

**DETERMINATION OF  
MERGER NOTIFICATION  
M/16/008**

**PANDAGREEN / GREENSTAR**

**Dated 16/08/2016**



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

**Competition and  
Consumer Protection  
Commission**

# 1. Introduction

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## Introduction

- 1.1 On 9 February 2016, pursuant to section 18(1) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby PandaGreen Limited (“PandaGreen”), a wholly-owned indirect subsidiary of Sretaw Unlimited Company (“Sretaw”), would acquire the entire issued share capital of Starrus Eco Holdings Limited which trades as Greenstar (“Greenstar”) from Starrus Holdings Limited (“Starrus”).
- 1.2 The proposed transaction is to be implemented pursuant to a share purchase agreement dated 3 February 2016 between PandaGreen and Starrus (the “SPA”). Following completion of the proposed transaction, PandaGreen would hold 100% of the shares in Greenstar.

## The Undertakings Involved

*Sretaw, Adnap Holdings Unlimited Company, PandaGreen, Nurendale Unlimited Company*

- 1.3 Sretaw, headquartered in Ballymount, Co. Dublin, is a private unlimited company incorporated in the State.<sup>1</sup> Companies controlled by Sretaw are involved in various sectors within the State, including the hospitality, energy, property development and waste management sectors.
- 1.4 Sretaw ultimately controls Adnap Holdings Unlimited Company (“Adnap”) which, in turn, ultimately controls Nurendale Unlimited Company (“Nurendale”),<sup>2</sup> a private unlimited company involved in the waste management sector in the Greater Dublin Area (“GDA”).<sup>3</sup> Nurendale trades as Panda Waste (“Panda”).
- 1.5 Panda is involved in the provision of integrated waste management services in the State. In particular, Panda is active in:
  - (a) the collection of waste from domestic household customers;
  - (b) the collection of waste from commercial and industrial (“C&I”) customers (both individual and multi-site C&I customers); and

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<sup>1</sup> [...].

<sup>2</sup> [...].

<sup>3</sup> For the purposes of this Determination, the GDA comprises Counties Dublin, Meath, Kildare and Wicklow; i.e. the areas administered by Dublin City Council (“DCC”), Dun Laoghaire-Rathdown County Council (“DLRC”), Fingal County Council (“FCC”), South Dublin County Council (“SDCC”), Meath County Council (“MCC”), Kildare County Council (“KCC”) and Wicklow County Council (“WCC”).

(c) the processing of waste and recyclable material.

- 1.6 Panda owns a fleet of approximately 190 trucks, which it uses to collect waste from its customers' premises. Panda also owns six licensed waste management facilities in Counties Dublin and Meath, at which waste is sorted and processed. Panda's material recovery facility in Dublin processes waste and recyclable material for third parties. Waste processed at this site is mainly exported outside the State, although a small number of sales are made to customers located in the State.
- 1.7 PandaGreen, a wholly-owned subsidiary of Adnap, is a private limited company which has been incorporated for the purposes of the proposed transaction.
- 1.8 For the financial year ended 31 March 2015, Adnap's worldwide turnover was [...], all of which was generated within the State.

#### *The Target – Greenstar*

- 1.9 Greenstar, headquartered in Bray, Co. Wicklow, is a private limited company involved in the waste management sector in the GDA as well as in Counties Carlow, Cork, Kilkenny, Limerick, Sligo, Waterford and Wexford.
- 1.10 Greenstar is involved in the provision of integrated waste management services in the State. In particular, Greenstar is involved in:
- (a) the collection of waste from domestic household customers;
  - (b) the collection of waste from C&I customers (both individual and multi-site C&I customers); and
  - (c) the processing of waste and recyclable material.
- 1.11 Greenstar collects waste from customers' premises and transports it to waste transfer stations, at which the waste is sorted, consolidated and, if necessary, treated. Greenstar operates eight waste transfer stations which are located in Counties Dublin, Cork, Limerick, Kilkenny, Wexford, Waterford and Sligo. Greenstar also operates three material recovery facilities, one of which is located in Co. Wicklow and one is located in Co. Cork.<sup>4</sup>
- 1.12 For the financial year ended 31 March 2015, Greenstar's worldwide turnover was [...], of which [...] was generated within the State.

#### *The Vendor – Starrus*

- 1.13 Starrus, headquartered in Bray, Co. Wicklow, is a private limited company which currently owns the entire issued share capital of Greenstar. Starrus is owned and controlled by Promontoria Holdings 52 B.V. ("Promontoria"). Promontoria

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<sup>4</sup> Greenstar landfill sites were not included as part of the proposed transaction.

is ultimately controlled by Cerberus Capital Management, L.P. and its affiliated funds and fund management entities.

## Rationale for the Proposed Transaction

1.14 The parties state in the notification that:

*“Greenstar is being acquired in order to expand Sretaw’s existing waste management services in Ireland beyond the Greater Dublin Area. Sretaw seeks to maximise the potential of the Greenstar business, by driving efficiencies and synergies merging the key collection and processing aspects of the two businesses. Sretaw considers that this is the only way in which Greenstar could be returned to profitability.”<sup>5</sup>*

## The Procedure

### Preliminary Investigation (“Phase 1”)

#### *Contacts with the Undertakings Involved*

- 1.15 On 21 March 2016, the Commission served a Requirement for Further Information (“RFI”) on each of Sretaw and Greenstar pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Commission’s Phase 1 assessment.
- 1.16 Both Sretaw and Greenstar responded to the RFI on 8 April 2016. The issuing of the RFIs adjusted the deadline within which the Commission had to conclude its assessment of the proposed transaction in Phase 1. Upon receipt of the responses to the RFIs, the “appropriate date” (as defined in section 19(6)(b) of the Act) became 8 April 2016<sup>6</sup>.
- 1.17 The Commission requested and received, on an ongoing basis, further information and clarifications from the parties throughout the Phase 1 investigation. The Commission had a meeting with representatives of Sretaw on 12 May 2016 to discuss its preliminary views on the proposed transaction and any potential concerns that the Commission may have identified at that stage.
- 1.18 On 16 May 2016, PandaGreen submitted to the Commission proposals regarding measures to be taken to ameliorate any effects of the proposed transaction on competition in accordance with section 20(3) of the Act. The proposals concerned the divestment of Greenstar’s domestic waste collection businesses in the Fingal and Dun Laoghaire-Rathdown local authority areas. The submission of these proposals by PandaGreen extended the Commission’s Phase 1 review

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<sup>5</sup> Notification, page 5.

<sup>6</sup> The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

period from 30 working days to 45 working days in accordance with section 21(4) of the Act. These proposals are discussed in more detail in Section 5 below.

### *Third Party Submissions*

- 1.19 The Commission received 18 submissions from third parties (including 3 anonymous submissions) during its Phase 1 investigation. Some submissions expressed concerns regarding the competitive effects of the proposed transaction. Such concerns are summarised below. Some submissions also referred to issues that are outside the remit of the Commission and which, consequently, are not addressed in this Determination.
- 1.20 The submissions argued that the implementation of the proposed transaction would give rise to the following competition problems:
- Panda would become the largest and the dominant waste company in the State.
  - Panda would have a monopoly, or would almost have a monopoly, over the collection of household waste in the Dublin area and, in particular, in the Fingal and Dun Laoghaire-Rathdown local authority areas.
  - Panda would have market power in relation to waste processing in the GDA.
  - Entry by competitors into the GDA would become more difficult.
- 1.21 The submissions also asserted that:
- Panda has entered into agreements with the Covanta group, the developer of the thermal treatment plant in Poolbeg, Dublin which is expected to begin operations in 2017, pursuant to which Panda has committed to supply over half of the plant's capacity for waste once it opens in 2017. Some concerns were raised that the merged entity would have a monopoly over access to the plant.
  - Panda has already effectively agreed not to compete with other major waste companies in Dublin and the implementation of the proposed transaction would eliminate any existing competition in the market for domestic waste collection in Dublin.
  - Panda will increase its waste collection prices when the 'pay by weight' system of charging consumers is introduced and consumers will have limited options to source waste collection services from an alternative waste company due to the lack of existing competition.
  - Following implementation of the proposed transaction, Panda will increase exports of recyclable waste rather than supply customers in the State.

- 1.22 The Commission has fully considered the issues raised in third party submissions in the course of its analysis of the competitive effects of the proposed transaction, but only to the extent that these issues are merger-specific (i.e., the merger review function of the Commission does not examine issues that would occur in the absence of the proposed transaction).

#### *Market Enquiries*

- 1.23 During the Phase 1 investigation, the Commission drew up a questionnaire to be answered by a number of competitors of the notifying parties within the State.
- 1.24 The Commission also consulted with local authorities in the GDA, the Environmental Protection Agency (“EPA”) and the National Waste Collection Permits Office (“NWCPD”).
- 1.25 The Commission’s investigation found that competitors of the notifying parties do not, in general, consider that the proposed transaction will give rise to competition concerns. However, some respondents highlighted the overlap in the domestic waste collection activities of the parties in the Fingal and Dun Laoghaire-Rathdown local authority areas.

#### *Expert Economic Advice*

- 1.26 The notifying parties relied on a detailed competition economics analysis prepared by Compecon – Competition Economics (the “Compecon Report”) as part of the merger notification<sup>7</sup>.
- 1.27 The Commission engaged the services of Dr. Kevin Hannigan of KHSK Economic Consultants to review the information provided to the Commission by the notifying parties and to provide advice on the competitive effects of the proposed transaction, in particular with respect to: (i) whether the proposed transaction is likely to give rise to a substantial lessening of competition (“SLC”) in any relevant market; and (ii) possible measures that could be implemented to ameliorate any SLC arising from the implementation of the proposed transaction.
- 1.28 The Commission also engaged Dr. Paul Gorecki, an independent external economist, to provide expert advice on the definition of the relevant product and geographic markets. Dr. Gorecki issued a report to the Commission on 11 May 2016 (the “Gorecki Report”) <sup>8</sup>.

#### **Phase 1 Determination**

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<sup>7</sup> Compecon, “*Economic Analysis of Acquisition of Greenstar by Panda*” dated 9 February 2016.

<sup>8</sup> Dr. Gorecki, “*Memorandum to the Competition and Consumer Protection Commission*” dated 11 May 2016.

- 1.29 Having considered all of the available information in its possession at the time, the Commission was unable to form the view at the conclusion of the Phase 1 investigation that the result of the proposed transaction would not be to substantially lessen competition in any market for goods or services in the State.
- 1.30 Consequently, on 9 June 2016, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation in relation to the proposed transaction under section 22 of the Act.

## Full Investigation (“Phase 2”)

- 1.31 The Commission’s Phase 2 investigation involved ongoing engagement with the notifying parties, the receipt of additional third party submissions and phone calls with third parties, the sending of additional questionnaires to customers, competitors and other bodies involved in the waste sector, and further engagement with the expert economists engaged by the Commission.

### *Contacts with the Undertakings Involved*

- 1.32 The Commission continued to engage with the parties during its Phase 2 investigation. In particular, the Commission and Sretaw’s legal advisors corresponded and had a number of telephone calls for the purpose of discussing and developing the proposals submitted to the Commission by PandaGreen on 16 May 2016.
- 1.33 On 15 August 2016, PandaGreen submitted to the Commission a final set of formal proposals under section 20(3) of the Act to divest Greenstar’s domestic waste collection businesses in the Fingal and Dun Laoghaire-Rathdown local authority areas.

### *Third Party Submissions*

- 1.34 The Commission received seven written submissions from third parties during its Phase 2 investigation, all of which either reiterated concerns expressed in the submissions received during the Commission’s Phase 1 investigation or raised other issues that were not specific to the competitive impact of the proposed transaction.

