

# DETERMINATION OF MERGER NOTIFICATION M/21/016 - PANDAGREEN / EXOMEX

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## Section 21 of the Competition Act 2002

**Proposed acquisition by Pandagreen Limited of sole control of Exomex (Ireland) Limited.**

**Dated 30 September 2021**

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### **Introduction**

1. On 9 April 2021, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby Pandagreen Limited (“Pandagreen”), a wholly-owned indirect subsidiary of Beuparc Utilities Holdings Limited (“Beuparc”), would acquire sole control of Exomex (Ireland) Limited (“Exomex”) (the “Proposed Transaction”). Pandagreen and Exomex are the notifying parties (the “Parties”).

### **The Proposed Transaction**

2. The Proposed Transaction involves the purchase by Pandagreen of 92.5% of the share capital in Exomex. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 1 April 2021 between Drumkill Industries Limited, Emmet McElvaney and Hugh McElvaney (“the Sellers”) and Pandagreen (the “SPA”).

### **The Undertakings Involved**

#### *The Acquirer – Pandagreen*

3. Pandagreen, a private limited company incorporated in the State, is indirectly owned and controlled by Beuparc, which itself was previously jointly controlled by Sretaw 3 Limited (“Sretaw”) and BTO Feileacan S.A.R.L.<sup>1</sup> Sretaw, a private limited company

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<sup>1</sup> On 24 August 2021 Macquarie European Infrastructure Fund 6 ScSp (“MEIF”), acting through Broom Holdings Bidco Limited, acquired 100% of the issued share capital of Beuparc. MEIF is an infrastructure fund managed by Macquarie Infrastructure and Real Assets (Europe) Limited, a wholly-owned subsidiary of Macquarie Group Limited (“Macquarie”). Macquarie is listed on the Australian Securities Exchange and is a global provider of banking, financial, advisory, investment and fund management services. Pandagreen informed the Commission in a letter dated 17 June 2021 that Macquarie does not own or control any entities active in the waste management sector



- incorporated in the State, is owned by Eamon Waters and Robert Waters. BTO Feileacan S.A.R.L is part of the Blackstone Group Inc. (“Blackstone”). The Parties state in the notification that neither Blackstone’s portfolio companies nor Sretaw are currently active in the waste management sector in the State, other than through Beuparc.
4. Outside the State, Beuparc and the entities that it directly or indirectly owns and controls (together, “the Purchaser Group”) are active in the collection, processing and disposal of domestic and commercial and industrial (“C&I”) waste in the United Kingdom and the Netherlands. The Purchaser Group also provides waste recycling solutions using solar compactor smart bins in Germany, France and Spain.
  5. In the State, Pandagreen is active in the waste management sector, in particular:
    - (i) The collection of waste from domestic customers;
    - (ii) The collection of waste from C&I customers (both individual and multi-site C&I customers);
    - (iii) The collection of waste from construction and demolition (“C&D”) customers;
    - (iv) The processing of waste and non-glass recyclable material; and,
    - (v) The disposal of waste (including via landfill at Knockharley landfill in Slane, Co. Meath,<sup>2</sup> via recovery such as through the manufacturing of solid recovered fuel, and through incinerators operated by Indaver Ireland Limited and Covanta Energy Ireland Limited).
  6. Pandagreen operates a fleet of trucks from various locations which collect waste from its customers’ premises throughout the State. These are supplemented by a network of subcontractors in areas with low population density. This combination enables Pandagreen to provide domestic, C&I and C&D waste collection services on a nationwide basis.
  7. Pandagreen provides waste collection services to a number of large multi-site C&I customers in the State. It provides waste collection services to some of these on a nationwide basis, although in some cases it sub-contracts the waste collection to local operators. Pandagreen also operates a number of licensed waste management facilities throughout the State in which waste is sorted and processed.

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in the State. This proposed acquisition was approved by the European Commission on 23 July 2021. The European Commission’s public decision is available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021M10354%2801%29>

<sup>2</sup> Pandagreen acquired Knockharley landfill in 2019. The Commission’s public determination is available at: <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2018/07/Public-M-18-053-Pandagreen-Knockharley-Landfill-and-Natureford-Public-Determination.pdf>



8. Recyclable material processed by Pandagreen is mainly exported outside the State, although some minimal sales are made to customers located in the State. Pandagreen also manages civic amenity sites on behalf of a number of local authorities in the State.
9. For the financial year ending 31 December 2020, the Purchaser Group's worldwide turnover was approximately €528 million, of which approximately €348 million was generated in the State.

*The Target – Exomex*

10. Exomex, trading as McElvaney's Waste and Recycling, is a private limited company incorporated in the State. In the State, Exomex provides domestic and individual C&I waste collection services in counties Monaghan, Louth and Cavan.<sup>3</sup> Exomex also provides C&D waste collection services to a very small number of customers.<sup>4</sup>
11. Exomex operates two transfer stations in Dundalk, Co. Louth. These two facilities are licensed by the Louth County Council. Exomex also operates a material recovery facility ("MRF") located in Scotch Corner, County Monaghan. This site is currently licenced by the Environmental Protection Agency ("EPA") but is in the process of being transferred to a local authority permit.
12. Exomex also manages five civic amenity sites on behalf of Cavan and Monaghan County Council. Exomex commenced the provision of waste collection services in Co. Louth following its acquisition of Ace Environmental Limited ("Ace Environmental") in 2016. Prior to this acquisition, Exomex only provided domestic and individual C&I waste collection services to customers in Co. Monaghan.
13. In October 2020, Exomex acquired Ecological Waste Management Limited ("Ecological"). Based in Dundalk where it owned and operated one transfer station (which was part of the acquisition by Exomex), Ecological provided domestic, C&I, and C&D waste collection and recycling services in counties Louth, Monaghan, and Dublin.<sup>5</sup>
14. For the financial year ending 31 December 2020, the Target's turnover was €10.9 million, all of which was generated in the State.

**Rationale for the Proposed Transaction**

15. The Purchaser Group states the following in the notification:

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<sup>3</sup> Exomex provided domestic waste collection services to only 13 customers in Co. Cavan in 2020.

<sup>4</sup> Exomex informed the Commission that it currently provides C&D waste collection services to five customers: two are located in Northern Ireland, two in Co. Dublin and one in Co. Monaghan.

<sup>5</sup> Ecological's business activities in Co. Dublin were confined to the provision of C&D waste collection services. As noted above, Exomex currently provides C&D waste collection services to five customers.



*“The Proposed Transaction is part of the Purchaser Group’s strategic growth strategy, which combines organic and acquisitive growth. The Proposed Transaction allows the Purchaser Group to expand into geographic areas where it has a limited presence. [Exomex] is [a] complementary fit for the Purchaser Group’s business as it adjoins the Purchaser Group’s current area of operations in Louth and Meath, and facilitates expansion into Monaghan and Cavan”.*

### Third Party Submissions

16. One third party submission was received by the Commission. The competition concerns expressed in this submission have been assessed by the Commission as part of its review of the likely competitive impact of the Proposed Transaction.

### Contacts between the Commission and the Undertakings Involved

17. On 9 April 2021, in addition to the notification, an economic report by Compecon Limited, commissioned on behalf of the Parties, entitled *“Economic Analysis of Acquisition of Exomex (Ireland) Limited by Pandagreen Limited,”* was submitted to the Commission (the *“Compecon Report”*).
18. On 20 May 2021, the Commission served a Requirement for Further Information (*“RFI”*) on both Pandagreen and Exomex pursuant to section 20(2) of the Act. The service of these RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.
19. The Commission received a full response to the RFI from Exomex on 16 July 2021. Upon receipt of a full response to the RFI by Pandagreen on 30 July 2021, the *“appropriate date”* (as defined in Section 19(6)(b)(i) of the Act) became 30 July 2021.<sup>6</sup>
20. During the Phase 1 investigation, the Commission requested and received, on an ongoing basis, further information and clarifications from the Parties.
21. The Commission identified potential competition concerns arising from the Proposed Transaction during the course of its Phase 1 review. These concerns are detailed in paragraph 91 below.
22. On 9 September 2021, Pandagreen submitted draft proposals to the Commission in accordance with section 20(3) of the Act with a view to ameliorating the potential concerns identified by the Commission. The submission of the draft proposals by Pandagreen extended the deadline within which the Commission was required to conclude its assessment of the competitive effects of the Proposed Transaction in Phase 1 by 15 working days to 45 working days in accordance with section 21(4) of the Act.

