

Cleanaway Waste Management Limited – proposed acquisition of Tox Free Solutions Limited

<p>Market definition</p>	<p>The ACCC did not reach concluded views on market definition, but in assessing the proposed acquisition, the ACCC considered the following potential markets:</p> <ul style="list-style-type: none"> • Local council area markets for the collection of municipal waste. • Regional or local council area markets for the collection of commercial and industrial (C&I) and/or construction and demolition (C&D) waste. • Regional markets for solid waste post-collection services, including services provided at landfills, transfer stations and/or material recovery facilities. • Regional markets for the collection of non-hazardous liquid waste, including drill muds, biosolids and/or wash and oily waters. • Regional markets for processing non-hazardous liquid waste. • State-based markets for the collection of hazardous waste. • An eastern seaboard or state-based market for processing hazardous waste or sub-categories of hazardous waste based on EPA licensing codes for hazardous waste. • Regional or local markets for the collection of medical waste (excluding used sharps collection). • Regional markets for processing medical waste. • Regional or local metropolitan markets for each of the various types of industrial services. • Regional markets for the collection of used lubricating oil (ULO). • Regional markets for processing and re-refining ULO. <p>The ACCC also considered the broader impact of the proposed acquisition across multiple waste streams and geographic areas, as well as the effect of increased vertical integration resulting from the proposed acquisition.</p>
<p>Competition analysis</p>	<p>The ACCC concluded that the proposed acquisition is unlikely to meet the threshold of a substantial lessening of competition in any relevant market, although the proposed acquisition may have the effect of lessening competition in some waste streams.</p> <p>In reaching this conclusion, the ACCC considered that a combined Cleanaway-Tox Free is generally likely to be constrained by the availability of existing alternative suppliers in most relevant markets. Additionally, for waste collection and industrial services, the ACCC considered future entry or expansion by existing players in nearby or related markets will likely act as a competitive constraint.</p> <p><u>Conclusions in relation to specific markets</u></p> <p>The ACCC reached the following conclusions in relation to each potential relevant market:</p> <ul style="list-style-type: none"> • Municipal waste collection – numerous existing national, regional and local competitors in nearly all areas, and a credible threat of geographic expansion will likely constrain a combined Cleanaway-Tox

Free in areas where there are fewer existing competitors.

- **C&I and C&D waste collection** – a number of existing competitors and potential future entry or expansion will likely constrain a combined Cleanaway-Tox Free.
- **Solid waste post-collection** – there is limited geographic overlap between the parties and there are also a number of competing landfills and C&D post-collection facilities that will likely constrain a combined Cleanaway-Tox Free. The ACCC also considered the potential for foreclosure of competing collectors, but formed the view that this is unlikely due to the availability of alternative facilities.
- **Non-hazardous liquid waste collection** – alternative suppliers in each area where the parties' operations overlap, and potential future entry or expansion will likely constrain a combined Cleanaway-Tox Free.
- **Non-hazardous liquid waste processing** – alternative processing facilities, including those in other regions, will likely constrain a combined Cleanaway-Tox Free post-acquisition and prevent it from foreclosing rival collectors.
- **Hazardous waste collection** – the ACCC considered that the proposed acquisition may lessen competition, however alternative suppliers and potential suppliers in each area where the parties' operations overlap will likely constrain a combined Cleanaway-Tox Free post-acquisition. As such, the lessening of competition is unlikely to be substantial.
- **Hazardous waste processing** – although barriers to entry are moderate to high, the ACCC considered that a number of alternative processors will constrain a combined Cleanaway-Tox Free. Further, the ACCC considered that a combined Cleanaway-Tox Free is unlikely to have the incentive to foreclose competing collectors, particularly given the scope to transport hazardous waste to facilities in other states. As such, the ACCC considered that any lessening of competition is unlikely to be substantial.
- **Medical waste collection** – Cleanaway currently has limited operations in this area and the ACCC identified a range of competitors that are likely to constrain a combined Cleanaway-Tox Free.
- **Medical waste processing** – there is currently no overlap in the parties' operations and a combined Cleanaway-Tox Free is unlikely to substantially lessen competition in processing or have the incentive to foreclose competing collectors.
- **Industrial services** – the ACCC identified numerous existing national, regional and local competitors and found barriers to entry and expansion in relation to a number of services are not significant.
- **Used lubricating oil collection** – the ACCC considered that the proposed acquisition may lessen competition. However, the lessening is unlikely to meet the threshold of being substantial, due to the constraint imposed by a number of competitors, and the potential for potential future entry or expansion.
- **Used lubricating oil processing** – there is currently very limited overlap in the parties' operations and a combined Cleanaway-Tox Free is unlikely to have the incentive to foreclose competing collectors.

Increased vertical integration

The ACCC also considered whether the increased vertical integration resulting from the proposed acquisition would give a combined Cleanaway-Tox Free the ability and incentive to increase prices for access to their processing services, thus raising rivals' costs and limiting rivals' ability to compete for customers in waste collection. The proposed acquisition seeks

to combine:

- The parties' C&I collection operations and Cleanaway's landfills
- The parties' industrial services businesses, liquid waste collections and processing facilities, and Cleanaway's landfills
- The parties' non-hazardous liquid waste collection and processing facilities
- The parties' hazardous waste collection and processing facilities
- The parties' medical waste collection, Tox Free's medical waste processing facilities and Cleanaway's landfills, and
- The parties' ULO collection and Cleanaway's processing facilities.

The ACCC considered that the increased vertical integration is unlikely to substantially lessen competition as a combined Cleanaway-Tox Free is unlikely to have the ability to foreclose rivals' access to processing facilities due to existing alternatives.

Presence across multiple waste streams

The ACCC also considered the possibility that a combined Cleanaway-Tox Free would be able to leverage its position in one waste stream or geographic location where there are few viable alternatives in order to win customers in other waste streams or geographical locations where there are a larger number of competitors.

The ACCC concluded that the proposed acquisition is unlikely to substantially lessen competition in this regard. It took into account the following factors in particular:

- There are other large suppliers that are present in multiple waste streams and geographical areas throughout Australia.
- Subcontracting is common, such that a competitor does not have to have its own operations in one waste stream and/or geographic area to compete for customers.
- Customers can, and do, disaggregate contracts if they are dissatisfied with pricing and/or service levels.