### *Market Enquiries*

- 1.35 During its Phase 2 investigation, the Commission completed its process, initiated during Phase 1, of seeking the views of industry stakeholders concerning the proposed transaction. The key findings from the Commission’s market enquiries during the Phase 1 and Phase 2 investigations are discussed in more detail in Section 4 below.

*Expert Economic Advice*

- 1.36 On 16 August 2016, the Commission received from Dr. Kevin Hannigan a final written economic report entitled *“Examination of the Potential Impact on Competition in Waste Services Resulting from the Proposed Acquisition of Greenstar by Panda”* (the “Hannigan Report”).
- 1.37 The findings of both Dr. Hannigan and Dr. Gorecki are incorporated into the Commission’s analysis of the proposed transaction and, although the Commission benefitted from their expert advice, the Commission alone is responsible for the views expressed in this Determination.

## 2. Background: Waste Sector in the State

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### Introduction

- 2.1 The Commission's analysis of the competitive effects of the proposed transaction focuses on the collection, processing and disposal of non-hazardous waste. Neither Panda nor Greenstar are active to any significant extent in the collection or processing of hazardous waste substances such as asbestos, polychlorinated biphenyls (PCBs) and persistent organic pollutants.<sup>9</sup>
- 2.2 Prior to the establishment of the Commission on 31 October 2014, the Commission's predecessor, the Competition Authority, examined the non-hazardous<sup>10</sup> waste management sector in various merger determinations, including *M/09/024 Greenstar/Veolia (Ireland)* and *M/13/015 - Promontoria/Greenstar*.<sup>11</sup> The Competition Authority's analysis of the sector provides useful background for the Commission's assessment of the proposed transaction.
- 2.3 In essence, as elaborated below, the non-hazardous waste management sector consists of four sequential activities:
  - Production of waste at domestic and C&I premises.
  - Collection of waste from domestic and C&I premises.
  - Processing of waste.
  - Disposal and recycling of waste.

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<sup>9</sup> In the notification, Sretaw stated that: "*Panda does not generally collect or process hazardous waste aside from occasionally on an ad hoc basis.*" (Notification, page 10.) In the notification, Greenstar stated that: "*Greenstar is not directly engaged in the collection or processing of hazardous waste save for the incidental operation of civic amenity sites. It occasionally facilitates outsourcing to a third party where customers require it*". (Notification, page 11.)

<sup>10</sup> For more information on hazardous waste including relevant European and Irish legislation see <[http://www.epa.ie/pubs/reports/waste/haz/NHWM\\_Plan.pdf](http://www.epa.ie/pubs/reports/waste/haz/NHWM_Plan.pdf)>.

<sup>11</sup> See <<http://www.ccpc.ie/enforcement/mergers/merger-notices/m09024-greenstar-veolia-ireland>> and

<<http://ccpc.ie/enforcement/mergers/merger-notices/m13015-promontoria-greenstar>>.

The Competition Authority also examined the waste management sector in its enforcement decision of 2005 entitled: "*Enforcement Decision No. E/05/002, Alleged excessive pricing by Greenstar Recycling Holdings Limited in the provision of household waste collection services in northeast Wicklow*".

## *Production, Collection, Processing and Disposal of Waste*

### Waste Production

- 2.4 Waste, by its very nature, is an undesirable by-product of other activities conducted in either a domestic or commercial setting. While some types of waste may be stored at a location near to the premises at which it was generated (e.g., composting organic material), other waste must be removed from the premises and taken to another location for disposal. Whereas sewerage systems provide a means of removing human waste from domestic or commercial premises, most other types of non-hazardous waste are collected and removed from the premises by a provider of waste collection services.

### Waste Collection

- 2.5 Waste collection involves the collection and transportation of waste from one place – the domestic or commercial premises at which the waste was generated – to another location. In order to provide a waste collection service, two key elements are required: a collection method (e.g. bags, wheelie bins or skips) and transport (e.g. vans or trucks).
- 2.6 For example, the collection of domestic household waste typically involves the removal, typically on a weekly or fortnightly basis, of wheelie bins or bags containing the waste created by a household (i.e., non-recyclable, organic and dry recyclable waste).

### Waste Transfer and Processing

- 2.7 Once waste has been collected from a customer's premises, it is then transported to a separate location for processing. Waste processing involves: (i) the transfer of waste from the waste collector's truck to a transfer station or processing facility; and (ii) the sorting and categorising of waste at the processing facility prior to subsequent recycling or disposal. For example, at a material recovery facility ("MRF"), different types of waste are separated out and prepared for subsequent disposal or recycling.
- 2.8 The transfer and processing of waste may take place at the same location or, alternatively, waste may be bulked up at a transfer station before being transported to another location for further processing.

### Waste Disposal and Exporting

- 2.9 Waste that cannot be recycled, so-called residual waste, is disposed of either by dumping in landfill sites or through incineration. Waste for incineration is currently exported outside of the State<sup>12</sup>.
- 2.10 The vast majority of waste that can be recycled (e.g., glass, paper, plastics, metals) is exported outside the State.<sup>13</sup>

### *Contracts for and Pricing of Waste Management Services*

- 2.11 The Commission's market enquiries indicated that there is considerable variety in the types of contracts available and methods of pricing for the provision of waste management services in the State.
- 2.12 For example, waste produced by domestic households is typically collected on either a weekly or a fortnightly basis. Contracts with domestic customers for the collection of waste typically have of a duration of between six months and twelve months. Pricing arrangements also vary from customer to customer and may include payment of an annual fee and/or payment of a fee per collection or a fee based on the volume/weight of the collected waste.
- 2.13 Similarly, there is a variety of contractual and pricing arrangements for the collection of waste from C&I customers. Where a customer has no formal contract with a provider of waste collection services, waste collection may be provided on an *ad hoc* basis to such customer.
- 2.14 There are various types of providers of waste management services. Some operators only collect waste from customers and do not own or operate waste processing facilities. Such operators contract with waste processors for the provision of waste processing services in relation to the waste that they collect. Contractual arrangements between waste collectors and waste processors (including operators of transfer stations) vary in terms of duration: annual rollover contracts appear to be a common practice and waste processors typically set prices by volume.

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<sup>12</sup> A thermal treatment plant is currently being constructed at Poolbeg in Dublin (referred to hereafter as "the Poolbeg incinerator") which shall process waste that cannot be reused or recycled. The plant is being developed as a Public Private Partnership between Dublin County Council (acting on behalf of the four Dublin local authorities) and the Covanta group. The Commission understands that construction work on the plan is targeted to be completed in early 2017, with the plant expected to be operational by the end of 2017. For more information, see: <http://dublinwastetoenergy.ie/>

<sup>13</sup> Both Greenstar and Sretaw indicate in the notification that some sales of recyclable metal are made to customers located in the State but that such sales are made on a small scale only.

### *Waste Regulation*

- 2.15 Waste collection and waste processing within the State are subject to regulation by the EPA, the National Waste Collection Permit Office (NWPCO) and local authorities. The EPA is responsible, under Irish and European legislation, for the licensing of waste facilities such as landfills, incinerators, and waste transfer and processing stations.<sup>14</sup>
- 2.16 The NWPCO is responsible, under the Waste Management (Collection Permit) Regulations 2007, as amended<sup>15</sup>, for the licensing of waste collection operators. The NWPCO issues licences on behalf of local authorities who have responsibility for the enforcement of licence conditions. No individual or firm can collect waste, for gain or profit, without first obtaining a licence from the NWPCO.<sup>16</sup>

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<sup>14</sup> For more information on legislation relevant to the EPA see <<http://www.epa.ie/pubs/legislation/waste/licpermit>>.

<sup>15</sup> S.I. No. 820/2007 Waste Management (Collection Permit) Regulations 2007, as amended.

<sup>16</sup> For more information on NWPCO see <<http://www.nwcpo.ie>>.

## 3. Relevant Product and Geographic Markets

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### Introduction

- 3.1 The Commission is required to form a view as to whether or not a proposed merger or acquisition which has been notified to it will result in an SLC in any markets for goods or services in the State.
- 3.2 The Commission focuses its merger review analysis on the part or parts of the economy that will most likely be affected by the proposed transaction. This involves defining relevant product and geographic markets to the extent necessary depending on the particular circumstances of a given case.<sup>17</sup> The relevant markets that are likely to be affected by the proposed transaction are defined below in terms of their product and geographic dimensions. In this regard, both the views of the notifying parties and the Commission are set out below.

### Relevant Product Markets

#### Views of the Undertakings Involved

- 3.3 The parties argue that there are four relevant product markets:
  - (a) the market for the provision of domestic waste collection services to single dwelling houses.
  - (b) the market for the provision of waste management services to individual C&I customers.<sup>18</sup>
  - (c) the market for the provision of waste management services to multi-site C&I customers.
  - (d) the market for the sale of recycled materials.
- 3.4 The parties cite European and Irish case law as well as decisions of the Commission's predecessor, the Competition Authority, in support of their

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<sup>17</sup> The Commission's approach to defining the relevant product and geographic markets is set out in Section 2 of the *"Guidelines for Merger Analysis adopted by the Competition and Consumer Protection Commission on 31 October 2014"* (the "Merger Guidelines") which can be found at [http://www.ccpic.ie/sites/default/files/CCPC%20Merger%20Guidelines\\_1.pdf](http://www.ccpic.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf).

<sup>18</sup> The market for the provision of waste management services to individual C&I customers in this context includes collections from C&I customers, collections from construction and demolition ("C&D") customers, collections from apartment complexes and domestic skip collections.

proposed approach to defining the relevant product markets. In particular, the parties argue that:

- (a) domestic premises are distinct from C&I premises.<sup>19</sup>
- (b) apartment complexes are part of the market for the provision of waste management services to individual C&I customers rather than part of the market for the provision of domestic waste collection services.<sup>20</sup>
- (c) the provision of waste management services to multi-site C&I customers forms a separate market in part because such customers can concurrently purchase waste collection services from more than one supplier (including, for example, different suppliers for different locations).
- (d) the precise product market definition with respect to the sale of recyclable products can be left open in this instance (the parties noted that the product market could be defined narrowly, by distinguishing between different types of dry recyclables such as glass, packaging, paper and plastic, or more broadly to include all such recyclables in the same market).

### Views of the Commission

- 3.5 On the basis of the information available to the Commission, the Commission generally agrees with the product market definitions proposed by the parties, subject to the findings set out below. In particular, in this instance, the Commission agrees with the parties' arguments that the market for the collection of waste from domestic customers is a distinct market from the market for the collection of waste from other types of customers, such as C&I customers.
- 3.6 The Commission considers that the relevant product markets with respect to C&I customers can more accurately be described as the supply of waste collection services rather than, as argued by the parties, the supply of waste management services.
- 3.7 The Commission also considers that there is one additional relevant product market to those identified by the parties, namely the market for the supply of waste processing services. Whereas both Panda and Greenstar are vertically integrated (i.e., both Panda and Greenstar collect and process waste), some of their competitors are active in waste collection only and purchase waste processing services from waste processors such as Panda, Greenstar and other operators. The Commission does not consider it necessary in this instance to

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<sup>19</sup> In this regard, the parties relied on Case No. Comp/M.4576 - AVR/*Van Gansewinke*.

<sup>20</sup> In this regard, the parties relied on Case No. 2008/420 JR *Nurendale Limited t/a Panda Waste Services –v- Dublin City Council, Dun Laoghaire/Rathdown County Council, Fingal County Council & South Dublin County Council*.

further distinguish the market for the processing of waste by, for example, the type of waste being processed.