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<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.



23. During the Phase 1 investigation, the Commission engaged with Pandagreen and their legal advisors to discuss whether the draft proposals submitted by Pandagreen would ameliorate the potential competition concerns identified by the Commission.

#### **Market Enquiries**

24. During its review of the Proposed Transaction, the Commission circulated questionnaires to various third parties, including competitors and individual C&I waste customers of Pandagreen and Exomex.
25. The Commission received a response from the majority of the third parties to whom it sent a questionnaire and, in some cases, the Commission also contacted those third parties by telephone and/or e-mail to seek further details regarding their responses.
26. In addition, during the Phase 1 review, the Commission visited the areas in the State where the Parties compete in the supply of domestic and individual C&I waste collection services. As part of this visit, the Commission spoke to domestic and individual C&I waste customers of Pandagreen and Exomex.

#### **Industry Background – Non-hazardous Waste Management in the State**

27. The Commission's analysis of the competitive impact of the Proposed Transaction focuses on the collection, processing and disposal of non-hazardous waste. Neither Pandagreen nor Exomex are active in the collection or processing of hazardous waste.
28. The non-hazardous waste management sector comprises the following four sequential activities:
- Production of waste at domestic and C&I premises;
  - Collection of waste from domestic and C&I premises;
  - Processing of waste; and
  - Disposal and recycling of waste.

#### *Waste Production*

29. Waste, by its very nature, is an undesirable by-product of another activity in either a domestic or commercial setting. Consequently, while some waste may be stored or relocated at an adjacent location (e.g., composting organic material), most waste is removed from domestic or commercial premises by way of a pre-arranged waste collection service.

#### *Waste Collection*

30. The function of waste collection is to collect waste and transport it from one place – the domestic or commercial setting in which the waste has been produced – to

another (e.g., a transfer station, processing facility, or incinerator/landfill). Waste collection involves two key elements: a collection method (e.g., bags, wheelie bins or skips) and transport (e.g., vans or trucks).

31. Domestic waste collection typically involves the removal, on a weekly or fortnightly basis, of wheelie bins or bags containing the waste created by a household (i.e., municipal solid waste, organic waste, and dry recyclable waste). In addition, domestic waste collection can involve the removal, on an ad hoc basis, of skips containing construction and demolition waste. C&I waste collection services are typically more varied than domestic waste collection services, but in general similar streams of waste are collected from both C&I and domestic residences. Thus, the processing and disposal options are similar for domestic and C&I waste.

#### *Waste Transfer and Processing*

32. 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 an MRF, different types of waste are separated out and prepared for subsequent disposal or recycling. 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.
33. 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. Some operators collect waste from customers and process the waste in their own waste processing facilities.

#### *Waste Disposal and Exporting*

34. Waste that cannot be recycled/composted (also called residual waste) is either disposed of at a landfill, recovered at a landfill (i.e., used as landfill cover or for engineering purposes such as road building), sent to cement kilns, or is sent for incineration at a Waste-to-Energy Facility either in the State or abroad.

#### *Waste Regulation*

35. Waste collection and processing within the State is subject to regulation by the EPA, the National Waste Collection Permitting Office ("NWCPO"), and local authorities (including three nominated waste enforcement regional lead authorities). The EPA is responsible, under Irish and European legislation, for the licensing of waste facilities such as landfills, incinerators, cement kilns and waste transfer/processing facilities. As part of its regulatory role, the EPA sets maximum capacity thresholds for waste facilities.



36. The NWPCO is responsible, under the Waste Management (Collection Permit) Regulations 2007, as amended, for the licensing of waste collection operators. The NWPCO issues licenses on behalf of local authorities who have responsibility for the enforcement of license conditions. No individual or firm can collect waste, for gain or profit, without first obtaining a license from the NWPCO.

*The Commission's Previous Reviews of the Non-Hazardous Waste Management Sector*

37. The Commission has examined the non-hazardous waste management sector in the State in various recent merger determinations, including *M/18/053 - Pandagreen/Knockharley Landfill and Natureford*,<sup>7</sup> *M/18/005 - Thorntons/A Plus*,<sup>8</sup> and *M/16/008 - PandaGreen/Greenstar*.<sup>9</sup> The Commission also published a market study entitled *"The Operation of the Household Waste Collection Market"* in 2018 (the "2018 Market Study").<sup>10</sup> The Commission's analysis of the sector provides a useful background to its review of the likely competitive impact of the Proposed Transaction.
38. In the 2018 Market Study, the Commission highlighted a number of concerns in the market for the supply of domestic waste collection services.<sup>11</sup> For example, paragraph 2.46 of the 2018 Market Study states the following:

*"The market is highly concentrated in places, giving operators considerable market power. This market power is unconstrained by any countervailing buyer power, due to the weak position of consumers.*

*The household waste collection sector exhibits characteristics of a natural monopoly, including economies of density and scale, high fixed costs and a large cost advantage for a single operator. Barriers to entry are exacerbated by the side-by-side competition model which makes the cost of acquiring households for a new entrant both expensive and uncertain.*

*The level of competition varies across the country. Whether households have a choice of operator, and an ability to switch, is heavily influenced by their location.*

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<sup>7</sup> The Commission's public determination is available at:  
<https://www.ccpic.ie/business/mergers-acquisitions/merger-notifications/m18053-pandagreenknockharley-landfill-natureford/>

<sup>8</sup> The Commission's public determination is available at:  
<https://www.ccpic.ie/business/mergers-acquisitions/merger-notifications/m18005-thorntonsa-plus/>

<sup>9</sup> The Commission's public determination is available at:  
[https://www.ccpic.ie/business/wp-content/uploads/sites/3/2016/02/M\\_16\\_008-PandaGreen\\_Greenstar-Phase-2-Public-Determination.pdf](https://www.ccpic.ie/business/wp-content/uploads/sites/3/2016/02/M_16_008-PandaGreen_Greenstar-Phase-2-Public-Determination.pdf)

<sup>10</sup> The Commission's market study, *The Operation of the Household Waste Collection Market*, is available at:  
<https://www.ccpic.ie/business/wp-content/uploads/sites/3/2018/10/The-Operation-of-the-Household-Waste-Collection-Market.pdf>

<sup>11</sup> The 2018 market study is available at:  
<https://www.ccpic.ie/business/wp-content/uploads/sites/3/2018/10/The-Operation-of-the-Household-Waste-Collection-Market.pdf>



*Significant operator consolidation has occurred in the market and this is likely to continue. It is not likely that new operators will enter the market, due to cited structural and behavioural barriers to entry.*

*The ongoing consolidation in the market could mean that the remaining operators may have an unregulated monopoly position with possible adverse implications for household charges and service levels, and ultimately, consumers.”*

39. Paragraphs 3.50 and 3.51 of the 2018 Market Study expressed the following views about mergers and acquisitions in the household waste collection market in the State:

*“This study has outlined that there will likely be further consolidation of operators in the household waste collection market in the State. Currently, the majority of mergers and acquisitions which occur in the household waste collection sector involve small operators whose turnover falls under the CCPC’s merger notification thresholds and thus, are not required to be mandatorily notified.*

*However, the ability of the merger review mechanism to address issues in the context of a natural monopoly is limited. There may be significant efficiencies in allowing a single company to operate in areas, but the monopoly effects can only be addressed through a clear policy and regulatory framework. The merger review process is not suitable for this purpose. Indeed, it is likely that the continuation of mergers within the industry will only further highlight the need for a regulatory solution.”*

40. Paragraph 4.30 of the 2018 Market Study highlights the findings in relation to consumers’ experience in the household waste collection market in the State:

*“A significant number of households do not have a choice of operator and therefore, the normal pressures exerted in a market that is designed to be competitive, do not exist.*

