCC were to look to move to a rates-based model, there would likely be a lengthy lead time, including a consultation period, before this came into effect. This is relevant to the constraint that the threat of moving to a rates-based collection would provide on the merged entity in the short-term."
 - (b) "110. As noted above, we are still considering whether there can be a combined constraint of a threat of entry and the threat of councils moving to a rates-based collection service, or whether they are mutually exclusive. If the threat of rates-based collection is perceived as credible, entry will likely be deterred because the likelihood of profitably entering decreases (and therefore they are mutually exclusive constraints). However, it may be that the threat of rates-based waste collection is a greater disincentive to de novo entry than to expansion by players already in the market – in which case, they may not be necessarily mutually exclusive constraints."
 - (c) "111. We invite submissions on the constraint provided by the threat of councils moving to rates-based collection contracts."

2. Northland Waste's view

- 2.1 Based on our experience in various waste markets over an extended period, we disagree with the Commission's conclusions in relation to the constraint from councils. To the contrary, the ever-present threat of councils shifting to a rates-based model is credible (numerous councils have done so) and the ramifications are astronomical, given such a move essentially wipes out the private operators' businesses in the region.

- 2.2 Further, we do not agree that operators can ‘test the water’ by slowly lifting collection rates above competitive levels over time – like all markets, consumer sentiment in these markets can turn very quickly, and when this sentiment is one expressed by voting ratepayers, our experience is that councils will act very quickly in response.
- 2.3 History shows that councils will move, and many have moved in very recent times. By way of example:
- (a) Tauranga City Council converted to rates-based model this year;
 - (b) Lower Hutt City Council converted to rates-based model this year;
 - (c) Hamilton City Council converted to a rates-based model last year;
 - (d) Napier City Council also converted to a rates-based model last year;
 - (e) Dunedin City Council is considering changing to a rates-based model; and
 - (f) Auckland Council currently operates on a 50/50 basis of user-pays and rates-based (based on legacy councils) and although the current plan is to convert all areas to a user-pays model, a review has been called and Auckland Council are now considering a move towards a full rates-based model.
- 2.4 Even if NCC or TDC are not *currently* considering a move (we are not privy to their internal deliberations), that is not to say that won’t change next month, or next year: a shift is not a theoretical risk, the above examples show that a great many councils have shifted. As an operator in other regions, we know that operators cannot simply assume that councils will not make such a decision. And the last thing operators can afford to do is to give councils any further incentive to shift by for example dropping service or increasing prices above competitive levels.
- 2.5 Furthermore, while Can Plan (unsurprisingly, given the ramifications) opposed the TDC’s proposal to shift, that is not to say that, *if ratepayers are faced with price increases post-transaction*, TDC would not revisit that decision. According, the threat still exists as a substantial constraint on incumbent operators’ ability to raise prices or reduce service quality.
- 2.6 The Commission has also suggested that there would be a lead time to allow for consultation. It is true that consultation will occur, but in our view that does not mean the competitive constraint is any less merely because there is a process that must occur prior to any council switch. Again, the ramifications of a switch by a council are so severe that incumbent operators cannot afford to ignore or even downplay the council constraint on the basis that the consultation period (for instance) means that *implementation* of any switch might be a little further away.
- 2.7 Finally, the Commission also says it is considering whether the threat of entry and of councils moving to a rates-based collection service are mutually exclusive. We do not believe they are: as a commercial operator in many other regions we must have regard to both. Furthermore, in the event the risk of a council shifting were such that traditional rivals were dissuaded from entering at a particular point in time, then that risk of the council switch must necessarily impose a very large constraint on the existing players in the market. Put another way, if a rival was dissuaded from entering due to the council risk, then that constraint from traditional entry is not required to ensure competitive pricing in the region because, almost by definition, the council constraint is so strong.

2.8 **[CONFIDENTIAL]:** [REDACTED]

We trust this submission assists. We are happy to answer any questions the Commission has in relation to it.

Your faithfully

Ray Lambert

Director – Northland Waste Ltd