- 3.8 In conclusion, for the purposes of its review of the competitive effects of the proposed transaction, the Commission considers that there are five relevant product markets:
- (a) the market for the supply of domestic waste collection services.
  - (b) the market for the supply of waste collection services to individual C&I customers.
  - (c) the market for the supply of waste collection services to multi-site C&I customers.
  - (d) the market for the processing of waste collected from domestic and C&I customers.
  - (e) the market for the supply (for sale) of recyclable materials.<sup>21</sup>

## Relevant Geographic Market

### Views of the Undertakings Involved

- 3.9 The parties argue that the relevant geographic market is the GDA for each of the following product markets:
- (a) the market for the provision of domestic waste collection services.
  - (b) the market for the provision of waste management services to individual C&I customers.
- 3.10 In addition, the parties argue that the relevant geographic market is larger than the GDA for each of the following product markets:
- (a) the market for the provision of waste management services to multi-site C&I customers.
  - (b) the market for the sale of recyclable materials.
- 3.11 With respect to the provision of domestic waste collection services and the provision of waste management services to individual C&I customers, the parties state that:

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<sup>21</sup> The Commission has not defined a market for the provision of waste disposal services at landfill sites in this instance because neither Panda nor Greenstar is involved in waste disposal at landfill sites.

*“Greenstar provides domestic and C&I waste collection services in various parts of the State. Panda, on the other hand only provides such services in the GDA and thus the competitive overlap between Panda and Greenstar will be limited to that area. In the event of a 5% price increase by a monopoly provider of either domestic or C&I waste collection services in the GDA, it would appear unlikely that customers could switch to a waste collection services provider located in another part of the State. It would also appear unlikely that such an increase would result in any geographic supply side substitution. Thus, in our opinion, the relevant geographic market in the present case for domestic and C&I customers is limited to the GDA. This conclusion is consistent with the Competition Authority’s decision in Greenstar/Veolia and the High Court judgment in Panda Waste. Thus the relevant geographic markets for domestic and C&I customers in the present case is defined as the GDA.”<sup>22</sup>*

- 3.12 The parties also cite the merger determination of the Commission’s predecessor, the Competition Authority, in *M/09/024 Greenstar/Veolia* in support of their proposed approach, particularly with respect to the following:
- waste collectors operate within a fixed geographic area around a transfer station in order to maximise collection time and minimise travel time;
  - the relevant catchment area for an individual waste collector with respect to the collection of domestic waste is a radius of approximately 50-60 kilometres from a transfer station;
  - the relevant catchment area for an individual waste collector with respect to the collection of waste from individual C&I customers is a radius of approximately 100 kilometres from a transfer station - a larger catchment area than for domestic waste collection because waste from individual C&I customers is collected in larger bulk quantities which reduces the total collection time.<sup>23</sup>
- 3.13 The parties argue that the geographic market for the collection of waste from multi-site C&I customers is larger than the GDA and is as wide as the State. The parties identify multi-site C&I customers who are active both inside and outside of the GDA<sup>24</sup> and also state that some multi-site C&I customers purchase waste collection services by way of a tender process for a single contract covering the entire State.
- 3.14 Finally, the parties argue that the relevant geographic market for the supply of recyclable materials is the State, although the majority of recyclable materials are exported outside of the State.

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<sup>22</sup> Compecon Report at p.22-25, referring *inter alia* to Case No. 2008/420 JR Nurendale Limited t/a Panda Waste Services v Dublin City Council, Dun Laoghaire/ Rathdown County Council & South Dublin County Council [2009] IEHC 588.

<sup>23</sup> Compecon Report paragraphs 3.24 and 3.25.

<sup>24</sup> E.g. major retailers such as Lidl, Musgrave and Tesco.

## Views of the Commission

3.15 In relation to the collection of domestic waste, the Commission disagrees with the views of the parties as to the scope of the geographic market and considers, on the basis of the information available to it in this instance, that the relevant geographic market is narrower than the GDA for the reasons given below.

3.16 Although the parties point to a previous merger determination of the former Competition Authority in support of their view that the geographic scope of the market for the collection of domestic waste is the GDA, the Commission's Merger Guidelines make it clear that the Commission is permitted to depart from its previous approach to market definition where the facts of a given case support an alternative approach:

*"Market definition depends on the specific facts, circumstances, and evidence of the particular merger under investigation. Decisions relating to market definition in previous merger investigations by the Commission may provide only limited guidance."*<sup>25</sup>

3.17 Furthermore, the Commission notes that the Competition Authority in its determination in *M/09/024 Greenstar/Veolia (Ireland)* did not reach a definitive conclusion as to the scope of the geographic market for the provision of waste management services:

*"The Authority considers that the GDA is a relevant geographic market. .... However, the Authority does not need to come to a definitive view on the precise relevant geographic market since its conclusions concerning the competitive effects of the proposed acquisition will be the same whether the relevant geographic market is Dublin City and County or wider to include the GDA."*<sup>26</sup>

3.18 The Commission in its Merger Guidelines indicates that a key consideration when defining geographic markets is the location of suppliers of substitute products or services:

*"The relevant geographic market is usually defined in terms of the location of suppliers and it includes those suppliers that customers consider to be feasible substitutes. The relevant geographic market may be local, regional, national or wider."*<sup>27</sup>

3.19 Furthermore, the Commission notes that the European Commission's guidance on defining relevant markets states that:

*"The objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings' behaviour"*

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<sup>25</sup> Merger Guidelines, paragraph 2.6.

<sup>26</sup> *M/09/024 Greenstar/Veolia (Ireland)*, paragraph 3.27.

<sup>27</sup> Merger Guidelines, paragraph 2.19.

*and of preventing them from behaving independently of effective competitive pressure”<sup>28</sup>*

- 3.20 The Commission considers that, in this instance, the relevant geographic market for the supply of domestic waste collection services is narrower than the GDA because waste must be collected where it is produced. It is not likely that households will have the ability to switch to a collector that does not currently collect waste in their area. Dr. Hannigan makes the following observation in the Hannigan Report:

“It is also important to note that the household waste collection market is greatly altered since the earlier Competition Authority cases and it does not simply follow that the GDA remains the relevant market for analysis. There has been ongoing consolidation in both collections and waste management in the intervening period since the quoted cases. Perhaps most importantly, local authorities in Dublin have exited the waste collection business in this period and have transferred their customers to private operators .... This created distinct areas of dominance for the companies that acquired these customers and the areas of dominance and operations of these companies continue to broadly equate with administrative boundaries.”

- 3.21 In support of their approach to geographic market definition, the parties cite the judgment of the High Court in *Nurendale*<sup>29</sup>. However, the Commission does not agree with the argument put forward by the parties that the High Court in *Nurendale* identified the GDA as the relevant geographical market for the supply of domestic waste collection services. Rather, the Commission considers that in *Nurendale*, while initially the judgment appears to start from the viewpoint that the geographic market is the GDA (because the relevant regional Waste Management Plan (“WMP”), which was the subject of the judicial review proceedings before the High Court, covered the Dublin City, Dun Laoghaire-Rathdown, Fingal and South Dublin local authority areas<sup>30</sup>), later in the judgment when discussing dominance and collective dominance the High Court finds that each individual local authority is dominant within its local authority area:

*“It is, in my opinion, patently clear that, as in the ESB case, each local authority, to a significant extent, is able to act independently of any other competitor in the market for household waste collection. Only they may issue WCPs [Waste Collection Permits] and attach conditions thereto, and unlike their competitors, they are not required to possess a WCP. Only they*

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<sup>28</sup> European Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372 /03). See

<[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209(01)&from=EN)>.

<sup>29</sup> Case No. 2008/420 JR *Nurendale Limited t/a Panda Waste Services v Dublin City Council, Dun Laoghaire/Rathdown County Council & South Dublin County Council* [2009] IEHC 588.

<sup>30</sup> *Ibid*, paragraph 77.

*may make, review and vary WMPs, albeit after a consultation process. Evidence was given of the relevant market share of the respondents at the date of hearing. In all cases the relevant local authority held the vast majority of the market share (> 95%), except for Dun Laoghaire-Rathdown which held approximately 46% of the market; it having been the first local authority into whose area private operators penetrated. These market shares alone would be capable of supporting a presumption of dominance. Nonetheless, as stated above, market share is but one of the factors in determining dominance. The undertakings involved are unlike private dominant undertakings in that not only do they have a significant share of the market, but more importantly, they have the power to regulate it: to decide entry or no entry, to decide conditions of entry, and if allowed, to decide operative conditions. It is that regulation, independently of any given market share which they might enjoy, which gives them the power to act independently and therefore makes them dominant in their respective markets. That they have considerable power to affect the market is evidenced by the Variation. Were it to be put into practice it would instantly give the local authorities 100% of the market share. No private undertaking would be able to do such. It is therefore clear that each respondent is dominant in each of their individual areas.”<sup>31</sup>*

- 3.22 The High Court judgment then confirms this view at paragraph 135 where it is stated that:

*“I would therefore find that the respondents are also collectively dominant in the greater Dublin area, as well as being dominant individually within each of their respective geographical areas.”<sup>32</sup>*

- 3.23 Thus, the Gorecki Report, which examines the issue of geographic market definition on behalf of the Commission, concludes:

*“It thus appears that when the [High] Court is dealing with whether or not a local council is dominant that it does so in relation to an individual local council area, which it is suggested, in this context at least, implies that the relevant geographic market for household waste collection is the local council area not the Greater Dublin Region.”<sup>33</sup>*

*“In sum, the Panda Waste judgment is consistent with the view that the relevant product market is household waste collection services and when considering single firm dominance, which arguably is most relevant in assessing unilateral effects in the current merger case, the relevant*

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<sup>31</sup> Ibid, paragraph 133.

<sup>32</sup> Ibid, paragraph 135.

<sup>33</sup> The Gorecki Report, page 5.

*geographic market(s) is each of the four local authority areas in the Greater Dublin Region taken separately rather than together.”<sup>34</sup>*

- 3.24 For the reasons above, and based on the Commission’s analysis, submissions from third parties, market enquiries and the information supplied by the parties (in particular the responses to certain RFI questions), the Commission concludes that each of the local authority areas within the GDA constitutes a relevant geographic market for the supply of domestic waste collection services.<sup>35</sup>
- 3.25 With respect to the remaining relevant product markets<sup>36</sup>, third party submissions, market enquiries and information supplied by the parties suggest that the geographic scope of the relevant markets may be the GDA or possibly larger than the GDA. With the exception of the market for the supply of domestic waste collection services, the Commission does not consider it necessary to come to a definitive view on the precise geographic scope of the remaining relevant product markets in this instance since it would not have a material impact on the Commission’s assessment of the competitive impact of the proposed transaction.

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<sup>34</sup> Ibid, page 6.

<sup>35</sup> While market enquiries suggested that it is possible that local markets that are geographically smaller than a local authority area could be identified, the Commission carried out its review of the domestic waste collection market using the relevant local authority areas in the GDA.

<sup>36</sup> Namely, the market for the supply of waste collection services to individual C&I customers; the market for the supply of waste collection services to multi-site C&I customers; the market for the processing of waste collected from domestic and C&I customers; and the market for the supply (for sale) of recyclable materials.

## 4. Competitive Assessment

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### Introduction

- 4.1 As stated above, the Commission’s merger review function is to determine whether or not a proposed transaction would lead to an SLC in markets for goods or services in the State. The Commission’s approach to the assessment of the likely competitive effects of the proposed transaction is set out in detail in its Merger Guidelines.
- 4.2 The Commission’s analysis involves an assessment of:
- (i) Horizontal overlaps between the activities of the parties in the State;
  - (ii) Vertical relationships between Panda and Greenstar and between the parties and third parties in the State;
  - (iii) The relevant counterfactual – i.e., the likely state of competition in the relevant market or markets in the absence of the proposed transaction;<sup>37</sup> and
  - (iv) Competitive effects of the proposed transaction in comparison to the relevant counterfactual.
- 4.3 There are a number of horizontal overlaps between the activities of the parties within the State. Both Greenstar and Panda are involved in (i) the collection of domestic waste; (ii) the collection of waste from individual C&I customers; (iii) the collection of waste from multi-site C&I customers; (iv) the processing of waste collected from domestic and C&I customers; and (v) the supply (for sale) of recyclable materials.
- 4.4 There is also a vertical relationship between Greenstar and Panda to the extent that (i) Panda provides waste processing services to Greenstar on an “*ad hoc and emergency basis*”<sup>38</sup> and (ii) Greenstar supplies municipal solid waste to Panda for subsequent baling and exporting outside of the State for incineration. In

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<sup>37</sup> In this instance the relevant counterfactual is the *status quo ante*, i.e., the state of competition prior to the proposed transaction being implemented. Notwithstanding the commercial rationale for the proposed transaction, as set out in paragraph 1.14, which implies that the parties had concerns about the profitability of Greenstar, the parties did not present a failing firm argument to the Commission.