*Householder buyer power in the market is limited by two factors – not having an alternative provider, and the fact that household waste collection is a standard service, from a consumer’s point of view.*

*Current switching levels suggest that, even in the areas where households do have a choice of operator, consumers are not switching to a degree that would have a meaningful impact on operators.*

*A significant number of households cannot or do not avail of a waste collection service. In the current market structure, the viability of operators in a given area is influenced by route density and collection costs. The specific characteristics of*





*sparceily populated or rural areas mean that they are less economically attractive. These characteristics are structural features of the market and are unlikely to change.”<sup>12</sup>*

### Relevant Product and Geographic Markets

41. The Commission focuses its merger review 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.

#### *Horizontal Overlap*

42. The Parties overlap horizontally in the State in the following business activities:
- The supply of domestic waste collection services: Pandagreen supplies domestic waste collection services in most areas of the State (including Co. Louth and Co. Meath),<sup>13</sup> Exomex’s domestic waste collection service in the State is confined to counties Louth and Monaghan;<sup>14</sup>
  - The supply of waste collection services to individual C&I customers:<sup>15</sup> Pandagreen supplies waste collection services to individual C&I customers in most areas of the State (including Co. Louth and Co. Meath), while Exomex’s individual C&I waste collection service in the State is confined to counties Louth and Monaghan;<sup>16</sup>
  - The supply of C&D waste collection services: Pandagreen supplies C&D waste collection services to customers in most areas of the State. Since Exomex only supplies C&D waste collection services to five customers in the State, the Commission considers that the degree of horizontal overlap between the Parties in the supply of C&D waste collection

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<sup>12</sup> See paragraph 4.30 of *The Operation of the Household Waste Collection Market* which is available at: <https://www.cccpc.ie/business/wp-content/uploads/sites/3/2018/10/The-Operation-of-the-Household-Waste-Collection-Market.pdf>

<sup>13</sup> Pandagreen does not, however, provide domestic waste collection services in Co. Monaghan.

<sup>14</sup> Exomex also provides domestic waste collection services to a negligible number of customers in Co. Cavan (13 customers in 2020).

<sup>15</sup> There is no horizontal overlap between Pandagreen and Exomex in the supply of waste collection services to multi-site C&I waste customers in the State since the Exomex does not supply waste collection services to multi-site C&I waste customers.

<sup>16</sup> Exomex provided waste collection services to approximately 1,500 individual C&I customers in Co. Monaghan in 2020. Pandagreen provided waste collection services through a sub-contractor to only ten individual C&I customers in Co. Monaghan in 2020. The degree of horizontal overlap between Exomex and Pandagreen in the supply of individual C&I waste collection services in Co. Monaghan is therefore negligible and this overlap will not be discussed any further in this determination.



services in the State is negligible and this overlap will therefore not be discussed any further in this determination;

- The processing of waste collected from domestic and C&I customers: Pandagreen operates a number of waste processing facilities in the State, including in Beauparc, Co. Meath. Exomex operates two transfer stations in Dundalk, Co. Louth (Haggardstown and Coes Road) and an MRF in Scotch Corner, Co. Monaghan.<sup>17</sup>
- The supply (for sale) of non-glass recyclables; and
- The management of local authority civic amenity sites: Pandagreen manages six civic amenity sites in the State, while Exomex manages three civic amenity sites in Co. Cavan and two in Co. Monaghan.

#### *Vertical Overlap*

43. There is a vertical relationship between the Parties in the State in the following business activities:

- The disposal of residual waste: In 2019, Pandagreen acquired Knockharley landfill in Navan, Co. Meath.<sup>18</sup> Knockharley landfill accepts non-hazardous waste for both disposal and recovery. Exomex is a customer of Pandagreen as it delivers some of its residual waste to the Knockharley landfill for disposal as well as supplying some residual waste to Pandagreen which Pandagreen uses to produce refuse derived fuel and solid recovered fuel;
- The supply (sale) of non-glass recyclables: Exomex supplies non-glass recyclables to Pandagreen; and
- The processing of waste collected from domestic and C&I customers: there is a small vertical relationship between Pandagreen and Exomex in waste processing as Pandagreen currently delivers approximately 12 tonnes of waste per week to Exomex's facility in Haggardstown, Co. Louth.

#### Relevant Product Markets

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<sup>17</sup> Waste is brought to a transfer station for bulking and storage before being transferred to a waste processing facility or MRF; no waste processing occurs in a transfer station. Recyclable waste material is extracted and processed in an MRF.

<sup>18</sup> As noted above, this acquisition was approved by the Commission in 2019 and the public determination is available at:

<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/07/Public-M-18-053-Pandagreen-Knockharley-Landfill-and-Natureford-Public-Determination.pdf>



### *Views of the Parties*

44. With respect to the relevant product market, the Compecon Report states the following:

*“In our opinion, there are several relevant product markets in which there is either a horizontal or a vertical overlap between the merging parties in the present case, namely:*

- (i) the market for domestic (household) waste collection services;*
- (ii) the market for C&I waste collection services;*
- (iii) the market for the processing of waste collected from domestic and C&I customers;*
- (iv) the market for the supply (for sale) of non-glass recyclables.*
- (v) the market for the disposal of residual waste which includes landfill, incineration (including exports), cement kilns; and*
- (vi) the market for the management of local authority civic amenity sites.”*

### *Views of the Commission*

45. In *M/16/008 - PandaGreen/Greenstar*<sup>19</sup> and *M/18/005 - Thornton's/A Plus*,<sup>20</sup> the Commission analysed the competitive impact of the relevant transactions in the following potential product markets:

- a) the supply of domestic waste collection services;
- b) the supply of waste collection services to individual C&I customers;
- c) the processing of waste collected from domestic and C&I customers; and
- d) the supply (for sale) of non-glass recyclable materials.

46. In *M/18/053 - Pandagreen/Knockharley Landfill and Natureford*,<sup>21</sup> the Commission analysed the competitive impact of the relevant transaction in the potential market for the disposal of residual waste material.

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<sup>19</sup> See paragraphs 3.5-3.8 of merger determination *M/16/008 – Pandagreen/Greenstar* which can be accessed at: [https://www.cpc.ie/business/wp-content/uploads/sites/3/2016/02/M\\_16\\_008-PandaGreen\\_Greenstar-Phase-2-Public-Determination.pdf](https://www.cpc.ie/business/wp-content/uploads/sites/3/2016/02/M_16_008-PandaGreen_Greenstar-Phase-2-Public-Determination.pdf)

<sup>20</sup> See paragraphs 18-19 of merger determination *M/18/005 – Thorntons/A Plus* which can be accessed at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2018/01/M-18-005-Thorntons-A-Plus-Public-1.pdf>

<sup>21</sup> See paragraphs 49-56 in merger determination *M/18/053 – Pandagreen/Knockharley Landfill and Natureford* which can be accessed at:



47. In *M/09/024 – Greenstar/Veolia*, the Commission analysed the competitive impact of the relevant transaction in the potential market for the management of local authority civic amenity sites.<sup>22</sup>
48. The Commission has not, in the course of its assessment of the competitive impact of the Proposed Transaction, found reasons to depart from the approach to product market definition previously taken by the Commission in *M/09/024 – Greenstar/Veolia*, *M/16/008 - PandaGreen/Greenstar*, *M/18/005 - Thornton's/A Plus* and *M/18/053 - Pandagreen/Knockharley Landfill and Natureford*.
49. Thus, for the purposes of its competitive analysis of the horizontal overlaps that exist between the Parties, the Commission has assessed the competitive impact of the Proposed Transaction in the following potential product markets:
- a) the supply of domestic waste collection services;
  - b) the supply of waste collection services to individual C&I customers;
  - c) the processing of waste collected from domestic and C&I customers;
  - d) the supply (for sale) of non-glass recyclable materials; and
  - e) the management of local authority civic amenity sites.
50. For the purposes of its competitive analysis of the vertical relationships that exist between the Parties, the Commission has assessed the competitive impact of the Proposed Transaction in the following potential product markets:
- a) the disposal of residual waste;
  - b) the supply (for sale) of non-glass recyclable materials; and
  - c) the processing of waste collected from domestic and C&I customers.