<sup>38</sup> Notification, page 12. These services are provided at Panda’s facility in Ballymount, Co Dublin.

addition, both Greenstar and Panda supply waste transfer and waste processing services to third party waste collectors.

4.5 The Commission's competitive assessment of the proposed transaction has focussed (for reasons discussed in more detail below) on the following three theories of harm which may potentially arise as a result of the implementation of the proposed transaction:

- (a) unilateral effects,<sup>39</sup> within local authority areas in the GDA, on the market for the supply of domestic waste collection services.
- (b) unilateral effects, within the GDA, on the market for the supply of waste collection services to individual C&I customers and the market for the supply of waste collection services to multi-site C&I customers.
- (c) vertical effects,<sup>40</sup> within the GDA, on the market for the processing of waste collected from domestic and C&I customers.

4.6 The Commission does not consider that there are credible theories of harm concerning the impact of the proposed transaction on the market for the supply of recyclable materials. While there is a horizontal overlap between Panda and Greenstar in this market within the State, the merged entity will continue to export recyclable material outside of the State following the implementation of the transaction and it will not have market power to influence export prices. The proposed transaction will thus not give rise to any significant effect on competition in the market for the supply of recyclable materials in the State and therefore this particular market is not examined further in this Determination.

## Domestic Waste Collection

### Unilateral Effects

4.7 According to the Commission's Merger Guidelines, unilateral effects occur *"when a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors."*<sup>41</sup>

4.8 The Merger Guidelines also state that the *"incentive to increase prices arises whenever the merged entity can increase profits by doing so."*<sup>42</sup> Of critical importance in this respect are the competitive constraints on the merged entity. The Merger Guidelines argue that these constraints *"will be weaker to the extent that (i) there is an absence of substantial competition from other firms in the market or firms likely to enter in a timely manner, (ii) competitors have insufficient productive capacity to increase output, or (iii) competitors do not*

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<sup>39</sup> See Section 4 of the Merger Guidelines.

<sup>40</sup> See Section 5 of the Merger Guidelines.

<sup>41</sup> Merger Guidelines, paragraph 4.8.

<sup>42</sup> Merger Guidelines, paragraph 4.10.

*have a strong incentive to compete (for example, if they might also benefit from increased prices), also referred to as price accommodation.”<sup>43</sup>*

#### Views of the Undertakings Involved

4.9 The parties argue that the proposed transaction will not lead to an SLC in the market for the supply of domestic waste collection services within the GDA.

4.10 The parties argue that Greenstar’s low market share in the GDA, which will result in a relatively small increase in Panda’s existing market share in the GDA as a result of the proposed transaction, indicates that the proposed transaction is unlikely to give rise to competition concerns in the market for the supply of domestic waste collection services:

*“Greenstar is a relatively small player in the overall GDA domestic waste market with approximately 4% market share. It would appear extremely unlikely that a firm with such a small market share would exercise a significant competitive constraint on Panda.”<sup>44</sup>*

4.11 Table 1 below shows the market shares of the parties and other key operators for the supply of domestic waste collection services within the GDA. In a hypothetical GDA-wide market for the collection of domestic waste, the parties would have a combined market share of almost 30% of households. In addition, the parties argue that:

- the merged entity will continue to face strong competition from other suppliers of domestic waste collection services in the GDA;
- there are low barriers to entry into the waste management sector, including in the market for the collection of domestic waste; and
- Panda and Greenstar are not each other’s closest competitors within the GDA and the main competitive constraint on Panda comes from other suppliers of domestic waste collection services in the GDA.

**Table 1: Domestic Waste Collection in the GDA - Number of Households and Market Share (%), 2014.**

Operator	Number of Households	Market Share %
Panda	[...]	[25-30]%
Greenstar	[...]	[0-5]%
<b>Combined</b>	<b>[...]</b>	<b>[25-30]%</b>
Greyhound Household	[...]	[25-30]%
Thorntons Recycling	[...]	[10-15]%

<sup>43</sup> Merger Guidelines, paragraph 4.11.

<sup>44</sup> Compecon Report, at page 53.

Oxigen Group Services Limited (“Oxigen”)	[...]	[0-5]%
AES <sup>45</sup>	[...]	[5-10]%
The City Bin Co.	[...]	[5-10]%
Allied Recycling Limited	[...]	[0-5]%
Whelan Waste	[...]	[0-5]%
Key Waste Management Limited (“Key Waste”)	[...]	[0-5]%
Advanced Waste Recycling Limited (“Advanced Waste”)	[...]	[0-5]%
Others	[...]	[15-20]%
Total	[...]	100%

Source: Information supplied by the Parties<sup>46</sup>

#### Views of the Commission

4.12 As stated in paragraph 3.15 above, the Commission does not agree with the parties’ view that the GDA is the relevant geographic market for the collection of domestic waste. Rather, the Commission considers that each of the local authority areas within the GDA constitutes a distinct relevant geographic market for the supply of domestic waste collection services.

#### Market Structure and Closeness of Competition

4.13 Table 2 below shows the market shares of the parties and other key operators for the supply of domestic waste collection services within each of the local authority areas within the GDA.

**Table 2: Market Shares (%) for Domestic Waste Collection by Household – Local Authority Areas within the GDA and the GDA overall, 2014.**

Operator	DCC	DLRC	FCC	SDCC	KCC	MCC	WCC	GDA
Panda	[0-5]%	[85-90]%	[90-95]%	[0-5]%	[0-5]%	[25-30]%	[0-5]%	[25-30]%
Greenstar	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[25-30]%	[0-5]%

<sup>45</sup> Advanced Environmental Solutions (Ireland) Limited (“AES”).

<sup>46</sup> The market shares are calculated by Compecon based on 2011 Census data adjusted for a household growth of approximately 5% to the end of December 2014.

Operator	DCC	DLRC	FCC	SDCC	KCC	MCC	WCC	GDA
<b>Combined</b>	[0-5]%	<b>[95-100]%</b>	<b>[95-100]%</b>	<b>0%</b>	<b>[0-5]%</b>	<b>[25-30]%</b>	<b>[25-30]%</b>	<b>[25-30]%</b>
Greyhound Household	65-70)%	[0-5]%	[0-5]%	[0-65)%	0%	[0-5]%	[0-5]%	27%
Oxigen	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[20-25)%	[0-5)%	9%	[0-5)%
Allied Recycling Limited	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%
AES	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[30-35)%	[20-25)%	[0-5)%	[5-10)%
Thorntons Recycling	[0-5)%	[0-5)%	[0-5)%	[25-30)%	[15-20)%	[15-20)%	[10-15)%	[10-15)%
The City Bin Co.	[10-15)%	[0-5)%	[0-5)%	[5-10)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%
Key Waste	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%
Advanced Waste	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%	[0-5)%
Whelans	[0-5)%	[0-5)%	[0-5)%	0%	[5-10)%	[0-5)%	[0-5)%	[0-5)%
Other <sup>47</sup>	[10-15)%	[0-5)%	[0-5)%	[0-5)%	[20-25)%	[20-25)%	45-50)%	[10-15)%
<b>Total</b>	100%	100%	100%	100%	100%	100%	100%	100%

Source Information supplied by the parties<sup>48</sup>

4.14 Table 2 clearly shows that the only local authority areas within the GDA in which there is a significant overlap between the parties for the supply of domestic waste collection services are the Dun Laoghaire-Rathdown and Fingal local authority areas. Post-merger, the merged entity will have a market share of 95% in each of these areas. Greyhound Household (the largest competitor of the parties in the GDA as a whole with a share of 27%) is absent from both Dun

<sup>47</sup> The “Other” figure in Table 2 is a residual figure from the identified market shares and the total number of customers as calculated by the Compecon Report on the basis of 2011 Census data adjusted for household growth of approximately 5% to the end of 2014. The “Other” figure in Table 2 includes households that do not avail of domestic waste collection.

<sup>48</sup> Sretaw’s response of 8 April 2016 to the RFI issued by the Commission on 21 March 2016. The Commission has reviewed household waste data from the NWCPO which includes all apartments including apartment complexes. Nevertheless, the Commission considers that the data presented by the parties, which excludes waste collected from apartment complexes, is an accurate indicator of market shares in domestic waste collection.



Laoghaire-Rathdown and Fingal local authority areas. There are no significant competitors present in the Dun Laoghaire-Rathdown and Fingal local authority areas, with the exception of Thorntons Recycling, which has only minimal activities in Dun Laoghaire-Rathdown<sup>49</sup>, and The City Bin Co., which has only a limited presence in the Fingal local authority area. In the absence of any other competitors of a significant size in these two local authority areas, Greenstar is Panda's closest competitor in each of the Dun Laoghaire-Rathdown and Fingal local authority areas. On the basis of the information available to it, the Commission considers that it is likely that following implementation of the proposed transaction the merged entity would have the ability to unilaterally raise the price of its domestic waste collection service in each of the Dun Laoghaire-Rathdown and Fingal local authority areas.

#### *Market Entry and Expansion*

- 4.15 Where it is likely that the other firms within a market will be unable to discipline a price rise by the merged entity, then attention turns to whether or not new entry or expansion by existing competitors would be able to constrain such a price rise. The Commission in its Merger Guidelines states that *"in assessing whether new entry will prevent an SLC"* it considers whether such entry would be timely, likely and sufficient to discipline such a price rise.<sup>50</sup> Each of these three conditions has to be satisfied.
- 4.16 In this instance, the Commission does not consider that the prospect of new entry by a third party will provide a credible competitive constraint on the merged entity. The Commission accepts that, while it may be relatively easy for a small scale operator to enter the market for the supply of domestic waste collection services, such entry will not be sufficient to constrain the merged entity for the reasons given below.
- 4.17 The Commission's market enquiries indicated that essentially all that is required for a small operator to enter the market for the supply of domestic waste collection services is to comply with the relevant regulatory requirements, which, while not trivial, do not appear to be particularly onerous, and to have access to a vehicle suitable for collecting and transporting waste which may be either owned by the operator or leased from another party.
- 4.18 However, the prospect of achieving a critical mass of customers in a relatively short period is a necessary component in order for any possible new entrant to: (i) consider entering the market in the first place; and (ii) become a competitive constraint on the merged entity. Some respondents to the Commission's market enquiries indicated that a new entrant could expect to sustain losses for at least the first 6 months of operation while it develops a sustainable scale of operation

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<sup>49</sup> Thorntons Recycling's market share in the Dun Laoghaire-Rathdown local authority area is less than 0.5% and therefore has been rounded down to 0% in Table 2.

<sup>50</sup> The Merger Guidelines, paragraph 6.4

and that this would likely deter entry into the market<sup>51</sup>. Furthermore, the Commission considers that it can be expected that the merged entity, with market shares of approximately 95% in each of the Dun Laoghaire-Rathdown and Fingal local authority areas, would be well-positioned to respond to any possible new entry in these areas (for example, by way of offering discounts to existing customers threatening to switch to a new entrant). On this basis, the Commission considers that the possibility of new entry into the market would not be likely or sufficient to discipline any potential future price rise by the merged entity.