#### Relevant Geographic Markets

##### **The Supply of Domestic Waste Collection Services**

###### *Views of the Parties*

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<https://www.ccpic.ie/business/wp-content/uploads/sites/3/2018/07/Public-M-18-053-Pandagreen-Knockharley-Landfill-and-Natureford-Public-Determination.pdf>

<sup>22</sup> See paragraphs 3.44-3.46 in merger determination *M/09/024 – Greenstar/Veolia* which can be accessed at: <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2017/04/M-09-024-Greenstar-Veolia-Phase-II-Determination-Non-Confidential-Version.pdf>

51. With respect to the relevant geographical market for the supply of domestic waste collection services, the Compecon Report states the following:

*“The [Competition Authority]/CCPC has applied a number of different geographic market definitions in the case of domestic waste:*

*(i) Regional, for example, in Greenstar/Veolia where the GDA<sup>[23]</sup> and South East Region were defined as relevant markets.*

*(ii) Individual local authority areas in Pandagreen/Greenstar.*

*(iii) Local geographic markets in its Waste Market Study.*

*The fact that Exomex and Pandagreen largely operate in different parts of County Louth with extremely limited overlap between their domestic waste operations in the county would tend to support a local geographic market definition with North and South Louth constituting separate geographic markets. Such a definition would mean that there was very little horizontal overlap between the merging parties, thus effectively ruling out the possibility of any SLC. Despite this, we do not believe that such a narrow geographic market definition is justified.*

*A geographic market definition limited to County Louth cannot be justified in our opinion. Two of the four undertakings providing waste collection services in County Louth operate from depots located in County Meath while Oxigen serves its domestic customers in Meath and Monaghan from its Dundalk depot. Exomex serves customers in Louth and South Monaghan from its Dundalk base while Allied serves domestic customers in Cavan and Meath from Westmeath. In all of these cases a significant proportion of the waste handled by these waste plants comes from outside the county in which they are located, the basis on which the Competition Authority decided that the relevant geographic market in Greenstar/Veolia comprised the South East region and was not limited to County Waterford. This clearly demonstrates that operators are not limited to operating within county boundaries. Three of the four operators provide services in Louth also provide domestic waste collection services in Meath. Combined with catchment area data this supports the conclusion that the relevant geographic market comprises at least counties Louth and Meath.*

*There is evidence in our opinion to support a wider geographic market comprising counties Cavan, Louth, Meath, and Monaghan. Evidence in relation to the size of catchment areas would support such a geographic market definition. As noted, Oxigen provides services across all four counties while five operators provide services in two of the four counties. This conclusion is also supported by the evidence that AES, Allied, Exomex, Pandagreen and Oxigen all serve customers in more than one county from a single base, while a number of operators send disposable waste from all four counties to the Indaver facility at Duleek in County Meath.*

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<sup>23</sup> GDA refers to the Greater Dublin Area, as explained in footnote 25 below.

*Taking all of the above into account it would seem reasonable to conclude that the relevant geographic market for domestic waste collection services in this case comprises at least counties Louth and Meath. Indeed, there is strong case for concluding that the geographic market includes counties Cavan, Louth, Meath, and Monaghan. The evidence does not support a geographic market definition limited to individual counties or smaller areas within individual counties, although we note that if the latter approach were followed the horizontal overlap between the merging parties would be extremely limited.”*

#### *Previous Determinations*

52. Previously, in *M/09/024 – Greenstar/Veolia*, the Competition Authority stated that domestic and C&I waste service markets were local in nature on the grounds that waste operators provided services within a certain radius of transfer stations.<sup>24</sup>

*“Waste management services providers tend to operate within a specific radius of their transfer station in order to maximise the number of collections per truck in any one day. Providing waste management services to customers in one region and then transporting the waste to a transfer station located in a different region is unlikely to be economically viable for an operator. Thus, given the importance of proximity to a transfer station for a waste management services provider, markets are regional. The parties informed the Authority that the radius of the likely catchment area for each transfer station is 100km.”*

53. The Competition Authority did not reach a definitive conclusion as to the precise scope of the relevant geographic market for the provision of waste management services in this instance, but examined the Greater Dublin Area<sup>25</sup>, the South-East region, and Cork city and county.
54. In *M/16/008 – Pandagreen/Greenstar*, the Commission concluded that the geographic market for the supply of domestic waste collection services was narrower than the Greater Dublin Area.

*“The Commission considers that, in this instance, the relevant geographic market for the supply of domestic waste collection*

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<sup>24</sup> Waste management services is now referred to as the supply of waste collection services. See paragraph 3.24 in merger determination *M/09/024 – Greenstar/Veolia* which can be accessed at: <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m09024-greenstar-veolia-ireland/>

<sup>25</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”).

*services is narrower than the GDA because waste must be collected where it is produced.”<sup>26</sup>*

55. In *M/16/008 – Pandagreen/Greenstar*, the Commission defined the geographic market for the supply of domestic waste collection services as each of the local authority areas within the Greater Dublin Area.<sup>27</sup>

#### *Views of the Commission*

56. As noted above, there is a horizontal overlap between the Parties in the supply of domestic waste collection services in Co. Louth. However, the geographic area in Co. Louth where the Parties overlap in the supply of domestic waste collection services is very small.
57. Exomex supplies domestic waste collection services in Co. Monaghan and north Co. Louth.<sup>28</sup> Exomex services its domestic waste collection customers in Co. Monaghan from its MRF facility in Scotch Corner, Co. Monaghan, and it services its domestic waste collection customers in Co. Louth from its two transfer stations in Dundalk, Co. Louth. The Compecon Report states that within Co. Louth, Exomex currently only supplies domestic waste collection services to customers located in the northern part of the county, specifically: Dundalk, the Cooley peninsula, north of Dundalk to the border with Northern Ireland, Louth Village, Dromiskin, Ardee, Collon and Dunleer.<sup>29</sup> Exomex informed the Commission that it has never collected domestic waste in the southern half of Co. Louth. Exomex also informed the Commission that the maximum distance it travels in any direction from its transfer stations in Haggardstown and Coes Road, Dundalk to collect domestic waste is 28 kilometres and 22 kilometres, respectively.
58. In contrast, Pandagreen supplies domestic waste collection services in Co. Meath and south Co. Louth. In Co. Louth, Pandagreen only supplies domestic waste collection services to customers located in the southern half of the county, primarily in Drogheda and the surrounding area.<sup>30</sup> Pandagreen services its domestic waste collection customers in Co. Louth using trucks which are based at its transfer station located in Beuparc, Co. Meath. Pandagreen informed the Commission that the furthest north it travels in Co. Louth to collect domestic waste is Tallanstown, which is located approximately 40 kilometres north of Pandagreen’s transfer station located

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<sup>26</sup>See paragraph 3.20 in merger determination *M/16/008 – Pandagreen/Greenstar* which can be accessed at: [https://www.ccpic.ie/business/wp-content/uploads/sites/3/2016/02/M\\_16\\_008-PandaGreen\\_Greenstar-Phase-2-Public-Determination.pdf](https://www.ccpic.ie/business/wp-content/uploads/sites/3/2016/02/M_16_008-PandaGreen_Greenstar-Phase-2-Public-Determination.pdf)

<sup>27</sup> See paragraph 3.24 in merger determination *M/16/008 – Pandagreen/Greenstar* which can be accessed at: [https://www.ccpic.ie/business/wp-content/uploads/sites/3/2016/02/M\\_16\\_008-PandaGreen\\_Greenstar-Phase-2-Public-Determination.pdf](https://www.ccpic.ie/business/wp-content/uploads/sites/3/2016/02/M_16_008-PandaGreen_Greenstar-Phase-2-Public-Determination.pdf)

<sup>28</sup> As noted above, Exomex also provided domestic waste collection services to 13 customers in Co. Cavan in 2020.

<sup>29</sup> In 2020, Exomex serviced 10,110 domestic waste collection customers in Co. Louth.