- 4.19 The Commission also considers that the current market structure in the GDA remains, to a significant extent, affected by the exit of local authorities from the provision of domestic waste collection and transfer of these services to private operators.

#### *Conclusion*

- 4.20 In light of the above, the Commission concludes that the proposed transaction is likely to lead to an SLC in the market for the collection of domestic waste in each of the Dun Laoghaire-Rathdown and Fingal local authority areas. The proposed transaction will involve the acquisition by PandaGreen of Panda's closest competitor in each of the Dun Laoghaire-Rathdown and Fingal local authority areas, giving the merged entity a post-transaction market share of 95% in each of these areas. The merged entity's existing competitors in these areas would be unlikely to constrain a post-merger price rise and the likelihood of a new entrant or existing waste operator in a neighbouring local authority area seeking to enter the market in these areas appears to be unlikely and insufficient to discipline the merged entity. The Commission did not, however, have to come to a final determination as to whether or not the proposed transaction would result in an SLC, as PandaGreen offered proposals to address the Commission's concerns.

## **Waste Collection from Individual and Multi-site C&I Customers**

### **Views of the Undertakings Involved**

- 4.21 The parties argue that the proposed transaction will not lead to an SLC in the market for the supply of waste collection services to individual C&I customers within the GDA or in the market for the supply of waste collection services to multi-site C&I customers within the State. Sretaw, on behalf of PandaGreen, states that:

*"We do not have information broken down by local authority region in the commercial sector. There is no basis for such an evaluation of the market ... All the GDA C&I business is managed together and reported together*

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<sup>51</sup> Some respondents stated, however, that small scale operators (e.g., those operating only a very small number of vehicles) may find it easier to enter a new local authority area.

*and all of our competitors compete with us for commercial customers throughout the GDA.”<sup>52</sup>*

4.22 Table 3 shows the market shares of the parties and other key operators in the market for the supply of waste collection services to individual C&I customers, based on value, within the GDA.

**Table 3: Market Shares for Waste Collection from Individual C&I Customers by value – GDA, 2014**

Operator	Turnover (€ Million)	Market Share (%)
Thorntons Recycling	[...]	[...]
Panda	[...]	[...]
Oxigen	[...]	[...]
Greenstar	[...]	[...]
Key Waste	[...]	[...]
The City Bin Co.	[...]	[...]
Greyhound Household	[...]	[...]
AES	[...]	[...]
Pac-on Waste & Recycling Limited	[...]	[...]
Allied Recycling Limited	[...]	[...]
Access Waste Recycling	[...]	[...]
Advance	[...]	[...]
Arklow Waste	[...]	[...]
Others	[...]	[...]
<b>Total</b>	<b>[...]</b>	<b>[...]</b>

Source Information supplied by the parties<sup>53</sup>

4.23 The parties state that Panda and Greenstar are currently the second and fourth largest competitors, respectively, in the market for the supply of waste collection services to individual C&I customers within the GDA and they argue that following implementation of the proposed transaction the merged entity will continue to face strong competition from competitors such as Thorntons Recycling, Oxigen, Key Waste, The City Bin Co. and other key waste operators.

<sup>52</sup> Sretaw’s response of 8 April 2016 to the RFI issued by the Commission on 21 March 2016, at page 17.

<sup>53</sup> The market shares in Table 3 are derived from Sretaw’s response of 8 April 2016 to the RFI issued by the Commission on 21 March 2016 and from the notification at page 45. The market shares refer to waste collection from individual C&I customers including apartment complexes.



- 4.24 The parties also argue that Panda and Greenstar are not each other's closest competitors and that, on the basis of their increasing market shares over time, Panda's closest competitors for the supply of waste collection services to individual C&I customers in the GDA are Thorntons Recycling and Oxigen.
- 4.25 The parties state that switching costs are low for individual C&I customers and that this, in part, reflects the loose contractual arrangements between the waste operators and their individual C&I customers. For example, the Compecon Report submitted by the parties states that:

*"Panda has no contracts with 85% of its C&I waste customers. This effectively means that the majority of Panda's C&I customers could switch at very short notice and this represents a very significant constraint on Panda's ability to raise prices unilaterally post-merger."*<sup>54</sup>

- 4.26 The Compecon Report concludes, therefore, in light of the above, that for individual C&I customers:

*"There are therefore no grounds for believing that the proposed transaction will give rise to unilateral effects in the GDA C&I waste market."*<sup>55</sup>

- 4.27 The parties were unable to provide precise market share information for the supply of waste collection services to multi-site C&I customers but estimated that there are approximately 70 multi-site C&I customers with premises located throughout the State who are customers in this market. On this basis, the parties estimate that together they account for 27% of multi-site C&I customers.

- 4.28 Further, the parties state that their multi-site C&I customers are:

*"all very large commercial entities and have significant countervailing buyer power since there are other providers of waste services to which they could switch in the event that the merged entity sought to increase its prices."*<sup>56</sup>

### Views of the Commission

- 4.29 As stated in paragraph 3.8 above, the Commission considers that the relevant product markets in the commercial waste sector are the market for the supply of waste collection services to individual C&I customers and the market for the supply of waste collection services to multi-site C&I customers. As stated in paragraph 3.25 above, the Commission considers that the relevant geographic market for the supply of waste collection services to individual C&I customers and for the supply of waste collection services to multi-site C&I customers is

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<sup>54</sup> Compecon Report at page 43.

<sup>55</sup> Compecon Report, at page 43. The parties also conclude that coordinated effects are not likely in the C&I waste collection sector due to the number of competitors and their asymmetric market shares.

<sup>56</sup> Compecon Report, at page 50.

likely to be at least as large as the GDA. The Commission has not found evidence, through information obtained from the parties, market enquiries, third party submissions or its own analysis, to indicate that the geographic market for the supply of waste collection services to individual C&I customers and for the supply of waste collection services to multi-site C&I customers would be smaller than the GDA.

- 4.30 The market shares of the parties in the market for the supply of waste collection services to individual C&I customers in the GDA, as shown in Table 3, do not indicate that competition concerns are likely to arise from the proposed transaction within the GDA. Following implementation of the proposed transaction, the merged entity would have a market share of approximately 25.4% for the supply of waste collection services to individual C&I customers in the GDA. Other key operators in the market, in particular Thorntons Recycling (with a market share of approximately 20%) and Oxigen (with a market share of approximately 12.7%), would continue to exert a significant competitive constraint on the merged entity.
- 4.31 Similarly, the combined market share of the parties for the supply of waste collection services to multi-site C&I customers in the State does not indicate that the proposed transaction is likely to give rise to competition concerns. While, following implementation of the proposed transaction, the merged entity would have a significant share of this market of approximately 27%, a significant number of other key competitors would remain active in the market. In particular, AES (with a market share of approximately 21.4%) and Thorntons Recycling (with a market share of approximately 7.1%), would continue to exert a significant competitive constraint on the merged entity.
- 4.32 Furthermore, the Commission's market enquiries indicated that the costs to individual C&I customers and multi-site C&I customers of switching between waste suppliers are low, and that customer switching is currently reasonably commonplace. The Commission considers that following implementation of the proposed transaction both individual C&I customers and multi-site C&I customers will still have alternative suppliers of waste collection services available and these alternative suppliers will act as a competitive constraint on the merged entity.
- 4.33 In light of the above factors, the Commission concludes that the proposed transaction is not likely to lead to an SCL in the market for the supply of waste collection services to individual C&I customers within the GDA or in the market for the supply of waste collection services to multi-site C&I customers either nationally or within the GDA.



## Processing of Waste Collected from Domestic and C&I Customers

### Views of the Undertakings Involved

- 4.34 The parties do not identify a distinct market for the processing of waste collected from domestic and C&I customers. The parties do, however, acknowledge that there is a potential vertical issue:

*“Some smaller waste operators are only engaged in waste collection and are reliant on access to transfer/processing facilities owned and operated by the larger vertically integrated operators. Theoretically, such smaller operators could be forced to exit the market if they were unable to gain access to such facilities”.<sup>57</sup>*

- 4.35 The parties do not, however, consider that there is a significant risk of such operators being foreclosed from the market and state that:

*“As there are a number of competing undertakings with transfer/processing facilities in both the domestic and C&I GDA waste markets, the potential gains from foreclosure would be dissipated and any gains to the merged entity would be limited.”<sup>58</sup>*

### Views of the Commission

- 4.36 As described in paragraph 2.14 above, while some waste management operators are vertically integrated, i.e., such operators are involved in both waste collection and waste processing, other operators are involved in waste collection only. Consequently, there is a vertical relationship between a waste processor who provides waste processing services to third party waste collectors and a waste collector who contracts to use the waste processor’s services.
- 4.37 Both of Panda and Greenstar are vertically integrated as they both collect and process waste. As stated in paragraph 1.6 above, Panda owns a number of waste management facilities in Counties Dublin and Meath and its material recovery facility in Dublin processes waste and recyclable material for third parties. As noted in paragraph 1.11 above, Greenstar operates a number of waste transfer stations as well as several material recovery facilities.
- 4.38 In its analysis of the proposed transaction, the Commission considered whether the proposed transaction would provide the merged entity with the ability and incentive to foreclose waste collectors competing with the merged entity in the GDA from the market, for example, by either:

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<sup>57</sup> Compecon Report at page 46.

<sup>58</sup> *ibid.*

- (i) refusing to allow competing waste collectors to tip their waste into the merged entity's waste processing facilities or transfer stations; or,
- (ii) increasing the prices the merged entity charges to a competing waste collector for the use of its waste processing facilities to the ultimate detriment of such waste collector's domestic and C&I customers (e.g., because the competing waste collector decides to pass on increased prices to its customers or to exit the waste collection market entirely).

- 4.39 The Commission acknowledges that some concerns were expressed in third party submissions and in responses to the Commission's market enquiries that the merged entity may seek to implement a foreclosure strategy with respect to competing waste collectors. The Commission notes that, at present, both of Panda and Greenstar provide waste processing services to competing waste collectors and would have the ability to foreclose, fully or partially, competing waste collectors.
- 4.40 However, the merged entity would have an incentive to implement a foreclosure strategy only if any revenue losses borne by the merged entity as a result of discontinuing or limiting the provision of waste processing services to competing waste collectors would be outweighed by revenue increases arising from increased waste collections by the merged entity to its own domestic and/or C&I customers.
- 4.41 The incentive of the merged entity to foreclose competing waste collectors is restricted by the presence of other waste processors in the GDA<sup>59</sup> which compete with the merged entity (such as Greyhound Household, Oxigen, Thorntons Recycling, Access Waste Recycling and AES<sup>60</sup>), to whom third party waste collectors would likely turn should the merged entity restrict access to or increase prices for the use of its waste processing facilities. The Commission's market enquiries indicated that waste collectors can switch between waste processors relatively easily. Consequently, the Commission considers that there would not be a strong incentive for the merged entity to implement an input foreclosure strategy with respect to competing waste collectors in the GDA.
- 4.42 In addition, the opening of the Poolbeg incinerator in 2017 will increase significantly the overall available capacity in the GDA for the processing and disposal of waste. This is likely to further reduce the incentive of the merged entity to seek to foreclose competing waste collectors, particularly if such waste collectors are able to by-pass the merged entity and deliver collected waste directly to the Poolbeg incinerator.

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<sup>59</sup> It is also possible that some collectors of waste from C&I customers could seek alternative tipping locations outside of the GDA.

<sup>60</sup> These competitors are identified in the Compecon Report and also in data supplied by the EPA to the Commission on 28 June 2016.

- 4.43 Finally, the Commission understands that Panda has committed to supply a specified annual tonnage of waste to the Covanta group, the developer of the Poolbeg incinerator, and so is likely to have an incentive to increase, rather than decrease, the volumes of waste it accepts from competing waste collectors.<sup>61</sup>
- 4.44 In light of the above, the Commission concludes that the proposed transaction is not likely to lead to an SLC as a result of vertical effects on competition, such as full and/or partial foreclosure by the merged entity of competing waste collectors.