<sup>30</sup> In 2020, Pandagreen serviced 10,034 domestic waste collection customers in Co. Louth.

in Beauparc.<sup>31</sup> Pandagreen informed the Commission that it does not service the northern half of Co. Louth “for commercial and business operational reasons.”<sup>32</sup>

59. Thus, while both Pandagreen and Exomex supply domestic waste collection services in Co. Louth and the broader North-east region of the State, they predominantly service different areas of this region. The map in figure 1 below illustrates the areas of the north-east region of the State where the Parties supply domestic waste collection services from their respective transfer stations. The area serviced by Exomex is shaded blue and green in the map, while the area serviced by Pandagreen is shaded red and green. As illustrated by the green shaded area in the map, the Parties only overlap in the supply of domestic waste collection services in the following towns and townlands in Co. Louth: Collon; Ardee; Dunleer; Tallanstown; Dromin; Grangebellew; Ballapousta; Philipstown and Tinure (the “Overlapping Area”).<sup>33</sup>

**Figure 1: The Areas of the North-east Region of the State where the Parties Supply Domestic Waste Collection Services.**

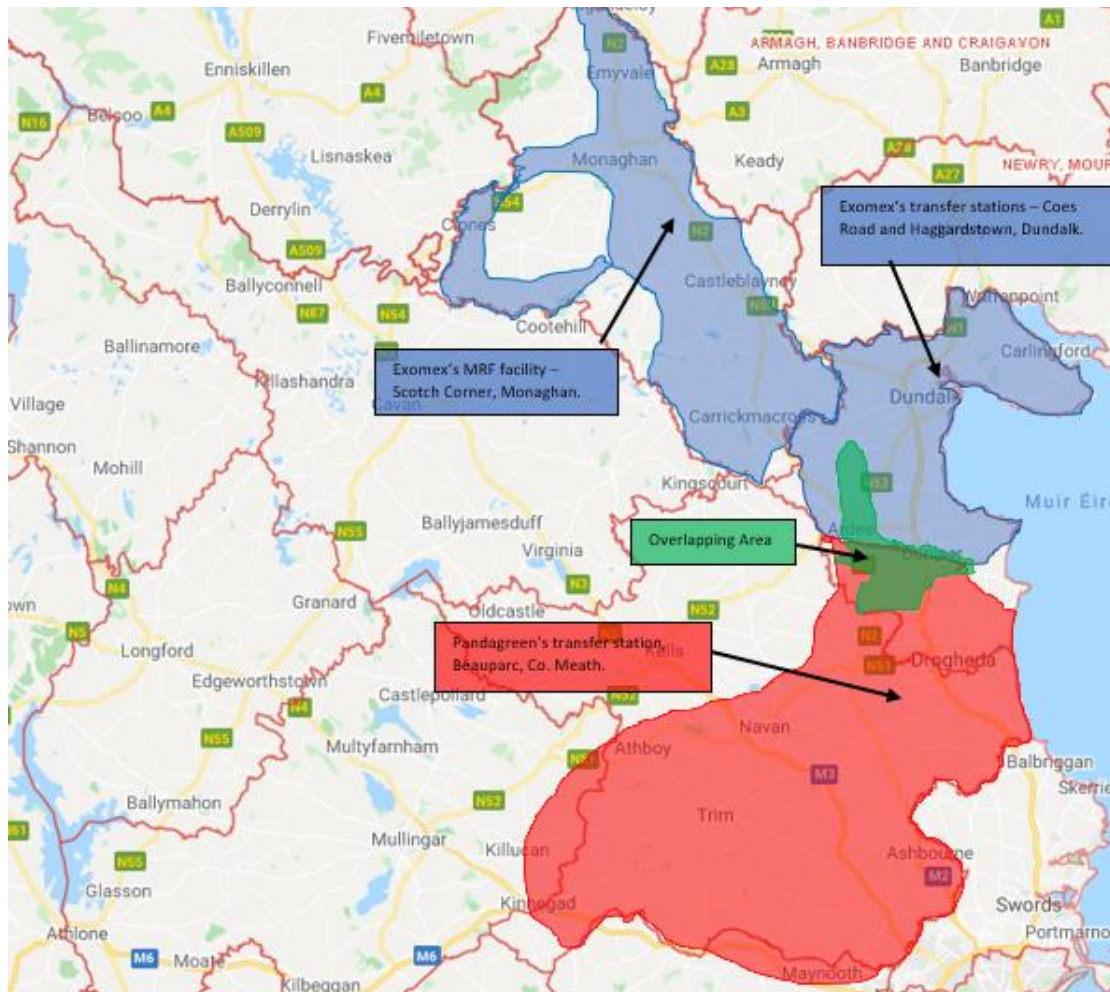
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<sup>31</sup> Pandagreen also informed the Commission that the maximum distance it travels in any direction from its facility in Beauparc, Co. Meath to collect domestic waste is 53 kilometres to Kinnegad in Co. Westmeath.

<sup>32</sup> Information provided to the Commission by Pandagreen in its response to the RFI dated 23 June 2021.

<sup>33</sup> The white shaded area in the map in Co. Louth adjacent to the Overlapping Area is not currently serviced by either Pandagreen or Exomex for domestic waste collection.





Source: The Commission, based on information provided by the Parties.

60. It is clear that the Parties predominantly supply domestic waste collection services in different areas of the north-east region of the State. While Exomex supplies domestic waste collection services in Co. Monaghan and in the northern half of Co. Louth, Pandagreen in contrast services domestic waste collection customers located in Co. Meath and the southern half of Co. Louth.
61. In this instance, the Commission considers that it is not necessary to define precise relevant geographic markets. For the purposes of analysing the likely competitive impact of the Proposed Transaction, the Commission has focused on the areas in Co. Louth where the Parties are both active in the supply of domestic waste collection services in the State, i.e., the Overlapping Area.

### The Supply of Waste Collection Services to Individual C&I Customers

#### Views of the Parties



62. The Parties state in the notification that the relevant geographical market for the supply of waste collection services to individual C&I customers comprises counties Cavan, Louth, Meath and Monaghan.

*Previous Determinations*

63. In *M/16/008 – Pandagreen/Greenstar*, the Commission concluded that the relevant geographic market for the supply of waste collection services to C&I customers was the Greater Dublin Area:

*“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 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.”<sup>34</sup>*

*Views of the Commission*

64. As noted above, there is a horizontal overlap between the Parties in the supply of individual C&I waste collection services in Co. Louth.<sup>35</sup> The geographic area within Co. Louth where the Parties overlap in the supply of individual C&I waste collection services is much wider than the geographic area of overlap between the Parties in the supply of domestic waste collection services in Co. Louth.
65. As with domestic waste collection services, Exomex supplies individual C&I waste collection services in Co. Monaghan and in the northern half of Co. Louth. In 2020, Exomex had [...] individual C&I waste customers in Co. Monaghan and [...] individual C&I waste customers in Co. Louth. Exomex services individual C&I waste customers in predominantly the same areas of north Co. Louth as it does for domestic waste customers, namely: Dundalk, the Cooley peninsula, north of Dundalk to the border with Northern Ireland, Louth Village, Dromiskin, Ardee, Collon and Dunleer. This is illustrated in the red and blue shaded areas in the map in Figure 2 below. Exomex informed the Commission that the maximum distance it travels from its transfer

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<sup>34</sup> Please see paragraphs 3.25 in merger determination *M/16/008 – Pandagreen/Greenstar* which can be accessed at: [https://www.ccpic.ie/business/wp-content/uploads/sites/3/2016/02/M\\_16\\_008-PandaGreen\\_Greenstar-Phase-2-Public-Determination.pdf](https://www.ccpic.ie/business/wp-content/uploads/sites/3/2016/02/M_16_008-PandaGreen_Greenstar-Phase-2-Public-Determination.pdf)

<sup>35</sup> There is a negligible horizontal overlap between Exomex and Pandagreen in the supply of individual C&I waste collection services in Co. Monaghan (Pandagreen, through a subcontractor, serviced only 10 individual C&I customers in Co. Monaghan in 2020) which is not discussed any further in this determination.

stations in Coes Road and Haggardstown, Dundalk to collect individual C&I waste is 90 kilometres and 37 kilometres, respectively.<sup>36</sup>

66. Pandagreen supplies individual C&I waste collection services in counties Louth and Meath and, to a very limited extent, counties Cavan and Monaghan.<sup>37</sup> In 2020, Pandagreen had [...] individual C&I waste customers in Co. Louth, and [...] in Co. Meath. Pandagreen services its individual C&I waste collection customers in Co. Louth using trucks which are based at its transfer station located in Beauparc, Co. Meath. In contrast to its domestic waste collection service in Co. Louth which is limited to the southern half of the county, Pandagreen supplies individual C&I waste collection services in towns and townlands across many, but not all, areas of Co. Louth.<sup>38</sup> As illustrated in the map in Figure 2 below, Pandagreen supplies individual C&I waste collection services in the following areas of Co. Louth: Dundalk, Blackrock, Castlebellingham, Mullins Cross, Ardee, Dunleer, Collon, Tullyallen, Drogheda, Termonfeckin and Clogherhead. Pandagreen informed the Commission that the maximum distance it travels from its transfer station in Beauparc, Co. Meath to collect individual C&I waste is 48 kilometres.