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<sup>61</sup> The parties provided the Commission with a copy of the waste supply agreement entered into between Panda and Dublin Waste to Energy Limited, a wholly-owned subsidiary of the Covanta group of companies. The volumes of waste to be supplied by Panda and the proportion of the total capacity of the incinerator's annual capacity are less than that stated in some third party submissions received by the Commission.

## 5. Proposals

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- 5.1 Throughout its full (Phase 2) investigation the Commission continued to engage with the parties, particularly in relation to the proposals submitted by PandaGreen to the Commission on 16 May 2016.
- 5.2 As part of its ongoing engagement with the parties, the Commission sought to ensure that the proposals submitted by PandaGreen would ameliorate the effects of the proposed transaction on competition which were identified by the Commission during its investigation, and would do so in a manner which fully recognised and was consistent with the protection of consumers' rights under data protection and consumer protection legislation.
- 5.3 Separately Sretaw informed the Commission that Panda intends to remain active in the State as a national waste operator and does not intend to sell any of the businesses or assets of Greenstar which are to be acquired by PandaGreen pursuant to the proposed transaction, with the exception of the businesses to be divested by PandaGreen pursuant to the proposals set out below, for a period of 5 years following the implementation of the proposed transaction.
- 5.4 On 15 August 2016, PandaGreen submitted to the Commission final proposals under section 20(3) of the Act to divest the Greenstar domestic waste collection businesses in the Fingal and Dun Laoghaire-Rathdown local authority areas. In particular:
  - (a) PandaGreen committed to sell Greenstar's domestic waste collection businesses in the Fingal and Dun Laoghaire-Rathdown local authority areas to a purchaser to be approved by the Commission.
  - (b) The proposals provide for the businesses in question to be sold to Greyhound Household, a company with which PandaGreen had entered into a non-binding heads of agreement on 13 July 2016.
  - (c) If the sale to Greyhound Household of Greenstar's domestic waste collection businesses in the Fingal and Dun Laoghaire-Rathdown local authority areas does not proceed, the proposals provide for the businesses in question to be sold to an alternative purchaser or purchasers to be approved by the Commission.
- 5.5 The Commission is of the view that the proposals submitted by PandaGreen on 15 August 2016 are sufficient to address the competition concerns identified by the Commission in the market for the collection of domestic waste in the Fingal local authority area and in the market for the collection of domestic waste in the Dun Laoghaire-Rathdown local authority area. In accordance with section 20(3) and section 26(1) and section 26(4) of the 2002 Act, the proposals have become

commitments binding upon PandaGreen. The proposals are set out in full in section 7, “Determination”, below.

- 5.6 In light of the binding divestiture proposals submitted by PandaGreen on 15 August 2016, and in light of its analysis as set out in this determination, the Commission has determined that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

## 6. Ancillary Restraints

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- 6.1 The SPA between Starrus and PandaGreen contains a number of restrictive obligations on Starrus. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.<sup>62</sup> Given the particular nature of the proposed transaction, the Commission considers that these obligations are directly related to and necessary for the implementation of the proposed transaction.

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<sup>62</sup> In this respect, the Commission follows the approach adopted by the European Commission in paragraph 20 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information, see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN).

## 7. Determination

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### **Determination**

Pursuant to section 20(3) of the Competition Act 2002, as amended (“Act”), PandaGreen Limited (“Panda”) has submitted to the Competition and Consumer Protection Commission (“Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services, with a view to the said proposals becoming binding on Panda.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 22(3)(a) of the Act, that the result of the proposed acquisition whereby Sretaw, through its wholly-owned subsidiary PandaGreen Limited, would acquire the entire issued share capital of Starrus Eco Holdings Limited (trading as Greenstar) from Starrus Holdings Limited will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Isolde Goggin**  
**Chairperson**  
**Competition and Consumer Protection Commission**

### **PROPOSALS BY PANDA TO THE CCPC RELATING TO THE GREENSTAR BUSINESSES (“Proposals”)**

#### **RECITALS**

- a) Pursuant to section 20(3) of the Competition Act 2002, as amended, Panda has submitted to the CCPC the following Proposals relating to the Greenstar Businesses for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on Panda.
- b) Panda has agreed with the CCPC to commit to sell the Greenstar Businesses in accordance with the terms and procedures set out in these Proposals.
- c) Prior to the date of the Determination, the following has occurred:
  - (i) Panda identified Greyhound as a suitable prospective purchaser of the Greenstar Businesses and informed the CCPC that it was seriously considering the sale of the Greenstar Businesses to Greyhound.

- (ii) The CCPC has verified the suitability of Greyhound as a prospective purchaser of the Greenstar Businesses and has informed Panda of its approval of Greyhound.
- (iii) Panda has entered into non-binding Heads of Agreement with Greyhound for the sale of the Greenstar Businesses, the terms of which have been agreed with the CCPC.

#### A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:

**“Act”** means the Competition Act 2002, as amended;

**“CCPC”** means the Competition and Consumer Protection Commission and its successors;

**“Determination”** means the Determination of the CCPC pursuant to Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

**“DLR Customer”** or **“DLR Customers”** means a customer or customers located in the Dun Laoghaire Rathdown County Council area receiving Domestic Waste Collection Services from Greenstar at the date of the Determination;

**“DLR Business”** shall be construed in accordance with the Schedule hereto;

**“Domestic Waste Collection Services”** means waste collection services provided to domestic households, including without limitation to detached houses, semi-detached houses, terraced houses, bedsits and apartments in converted houses or commercial buildings, but excluding waste collection services provided to purpose-built apartment complexes;

**“Fingal Customer”** or **“Fingal Customers”** means a customer or customers located in the Fingal County Council area receiving Domestic Waste Collection Services from Greenstar at the date of the Determination;

**“Fingal Business”** shall be construed in accordance with the Schedule hereto;

**“Greenstar”** means Starrus Eco Holdings Limited (a private limited company incorporated under the laws of Ireland (Registration No. 527552)) trading under the name “Greenstar”;

**“Greenstar Customers”** means the DLR Customers and the Fingal Customers;

**“Greenstar Businesses”** means the DLR Business and the Fingal Business;

**“Greyhound”** means Greyhound Household (a private unlimited company incorporated under the laws of Ireland (Registration No. 487120));

**“Heads of Agreement”** means the heads of agreement entered into between Panda and Greyhound dated 13 July 2016 in the form approved by the CCPC, which relates to the proposed acquisition by Greyhound of the Greenstar Businesses;

**“Mandate”** means the mandate agreement to be entered into between Panda and the Trustee in accordance with paragraph 33 of these Proposals, the terms of which shall have previously been approved by the CCPC;

**“Material Change”** means a change whereby a purchaser of the Greenstar Businesses, or alternatively a purchaser of the DLR Business or a purchaser of the Fingal Business (if the DLR Business and the Fingal Business are intended to be acquired by separate purchasers pursuant to paragraph 12 or paragraph 39 of these Proposals), no longer fulfils the requirements of a “Suitable Purchaser”, as defined below;

**“Panda”** means PandaGreen Limited (a private limited company incorporated under the laws of Ireland (Registration No. 550340));

**“Panda Customer”** or **“Panda Customers”** means a customer or customers receiving Domestic Waste Collection Services from Panda;

**“Proposed Transaction”** means the proposed acquisition by Panda of the entire issued share capital of Greenstar as notified to the CCPC on 9 February 2016;

[...];

**“Suitable Purchaser”** means a purchaser who meets all of the following four criteria:

1) the acquisition by the purchaser of the Greenstar Businesses, or alternatively the acquisition by separate purchasers of the DLR Business and of the Fingal Business (if the DLR Business and the Fingal Business are intended to be acquired by separate purchasers pursuant to paragraph 12 or paragraph 39 of these Proposals), or the terms and conditions of any such acquisition would not be likely to create prima facie competition concerns;

2) the purchaser (or, in the case of separate purchasers, each purchaser) is unconnected to and independent of Panda and Greenstar;

3) the purchaser (or, in the case of separate purchasers, each purchaser) is able to provide, on a financially viable basis, Domestic Waste Collection Services to the Greenstar Customers, or alternatively to the DLR Customers or to the Fingal Customers (if the DLR Business and the Fingal Business are intended to be acquired by separate purchasers pursuant to paragraph 12 or paragraph 39 of these Proposals); and

4) the purchaser (or, in the case of separate purchasers, each purchaser) is reasonably likely to obtain all permits or access to assets required to

provide Domestic Waste Collection Services to the Greenstar Customers, or alternatively to the DLR Customers or to the Fingal Customers (if the DLR Business and the Fingal Business are intended to be acquired by separate purchasers pursuant to paragraph 12 or paragraph 39 of these Proposals);

“Trustee” means the trustee approved, or deemed to have been approved, by the CCPC with whom Panda shall enter into the Mandate in accordance with paragraph 33 of these Proposals.

**B. Divestment by Panda to Greyhound**

2. Panda undertakes, subject to the provisions set out herein, to effect the sale of the Greenstar Businesses to Greyhound [...] of the Determination.
3. Panda agrees with the CCPC that the sale of the Greenstar Businesses to Greyhound shall be upon the basis of the broad terms set out in the Heads of Agreement. Panda shall immediately inform the CCPC if Greyhound exercises its rights in accordance with the Heads of Agreement to decide not to proceed with the acquisition of the Greenstar Businesses.
4. Panda shall be deemed to have complied with paragraph 2 above if, [...] from the Determination (or such longer period as may be allowed by the CCPC), it has entered into a binding contract for the sale of each of the Greenstar Businesses to Greyhound (subject to due diligence, regulatory permits and any other necessary conditions not within the control of Panda or Greyhound) provided that such sale is completed within [...] from the date of the binding contract (or such longer period as may be allowed by the CCPC).
5. Panda shall immediately inform the CCPC if, having entered into a binding contract with Panda for the acquisition of the Greenstar Businesses, Greyhound exercises any relevant rights it has pursuant to such binding contract not to proceed with the acquisition of the Greenstar Businesses.
6. When Panda and Greyhound have entered into a binding contract for the sale of the Greenstar Businesses, Panda shall submit to each of the CCPC and the Trustee at the same time a copy of the binding contract together with a fully documented and reasoned proposal which demonstrates that the conditions laid down in these Proposals are fulfilled and that there has been no Material Change in the status of Greyhound since the CCPC assessed Greyhound’s suitability to purchase the Greenstar Businesses, subject to the CCPC agreeing to keep confidential all such information received.
7. Within [...] of the receipt by the CCPC of the binding contract for the sale of the Greenstar Businesses and accompanying fully documented and reasoned proposal in accordance with paragraph 6, the CCPC shall communicate in writing its view as to whether the conditions laid down in these Proposals have been

fulfilled and, in particular, as to whether there has been any Material Change in the status of Greyhound as provided for in paragraph 6.

8. Panda recognises that, if at any time prior to completion of the sale of the Greenstar Businesses to Greyhound, the CCPC considers on the basis of information available to it that:

[...]

the CCPC may withdraw its approval of Greyhound as a Suitable Purchaser of the Greenstar Businesses. In the event that the CCPC withdraws its approval of Greyhound as a Suitable Purchaser of the Greenstar Businesses as provided for in this paragraph, the procedure provided for in paragraph 9 of these Proposals shall be followed.

#### **C. Divestment by Panda to an Alternative Purchaser or Purchasers**

9. Panda undertakes, subject to the provisions set out herein, to effect the sale of each of the Greenstar Businesses to an alternative prospective purchaser or purchasers approved by the CCPC (whose approval shall not be unreasonably withheld) in the following circumstances, such sale to be effected within [...] of the occurrence of any one of these events:

- (i) if the CCPC withdraws its approval of the suitability of Greyhound as a purchaser of the Greenstar Businesses for one or more of the reasons referred to in paragraph 8 of these Proposals;
- (ii) if Panda informs the CCPC, pursuant to paragraph 3 of these Proposals, that Greyhound has exercised its rights in accordance with the Heads of Agreement not to proceed with the acquisition of the Greenstar Businesses;
- (iii) if [...] (or such longer period as may be agreed by the CCPC) have elapsed after the date of the Determination without Panda having entered into a binding agreement with Greyhound for the disposal of each of the Greenstar Businesses; or
- (iv) if, having entered into a binding agreement with Greyhound for the acquisition of the Greenstar Businesses, Panda informs the CCPC, pursuant to paragraph 5 of these Proposals, that Greyhound has exercised its rights pursuant to such binding agreement not to proceed with the acquisition of the Greenstar Businesses.

10. Panda agrees with the CCPC that the sale of the Greenstar Businesses shall be upon such conditions as the CCPC may reasonably consider proper and that the sale of the Greenstar Businesses to a prospective purchaser (or purchasers) must

not be likely to create, in light of information available to the CCPC, prima facie competition concerns.

11. Panda agrees that for a prospective purchaser (or purchasers) to obtain the CCPC's approval, such purchaser (or purchasers) shall:
  - (i) be unconnected to and independent of Panda and Greenstar;
  - (ii) be deemed able to provide Domestic Waste Collection Services to the Greenstar Customers on a financially viable basis; and
  - (iii) have, or be deemed reasonably likely to obtain, all permits and access to assets required to provide Domestic Waste Collection Services to the Greenstar Customers.
  
12. Panda shall be deemed to have complied with paragraph 9 of these Proposals if, within a [...] after the occurrence of any one of the events set out in paragraph 9 above (or such longer period as may be allowed by the CCPC or as may result from the delays referred to in paragraph 16 below), it has entered into a binding contract for the sale of the Greenstar Businesses to a single prospective purchaser, or alternatively for the sale of each of the DLR Business and the Fingal Business to separate prospective purchasers (subject to due diligence, regulatory permits and any other conditions not within the control of Panda or the purchaser(s)), provided that each such sale is (or sales are) completed within [...] from the date of the relevant binding contract (or such longer period as may be allowed by the CCPC).
  
13. Panda shall immediately inform the CCPC if, having entered into a binding contract with Panda for the acquisition of the Greenstar Businesses, or alternatively for the acquisition of the DLR Business or the Fingal Business, a prospective purchaser exercises any relevant rights it has pursuant to the binding contract not to proceed with the proposed acquisition.
  
14. Panda shall:
  - (i) promptly inform each of the CCPC and the Trustee at the same time in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase the Greenstar Businesses, or alternatively the DLR Business or the Fingal Business, and to whom Panda is seriously considering the sale of the Greenstar Businesses, or alternatively the DLR Business or the Fingal Business, in order to enable the CCPC to verify the suitability of the prospective purchaser or purchasers;
  - (ii) when the parties have entered into a binding contract for the sale of the Greenstar Businesses, or alternatively the DLR Business or the Fingal Business, submit a fully documented and reasoned proposal relating to each such sale to each of the CCPC and the Trustee at the same time (including a copy of the binding contract) in order to

enable the CCPC to verify that the conditions laid down in these Proposals are fulfilled and that there has been no Material Change in the status of the purchaser since the CCPC assessed that purchaser's suitability under paragraph 14(i), subject to the CCPC agreeing to keep confidential all such information received.

15. The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser within two weeks of the receipt by the CCPC of a fully documented and reasoned proposal identifying a prospective purchaser in accordance with paragraph 14(i). Separately, within two weeks of the receipt by the CCPC of a binding contract and accompanying fully documented and reasoned proposal in accordance with paragraph 14(ii), the CCPC shall communicate in writing its view as to whether the conditions laid down in these Proposals have been fulfilled and as to whether there has been any Material Change in the status of the purchaser as provided for in paragraph 14(ii).
16. Failure of the CCPC to communicate its approval or non-approval of a prospective purchaser within two weeks of the receipt by the CCPC of a fully documented and reasoned proposal identifying such a purchaser in accordance with paragraph 14(i) shall suspend the running of the three month period established in paragraph 9 above until the CCPC communicates its approval or non-approval. In the case of a plurality of offers from prospective purchasers to whom the CCPC does not object, Panda shall be free to accept any offer or to select the offer it considers best.

**D. The Greenstar Businesses to be Divested**

***The Greenstar Businesses***

17. Panda undertakes to dispose of the entirety of the Greenstar Businesses. Panda shall take all necessary actions, including procuring any necessary actions by Greenstar, to ensure the disposal of the entirety of the Greenstar Businesses.
18. Panda undertakes to ensure that the divestment of the Greenstar Businesses is conducted in a manner that complies with all applicable laws, including without limitation data protection law, contract law and consumer protection law. Panda shall procure that Greyhound or any other prospective purchaser(s) of the Greenstar Businesses takes all necessary steps to ensure that the divestment of the Greenstar Businesses is conducted in a manner that complies with all applicable laws, including without limitation data protection law, contract law and consumer protection law.
19. Save as required by law, Panda confirms that it will not impose, as a condition of sale of the Greenstar Businesses to Greyhound, or alternatively of the DLR Business and/or the Fingal Business to any other prospective purchaser(s), an obligation on Greyhound or on any other prospective purchaser(s) to acquire any associated assets or staff from Panda or Greenstar.

***Non-solicitation of Greenstar Customers [...]***

20. Panda undertakes not to solicit or conduct marketing activities specifically targeted at individual Greenstar Customers [...] for the provision of Domestic Waste Collection Services by for instance direct mail, including the sending of unsolicited emails, or telephone sales, or using promotions specifically targeted at the Greenstar Customers [...] at any time until the expiry of [...] following the completion of the sale of the Greenstar Businesses. For the avoidance of doubt, this paragraph shall not restrict Panda from conducting general marketing activities, including leaflet drops and advertising in media or on the internet, in the Dun Laoghaire Rathdown and Fingal County Council areas which are not specifically targeted at the Greenstar Customers [...]. In the event that Greyhound does not acquire the Greenstar Businesses for one or more of the reasons set out in paragraph 9 of these Proposals and each of the DLR Business and the Fingal Business are acquired by one or more alternative purchasers who have been approved by the CCPC in accordance with paragraph 15 or paragraph 41 of these Proposals, [...] referred to in this paragraph shall begin to run from:
- (i) the date of completion of the sale of the DLR Business in respect of any DLR Customer divested to the relevant purchaser pursuant to these Proposals; and
  - (ii) the date of completion of the sale of the Fingal Business in respect of any Fingal Customer divested to the relevant purchaser pursuant to these Proposals.
21. During the relevant [...] referred to in paragraph 20 of these Proposals, in the event that a Greenstar Customer [...] submits an unsolicited request to Panda for a quotation for the provision of Domestic Waste Collection Services by Panda, Panda shall respond in writing in a timely manner (the “**Offer**”). Panda shall not subsequently amend the price or terms and conditions for the provision of the Domestic Waste Collection Services contained in the Offer, although Panda may provide clarifications on the Offer, which must also be in writing, in response to a specific query received from that same Greenstar Customer [...]. Panda shall not comment on the prices or terms and conditions offered by a competing supplier of Domestic Waste Collection Services if asked to do so by a Greenstar Customer [...]. Panda shall retain copies of the Offer and written responses for a period of [...] after communication to the relevant Greenstar Customer [...] and must provide copies of the Offer and written responses to the CCPC upon the request of the CCPC.
22. Panda shall submit to the CCPC within [...] after the date of the Determination a written report (the “**First Report**”) demonstrating Panda’s compliance with its obligations set out in paragraph 21 of these Proposals since the date of the Determination. Panda shall submit to the CCPC within [...] after the date of submission of the First Report and at intervals of [...] thereafter, a written report (each, a “**Compliance Report**”) demonstrating Panda’s continued compliance with its obligations set out in paragraph 21 of these Proposals until the expiry of [...]

after the [...] period referred to in paragraph 20 of these Proposals. The First Report and each subsequent Compliance Report shall include the following:

- (i) the total number of unsolicited requests for a quotation for the provision of Domestic Waste Collection Services received by Panda from Greenstar Customers [...] during [...];
- (ii) how Panda dealt with each such unsolicited request received from a Greenstar Customer [...] during the preceding [...] period, including the price and terms and conditions for the provision of Domestic Waste Collection Services contained in any Offer made by Panda to a Greenstar Customer [...] and clarifications on any Offer made by Panda;
- (iii) the total number of Greenstar Customers [...] who, as a result of an unsolicited request to Panda, commenced receiving Domestic Waste Collection Services from Panda during the preceding [...].

#### ***Continued Separation***

23. [...]

24. Panda undertakes that if it attempts, [...], to acquire any interest in:

- (i) Greyhound; or
- (ii) in the event that Greyhound does not acquire the Greenstar Businesses for one or more of the reasons set out in paragraph 9 of these Proposals, the purchaser of the DLR Business and/or the purchaser of the Fingal Business;

Panda will inform the CCPC prior to doing so and will, if required to do so by the CCPC, notify any such proposed acquisition in accordance with Section 18(3) of the Act (or its successor provision, if applicable) if such proposed acquisition is not required to be notified under Section 18(1) of the Act (or its successor provision, if applicable).

#### **E. Interim Position of the Greenstar Customers**

25. Following the Determination and pending the disposal of the Greenstar Businesses, Panda undertakes to hold separate the Greenstar Customers and to continue to provide (or, if applicable, to procure the continued provision by Greenstar of) Domestic Waste Collection Services to the Greenstar Customers until the date of disposal in accordance with good commercial practice. Panda further undertakes to appoint, or to procure the appointment by Greenstar of, a manager (the “**Greenstar Customer Manager**”) as the person with responsibility for the continued day-to-day management of the Greenstar Customers and of the Domestic Waste Collection Services provided to the Greenstar Customers, under the supervision of the Trustee. The Greenstar Customer Manager shall continue to manage all operations relating to the Greenstar Customers in the best interests

of the Greenstar Customers with a view to maintaining the nature, description, range and standard of the Domestic Waste Collection Services provided to the Greenstar Customers. Further, the Greenstar Customer Manager shall be responsible for ensuring that no competitively sensitive information relating to the Greenstar Customers is provided to Panda during the period from the date of the Determination until the date of the disposal of the Greenstar Businesses (save, with the agreement of the Trustee, where such information is required for the provision of Domestic Waste Collection Services to the Greenstar Customers in accordance with good commercial practice or for the purpose of assisting the divestiture by Panda of the Greenstar Businesses to Greyhound or to any other prospective purchaser(s)).

26. Panda undertakes to maintain (or, if applicable, to procure the maintenance by Greenstar of) the nature, description, range and standard of the Domestic Waste Collection Services provided to the Greenstar Customers during the period from the date of the Determination until the date of disposal of the Greenstar Businesses and, more specifically:
- (i) to provide an equivalent standard of service (including the frequency of collection and the appointed day of collection) to the Greenstar Customers as provided by Greenstar to the Greenstar Customers at the date of the Determination;
  - (ii) to provide Domestic Waste Collection Services to the Greenstar Customers on terms (including price and the nature and range of services provided) equivalent to those provided to the Greenstar Customers by Greenstar at the date of the Determination, except where otherwise required by law;
  - (iii) to provide Domestic Waste Collection Services to the Greenstar Customers using Greenstar-branded trucks and Greenstar-branded bins;
  - (iv) to issue Greenstar-branded invoices to the Greenstar Customers in the same format as those issued to the Greenstar Customers by Greenstar at the date of the Determination, except where otherwise required by law;
  - (v) to provide customer services, help and assistance to the Greenstar Customers via a dedicated telephone number;
  - (vi) to maintain all permits required to provide Domestic Waste Collection Services to the Greenstar Customers; and
  - (vii) to commit to repair or replace any assets (including trucks and bins) necessary for the provision of Domestic Waste Collection Services to the Greenstar Customers in the event that such assets become damaged or lost or fall into disrepair prior to the date of disposal of the Greenstar Businesses;

For the avoidance of doubt, Panda shall procure that Greenstar provides such assistance required to ensure compliance with the obligations contained in this paragraph 26.