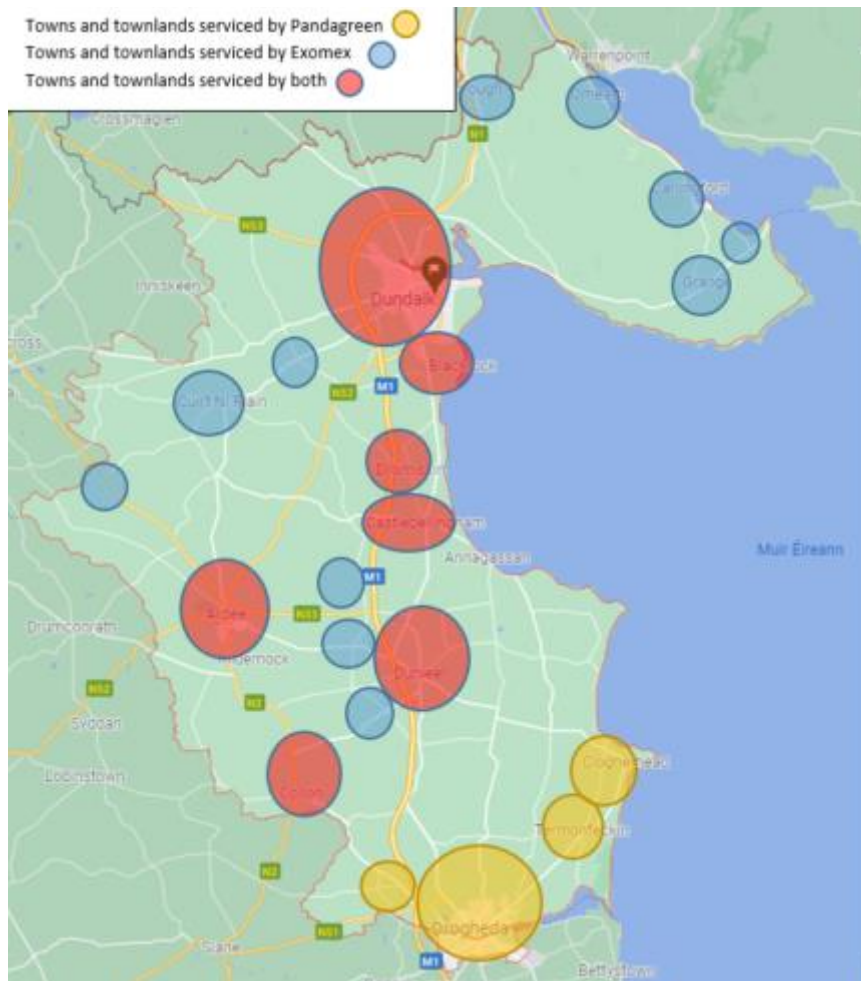
**Figure 2: The areas of Co. Louth where Pandagreen and Exomex supply Individual C&I Waste Collection Services**

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<sup>36</sup> Exomex informed the Commission that the reason it travels 90 kilometres from Coes Road to collect individual C&I waste is to service a small number of legacy customers carried over from its acquisition of Ecological in 2020.

<sup>37</sup> Pandagreen collected C&I waste from 10 individual C&I waste customers in Co. Monaghan in 2020, and 18 in Co. Cavan. Pandagreen currently subcontracts this individual C&I waste collection service to Exomex and Oxigen.

<sup>38</sup> As is clear in the map in Figure 2, Pandagreen's individual C&I waste collection service in Co. Louth is largely confined to urban areas (i.e., towns and townlands). Pandagreen does not, however, service any individual C&I waste customers located north or west of Dundalk in the northern half of Co. Louth.



Source: The Commission, based on information provided by the Parties

67. As illustrated in the map in Figure 2 above, both Pandagreen and Exomex supply individual C&I waste collection services to many areas of Co. Louth. Specifically, the Parties overlap in the supply of individual C&I waste collection services in the following towns and townlands in Co. Louth (the red shaded areas in the map in Figure 2): Collon, Ardee, Dunleer, Dundalk, Blackrock, and Castlebellingham (the “Overlapping Towns”).
68. In this instance, the Commission considers that it is not necessary to define precise relevant geographic markets. However, for the purposes of analysing the likely competitive impact of the Proposed Transaction, the Commission has focused on the areas in Co. Louth where the Parties overlap in the supply of individual C&I waste collection services i.e., the Overlapping Towns.

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

#### Views of the Parties

69. The Parties state in the notification that the relevant geographic market for the processing of waste collected from domestic and C&I customers comprises counties Cavan, Louth, Meath and Monaghan.

#### *Previous Determinations*

70. In *M/16/008 – Pandagreen/Greenstar*, the Commission did not reach a definitive view on the precise geographic scope of the potential product market for the processing of waste collected from domestic and C&I customers.<sup>39</sup>

#### *Views of the Commission*

71. Pandagreen processes the waste that it collects in counties Meath and Louth in its waste processing facility in Beauparc, Co. Meath. Pandagreen also processes waste on behalf of other waste collectors. Exomex operates two transfer stations located at Coes Road and Haggardstown in Dundalk, Co. Louth. Exomex also operates an MRF in Scotch Corner, Co. Monaghan. Exomex processes the domestic and C&I waste that it collects in these waste facilities but, unlike Pandagreen, does not process domestic and C&I waste on behalf of other waste collectors.
72. The Commission considers that it does not need to come to a definitive view on the precise relevant geographic market in this instance, since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant geographic market is defined on a narrow basis (i.e., the processing of waste collected from domestic and C&I customers in counties Louth, Meath and Monaghan) or more broadly to encompass the processing of waste collected from domestic and C&I customers in, for example, the North-east region of the State. For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed the likely competitive impact of the Proposed Transaction in the narrowest potential relevant geographic market, i.e., the processing of waste collected from domestic and C&I customers in counties Louth, Meath and Monaghan.

### **The Supply (for Sale) of Non-Glass Recyclable Materials**

#### *Views of the Parties*

73. With respect to the relevant geographic market for the supply (for sale) of non-glass recyclable materials, the Compecon Report states the following:

*“The Authority did not reach any conclusions in Greenstar/Veolia in respect of the geographic market in the case of the sale of recyclables, although it noted that all recycled waste materials were sold abroad on international markets. This market would therefore*

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<sup>39</sup> See paragraph 3.25 in merger determination *M/16/008 – Pandagreen/Greenstar* which can be accessed at: [https://www.ccpc.ie/business/wp-content/uploads/sites/3/2016/02/M\\_16\\_008-PandaGreen\\_Greenstar-Phase-2-Public-Determination.pdf](https://www.ccpc.ie/business/wp-content/uploads/sites/3/2016/02/M_16_008-PandaGreen_Greenstar-Phase-2-Public-Determination.pdf)



*appear to be wider than the State. Waste operators either export the material directly or sell to brokers who arrange for its export and resale on international markets. It remains the case that virtually all non-glass recyclables are exported, and the relevant geographic market therefore is at least EU wide and may be even wider.”*

#### *Previous Determinations*

74. In *M/16/008 – Pandagreen/Greenstar*, the Commission did not reach a definitive view on the precise geographic scope of the potential market for the supply (for sale) of non-glass recyclables.<sup>40</sup>

#### *Views of the Commission*

75. The Commission considers that it does not need to come to a definitive view on the precise relevant geographic market in this instance, since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant geographical market is defined on a narrow basis (i.e., the supply (for sale) of non-glass recyclable material in the State) or broader (e.g., the supply (for sale) of non-glass recyclable material in the European Union). For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed the likely competitive impact of the Proposed Transaction in the narrowest potential geographic market, which is the State.