27. The obligations contained in paragraph 26 of these Proposals shall cease immediately on disposal of the Greenstar Businesses or (where relevant and appropriate) at such later time as may be agreed between Panda and Greyhound or any other purchaser(s) of the Greenstar Businesses.
28. Panda undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the management of the Greenstar Customers or the nature, description, range and standard of the Domestic Waste Collection Services provided to the Greenstar Customers until the date of disposal of the Greenstar Businesses.
29. If, during the period from the date of the Determination until the date of disposal of the Greenstar Businesses, (i) one or more Greenstar Customers do not consent to the proposed transfer of their personal data to Greyhound or to any other purchaser(s) of the Greenstar Businesses (the “**Exiting Greenstar Customers**”) [...].

#### **F. Trustee Appointment, Mandate and Powers**

##### ***Appointment of a Trustee***

30. No later than ten working days after the Determination, Panda will propose to the CCPC a trustee, who is independent of Panda and Greenstar (the “**Proposed Trustee**”). The appointment of the Proposed Trustee is subject to the approval of the CCPC. If the CCPC does not reject the Proposed Trustee by notice in writing within five working days of the proposal, the Proposed Trustee shall be deemed to have been approved.
31. If the Proposed Trustee is rejected, Panda will propose the name of a new trustee (the “**New Trustee**”) within ten days of being informed of the rejection. If the CCPC does not reject the New Trustee by notice in writing to Panda within ten days of the new proposal, the New Trustee shall be deemed to have been approved.
32. If the New Trustee is rejected by the CCPC, the CCPC shall nominate a suitable trustee (the “**CCPC Trustee**”) which Panda will appoint or cause to be appointed.

##### ***Trustee’s Mandate***

33. Within ten working days of the date on which the CCPC has approved or is deemed to have approved either the Proposed Trustee, the New Trustee or the CCPC Trustee, Panda shall enter into a mandate agreement (“**Mandate**”) with the approved trustee (the “**Trustee**”), the terms of which shall have previously been agreed with the CCPC, which confers on the Trustee all the rights and powers

necessary to permit the Trustee to monitor Panda's compliance with the terms of these Proposals and in a manner consistent with the purpose of these Proposals.

34. The Trustee shall be independent of Panda and Greenstar, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
35. Throughout the duration of the Trustee's appointment, the Trustee shall:
  - (i) provide written reports ("**Trustee Reports**") to the CCPC on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the Determination, or at such other times or time periods as the CCPC may specify and are notified in writing to Panda. Panda shall receive a non-confidential copy of such Trustee Reports;
  - (ii) monitor and advise the CCPC as to the conduct of the negotiations between Panda and Greyhound or any other prospective purchaser(s) for the sale of the Greenstar Businesses;
  - (iii) monitor and advise the CCPC as to whether Greyhound or any other prospective purchaser(s) continues to satisfy the CCPC's requirements as to suitability;
  - (iv) monitor the maintenance of the nature, description, range and standard of the Domestic Waste Collection Services provided to the Greenstar Customers by Panda from the date of the Determination until completion of the sale of the Greenstar Businesses; and
  - (v) monitor and advise the CCPC as to the effectiveness of the process by which the Greenstar Customers [...] are transferred to Greyhound or any other prospective purchaser(s) of the Greenstar Businesses.
36. The Trustee's duties and functions as set out above shall not be extended or varied in any way by Panda, save with the express consent of the CCPC. Any instruction or request to the Trustee from Panda which conflicts with the terms of the Mandate, and the duties and functions as set out above, will be considered null and void.
37. The CCPC may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination so long as Panda is first given an opportunity to comment on any such orders or instructions in advance.

***Divestment by the Trustee***

38. In the circumstances specified below, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Greenstar Businesses to one prospective purchaser, or alternatively for the sale of the DLR Business and/or the Fingal Business to one or more prospective purchasers, [...] upon such terms and conditions as it considers appropriate for an expedient sale:
- (i) if [...] (or such longer period as may be agreed by the CCPC or as may result from the delays referred to in paragraph 16 of these Proposals) have elapsed after the date of the occurrence of any one of the events set out in paragraph 9 above without Panda having entered into a binding contract for the disposal of the entirety of the Greenstar Businesses; or
  - (ii) if any prospective purchaser referred to in section C of these Proposals exercises any relevant rights it has pursuant to any binding contract with Panda not to proceed with the acquisition of the Greenstar Businesses, or alternatively of the DLR Business or the Fingal Business.
39. For the avoidance of doubt, for the purpose of paragraph 38 of these Proposals, the Trustee shall have a mandate to negotiate and conclude arrangements for the sale of the DLR Business (if not already sold to a purchaser approved by the CCPC) to one prospective purchaser and separately for the sale of the Fingal Business (if not already sold to a purchaser approved by the CCPC) to a second prospective purchaser.
40. In the event of the occurrence of any of the circumstances listed in paragraph 38 of these Proposals, the Trustee shall:
- (i) identify at the earliest opportunity a viable prospective purchaser of the Greenstar Businesses, or alternatively a viable prospective purchaser for each or either of the DLR Business and/or the Fingal Business, who shall be unconnected to and independent of Panda and Greenstar;
  - (ii) following the identification of a viable prospective purchaser (or purchasers), promptly inform the CCPC in writing, with a fully documented and reasoned proposal, of the identity of the said prospective purchaser(s) and the Trustee's view as to the suitability of the said prospective purchaser(s), in order to enable the CCPC to verify the suitability of the prospective purchaser(s);
  - (iii) following receipt of the CCPC's approval of the suitability of the prospective purchaser(s), negotiate and conclude [...] a binding contract for the sale of the Greenstar Businesses, or alternatively for the sale of each or either of the DLR Business and/or the Fingal

Business, at [...] and upon such terms and conditions as the Trustee considers appropriate for an expedient sale;

- (iv) when a binding contract for the sale of the Greenstar Businesses, or alternatively for each or either of the DLR Business and/or the Fingal Business, has been entered into with the prospective purchaser(s), submit a fully documented and reasoned proposal (including a copy of the binding contract) relating to each such sale to the CCPC in order to enable the CCPC to verify that the conditions laid down in these Proposals are fulfilled and that there has been no Material Change in the status of the prospective purchaser(s) since the CCPC assessed the suitability of the prospective purchaser(s) under paragraph 40(ii) subject to the CCPC agreeing to keep confidential all such information received.
41. The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser [...] of the receipt by the CCPC of a fully documented and reasoned proposal identifying a prospective purchaser in accordance with paragraph 40(ii). Separately, within two weeks of the receipt by the CCPC of a binding contract and accompanying fully documented and reasoned proposal in accordance with paragraph 40(iv), the CCPC shall communicate in writing its view as to whether the conditions laid down in these Proposals have been fulfilled and as to whether there has been any Material Change in the status of the purchaser as provided for in paragraph 40(iv).
42. The Trustee shall have regard to the legitimate financial interests of Panda in respect of the sale of the Greenstar Businesses, [...].

***Further provisions relating to the Trustee***

43. Panda will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties, with the exception of Greenstar, provide such assistance required to ensure compliance with these Proposals. For the avoidance of doubt, Panda will procure that Greenstar provides all assistance as may be required by the Trustee in order to ensure compliance with these Proposals. Panda will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Panda as the Trustee may require in carrying out its Mandate, and will pay reasonable remuneration for the Trustee's services.
44. In addition, at the expense of Panda, the Trustee may (during the trustee divestment period referred to in paragraph 38 *et seq* above) appoint advisors (in particular for corporate finance or legal advice), subject to Panda's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Panda refuse to approve the advisors proposed by the Trustee the CCPC may approve the appointment of

such advisors instead, after first having heard Panda. Only the Trustee shall be entitled to issue instructions to the advisors.

45. The Trustee shall have full and complete access to the Greenstar Customer Manager (as defined in paragraph 25 of these Proposals) in order to ensure compliance by Panda with its obligation to maintain the nature, description, range and standard of the Domestic Waste Collection Services provided to the Greenstar Customers from the date of the Determination until completion of the sale of the Greenstar Businesses.
46. Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible, given the nature of its tasks, due regard to the commercial interests of Panda.
47. Panda shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Panda for, any liabilities arising out of the performance of the Trustee's duties under the Proposals and the Mandate, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
48. The Mandate and these Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Panda announces that the Proposed Transaction has been irrevocably abandoned.
49. The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.

**G. Review clause**

50. The CCPC may at its sole discretion extend any of the time periods provided for in these Proposals in response to a reasoned request from Panda or the Trustee or, in appropriate cases, on its own initiative. The CCPC may further, at its sole discretion, in response to a reasoned request from Panda or the Trustee showing good cause waive, modify or substitute, in exceptional circumstances, any provision in these Proposals.

## SCHEDULE TO THE PROPOSALS

1. The Greenstar Businesses to be divested by Panda pursuant to the Proposals consist of the DLR Business and the Fingal Business as defined in this Schedule to the Proposals.
2. The “**DLR Business**” consists of the following assets which are maintained by Greenstar at the date of the Determination:
  - (i) all books, records and correspondence relating to the DLR Customers, including the full name, address and contact details of each DLR Customer and any other relevant information relating to each DLR Customer (including but not limited to account number, bin tag number, number and type of bins, billing frequency, billing charge, billing date, payment method, debtor balance and prepaid calculation), which are maintained by Greenstar at the date of the Determination;
  - (ii) the rights, interest and obligations under all contracts between Greenstar and each of the DLR Customers for the provision of Domestic Waste Collection Services which are in force at the date of the Determination;
  - (iii) all debts (less any deferred income calculated upon closing of the sale of the Greenstar Businesses) in respect of the DLR Customers which are outstanding at the date of the Determination;
  - (iv) all bins provided by Greenstar to each of the DLR Customers at the date of the Determination;
  - (v) if requested by the prospective purchaser, and agreed by Panda, any trucks or other physical assets used by Greenstar for the purpose of providing Domestic Waste Collection Services to the DLR Customers at the date of the Determination; and
  - (vi) if requested by the prospective purchaser, and agreed by Panda, any employees of Greenstar involved in the provision of Domestic Waste Collection Services to the DLR Customers at the date of the Determination.
3. The “**Fingal Business**” consists of the following assets which are maintained by Greenstar at the date of the Determination:
  - (i) all books, records and correspondence relating to the Fingal Customers, including the full name, address and contact details of each Fingal Customer and any other relevant information relating to each Fingal Customer (including but not limited to account number, bin tag number, number and type of bins, billing frequency, billing

charge, billing date, payment method, debtor balance and prepaid calculation), which are maintained by Greenstar at the date of the Determination;

- (ii) the rights, interest and obligations under all contracts between Greenstar and each of the Fingal Customers for the provision of Domestic Waste Collection Services which are in force at the date of the Determination;
- (iii) all debts (less any deferred income calculated upon closing of the sale of the Greenstar Businesses) in respect of the Fingal Customers which are outstanding at the date of the Determination; and
- (iv) all bins provided by Greenstar to each of the Fingal Customers at the date of the Determination;
- (v) if requested by the prospective purchaser, and agreed by Panda, any trucks or other physical assets used by Greenstar for the purpose of providing Domestic Waste Collection Services to the Fingal Customers at the date of the Determination; and
- (vi) if requested by the prospective purchaser, and agreed by Panda, any employees of Greenstar involved in the provision of Domestic Waste Collection Services to the Fingal Customers at the date of the Determination.