### **The Disposal of Residual Waste**

#### *Views of the Parties*

76. With respect to the relevant geographical market for the disposal of residual waste, the Compecon Report states the following:

*“The relevant geographic market would appear to extend at least to the entire Eastern half of the State, including all of Leinster as well as Cavan and Monaghan. The market for the disposal of residual waste, however, is likely to be significantly wider as significant amounts of such material are exported.”*

#### *Previous Determinations*

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<sup>40</sup> See paragraphs 3.23 in merger determination *M/09/024 – Greenstar/Veolia* which can be accessed at: <https://www.cccp.ie/business/wp-content/uploads/sites/3/2017/04/M-09-024-Greenstar-Veolia-Phase-II-Determination-Non-Confidential-Version.pdf>

<sup>40</sup> See paragraph 3.25 in merger determination *M/16/008 – Pandagreen/Greenstar* which can be accessed at: [https://www.cccp.ie/business/wp-content/uploads/sites/3/2016/02/M\\_16\\_008-PandaGreen\\_Greenstar-Phase-2-Public-Determination.pdf](https://www.cccp.ie/business/wp-content/uploads/sites/3/2016/02/M_16_008-PandaGreen_Greenstar-Phase-2-Public-Determination.pdf)

77. In *M/18/053 - Pandagreen/Knockharley*, the Commission defined the relevant geographic market for the disposal of residual waste as the Greater Dublin Area. The Commission also stated in that instance that *“the potential to export material could act as a competitive constraint on waste disposal facilities operating in the State”*.<sup>41</sup>

*Views of the Commission*

78. The Commission considers that it does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant geographic market is defined on a narrow basis (i.e., the disposal of residual waste in counties Louth, Meath and Monaghan) or more broadly to encompass the disposal of residual waste in, for example, the eastern half of the State, including all of Leinster, Co. Cavan and Co. Monaghan. For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed the likely competitive impact of the Proposed Transaction in the narrowest potential geographic market, which is counties Louth, Meath and Monaghan.

**The Market for the Management of Local Authority Civic Amenity Sites**

*Views of the Parties*

79. With respect to the relevant geographical market for the management of local authority civic amenity sites, the Compecon Report states the following:

*“The market for the management of civic amenity sites would appear to comprise the State. If, for example, a hypothetical monopoly provider of such services in an individual county or even region was to increase prices, it seems likely that local authorities in that area could switch to providers of such services located in other counties or regions of the State.”*

*Views of the Commission*

80. The firms which manage local authority civic amenity sites are both national waste operators (such as, for example, Pandagreen, Oxigen, Bord na Mona Recycling Limited (“BnM”) and Thorntons) and regional waste operators (such as, for example, Exomex, Barna Waste Disposal and KWD Recycling). Therefore, the Commission considers that, in this instance, the relevant geographic market for assessing the potential market for the management of local authority civic amenity sites is the State.

**Conclusion on Market Definition**

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<sup>41</sup> See paragraph 56 in merger determination *M/18/053 – Pandagreen/Knockharley* which can be accessed at: <https://www.cccp.ie/business/wp-content/uploads/sites/3/2018/07/Public-M-18-053-Pandagreen-Knockharley-Landfill-and-Natureford-Public-Determination.pdf>



81. For the purposes of its competitive analysis of the horizontal overlaps that exist between Pandagreen and Exomex, the Commission has assessed the competitive impact of the Proposed Transaction in the following potential markets:
- the supply of domestic waste collection services in the Overlapping Area;
  - the supply of individual C&I waste collection services in the Overlapping Towns;
  - the processing of waste collected from domestic and C&I customers in counties Louth, Meath and Monaghan;
  - the supply (for sale) of non-glass recyclable materials in the State; and
  - the management of local authority civic amenity sites in the State.
82. For the purposes of its competitive analysis of the vertical relationships that exist between Pandagreen and Exomex, the Commission has assessed the competitive impact of the Proposed Transaction in the following potential markets:
- the processing of waste collected from domestic and C&I customers in counties Louth, Meath and Monaghan;
  - the supply (for sale) of non-glass recyclable materials in the State; and
  - the disposal of residual waste in counties Louth, Meath and Monaghan.

### **Horizontal Competitive Assessment**

83. In this section, the Commission sets out in detail its assessment of the competitive impact of the Proposed Transaction in each of the potential relevant markets identified above.

### **The Supply of Domestic Waste Collection Services in the Overlapping Area**

#### Competitive Effects Analysis

#### *Views of the Parties*

84. The Compecon Report states the following:

*“The proposed transaction is unlikely to result in an SLC in the domestic waste collection services market in Louth/Meath. The evidence indicates that the parties are not each other’s closest competitors and that the main competitive constraint on both of them stems from non-merging undertakings. Post-merger there will be a sufficient number of competitors in the market to prevent any unilateral price increase. Similarly, the conditions necessary for coordinated effects do not exist in this market.”*



### *Views of the Commission*

85. There is a small horizontal overlap between Pandagreen and Exomex in the supply of domestic waste collection services in Co. Louth, encompassing the Overlapping Area. On the basis of the information available to the Commission during its review of the Proposed Transaction, the Commission considers that the Proposed Transaction raises no competition concerns in the supply of domestic waste collection services in the Overlapping Area for the following reasons.
86. First, the geographic area in Co. Louth where the Parties overlap in the supply of domestic waste collection services is very small, comprising the following towns and townlands: Collon, Ardee, Dunleer, Tallanstown, Dromin, Grangebellew, Ballapousta, Philipstown and Tinure. Pandagreen estimates that the Overlapping Area accounts for approximately only [5-10]% of the total number of households in Co. Louth.<sup>42</sup>
87. Second, Exomex is active to a limited extent in the supply of domestic waste collection services in the Overlapping Area. Pandagreen informed the Commission that it serviced [...] domestic waste customers in the Overlapping Area in 2020, which accounted for [10-15]% of its total number of domestic waste customers in Co. Louth in 2020. In contrast, Exomex informed the Commission that it currently supplies domestic waste collection services to [...] customers located in the Overlapping Area, accounting for only [5-10]% of its total number of domestic waste customers in Co. Louth. Furthermore, a visit to the Overlapping Area by the Commission in September 2020 confirmed that Exomex has a limited presence in the supply of domestic waste collection services in the Overlapping Area.

### *Conclusion*

88. In light of the above, the Commission considers that the Proposed Transaction does not raise any competition concerns in the supply of domestic waste collection services in the Overlapping Area.

### **The Supply of Waste Collection Services to Individual C&I Customers in the Overlapping Towns.**

#### Competitive Effects Analysis

##### *Views of the Parties*

89. The Compecon Report states the following:

*“The proposed transaction will not result in any SLC in the individual C&I waste services market in Cavan, Louth, Meath, and Monaghan.*”

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<sup>42</sup> Information provided to the Commission by Pandagreen in a letter dated 24 August 2021. Pandagreen informed the Commission that this estimate is based on household data extracted from the 2016 census of population data published by the CSO and adjusted to take account of the change in household numbers by region as published by the CSO in its Quarterly Labour Force Survey.



*The parties are not each other's closest competitors. Post-merger the number of undertakings in this market will be sufficient to prevent any unilateral price increase. In addition, low switching costs mean that customers can exercise countervailing buyer power. The conditions for coordinated effects will not exist in this market post-merger."*

#### *Views of the Commission*

90. The Parties overlap in the supply of individual C&I waste collection services in the following Overlapping Towns in Co. Louth: Collon, Ardee, Dunleer, Dundalk, Blackrock, and Castlebellingham. In addition to Pandagreen and Exomex, Oxigen also supplies individual C&I waste collection services in the Overlapping Towns. Oxigen services its individual C&I waste customers in Co. Louth from its two waste transfer stations located in Dundalk, Co. Louth.
91. The Commission identified potential competition concerns in the supply of individual C&I waste collection services in the Overlapping Towns. In particular, the Commission's review of the Proposed Transaction indicated that:
- a) The supply of individual C&I waste collection services in the Overlapping Towns can be characterised as highly concentrated with each of Oxigen, Pandagreen and Exomex being an important and significant competitor; and
  - b) The Proposed Transaction would likely eliminate an important competitive force, Exomex, in the supply of individual C&I waste collection services in the Overlapping Towns. Following implementation of the Proposed Transaction, the credible options available to customers would be reduced to Oxigen and Pandagreen.
92. To address the potential competition concerns identified by the Commission, Pandagreen, on 9 September 2021, submitted proposals to the Commission in accordance with section 20(3) of the Act. Following receipt of these proposals, the Commission engaged with Pandagreen and its legal advisors to formulate proposals which would ameliorate the potential competition concerns that had been identified.
93. On 29 September 2021, Pandagreen submitted final proposals (the "Proposals") to the Commission. The Proposals submitted by Pandagreen include a commitment by Pandagreen to divest to Padraig Thornton Waste Disposal Limited, trading as "Thorntons Recycling", the customers to whom Pandagreen currently supplies individual C&I waste collection services in the Overlapping Towns.<sup>43</sup>
94. The Commission is of the view that the proposals are sufficient to address the competition concerns it has identified in the supply of individual C&I waste collection services in the Overlapping Towns. In accordance with section 20(3) and section 26(1)

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<sup>43</sup> If the proposal to divest to Thorntons Recycling the customers to whom Pandagreen currently supplies individual C&I waste collection services in the Overlapping Towns does not proceed, the Proposals provide for the customer book in question to be sold to an alternative purchaser, approved by the Commission.



and section 26(4) of the 2002 Act, the Proposals have become commitments binding upon Pandagreen. The Proposals are appended to this determination below.

95. The Commission considers that the Proposals will retain the pre-Proposed Transaction competitive landscape in the Overlapping Towns through the entry of a new competitor, Thornton's Recycling, which will effectively replace the competitive constraint exercised by Exomex pre-Proposed Transaction, such that the Proposed Transaction will no longer have any competitive impact in the supply of individual C&I waste collection services in the Overlapping Towns.

#### *Conclusion*

96. The Commission is of the view that the Proposals obtained from Pandagreen are appropriate and effective to address the potential competition concerns identified by the Commission. Therefore, having taken the Proposals into account (and which form part of the basis of its determination), in accordance with section 21(2)(a) of the Act, the Commission considers that the Proposed Transaction will not lead to any competition concerns in the supply of individual C&I waste collection services in the Overlapping Towns.

#### **The Processing of Waste Collected from Domestic and C&I customers in Counties Louth, Meath and Monaghan**

##### *Views of the Parties*

97. The Compecon Report states the following:

*"Panda has a waste processing facility at Beuparc. Exomex has transfer stations in Dundalk at Coes Road and Haggardstown and at Scotch Corner in County Monaghan. Pandagreen currently delivers approximately [...] tonnes per week to the Exomex Haggardstown facility. On that basis the proposed transaction will not give rise to any [substantial lessening of competition] in the market for waste processing...The merging parties would therefore not have the ability to unilaterally raise prices to customers who did not have waste processing facilities/transfer stations of their own."*

##### *Views of the Commission*

98. Pandagreen processes the waste it collects from domestic and C&I customers in counties Louth and Meath at its transfer station in Beuparc, Co. Meath. Exomex owns and operates transfer stations in Dundalk at Coes Road and Haggardstown and an MRF in Scotch Corner, Co. Monaghan where it processes the domestic and C&I waste it collects in counties Monaghan and Louth. Pandagreen offers waste processing services in its transfer station in Beuparc, Co. Louth to waste operators in counties Louth, Meath and Monaghan. Exomex informed the Commission that it does not offer waste processing services to third party waste operators, with the exception of

Pandagreen who deliver approximately [...] tonnes of waste per week to Exomex's transfer station in Haggardstown, Dundalk.

99. The Commission's market enquiries confirmed that all waste collection service providers currently active in counties Louth, Meath and Monaghan operate their own waste processing facilities and/or transfer stations, with one exception, Mahony's Environmental Cleansing Limited ("Mahony's"). Mahony's, which is active in the collection of domestic and C&I waste in Co. Monaghan, currently delivers its waste to Blue Dolphin Environmental Limited, which has a waste processing facility in Co. Monaghan. Following the implementation of the Proposed Transaction no waste collection service provider will be dependent on Pandagreen to supply them waste processing services and/or transfer station access. Therefore, the Commission considers that Pandagreen would not have the ability or incentive to unilaterally raise prices (or otherwise harm competition) to waste collectors in counties Louth, Meath and Monaghan.
100. The Commission therefore considers that the Proposed Transaction will not lead to any horizontal competition concerns in the processing of waste collected from domestic and C&I customers in counties Louth, Meath and Monaghan.

### **The Supply (for sale) of Non-Glass Recyclable Materials in the State**

#### *Views of the Parties*

101. The Compecon Report states the following:

*"There are a large number of firms active in the non-glass recyclables market in the State. The Irish Waste Management Association (IWMA) website lists more than 30 member companies that are engaged in the recycling business throughout the State. These include both undertakings that operate at national level and those which operate in local markets only. ... Irish waste operators engaged in the non-glass recyclables market are essentially price takers in what are international commodity markets. There would therefore appear to be no grounds for concluding that the merger would give rise to any [substantial lessening of competition] in this market."*

#### *Views of the Commission*

102. The Commission considers that the Proposed Transaction raises no competition concerns in the potential market for the supply (for sale) of non-glass recyclable materials in the State. There are a large number of firms currently active in the supply (for sale) of non-glass recyclable materials in the State, including BnM, Quality Recycling Limited, Thorntons and Barna Waste Disposal Limited. Pandagreen will continue to export non-glass recyclable materials outside of the State following

implementation of the Proposed Transaction and it will not have market power to influence export prices.<sup>44</sup>

### The Management of Local Authority Civic Amenity Sites in the State

#### Market Structure

103. Civic amenity sites are recycling centres which accept a large variety of waste materials such as large household items, plastics and garden materials. Civic amenity sites are typically owned by local authorities but in many cases the management of these sites is outsourced to waste operators. Pandagreen currently manages six civic amenity sites in the State; three in Co. Limerick, one in Cork city, one in south Co. Dublin, and one in Co. Sligo. Exomex manages five civic amenity sites; three located in Co. Cavan and two in Co. Monaghan.
104. Table 3 below shows the market shares of the Parties and their competitors in the management of local authority civic amenity sites in the State.

**Table 3: Market Shares in the Management of Local Authority Civic Amenity Sites in the State, 2021**

Firm	Number of Civic Amenity Sites Managed	Market Share (%)
Pandagreen	6	[5-10]%
Exomex	5	[5-10]%
<b>Combined</b>	<b>11</b>	<b>[10-15]%</b>
Local Authorities	53	[55-50]%
Bryson Recycling	6	[5-10]%
Oxigen	6	[5-10]%
BnM	4	[0-5]%
Barna Waste Disposal Limited	4	[0-5%]
Thorntons	2	[0-5]%
Mulleady's Limited	2	[0-5%]
V&W Recycling Limited	2	[0-5]%
KWD Limited	1	[0-5]%
<b>Total</b>	<b>91</b>	<b>100</b>

Source: The Commission, based on information provided by the Parties

#### *Views of the Parties*

105. The Compecon Report states the following:

<sup>44</sup> Pandagreen informed the Commission that it exports 98% of its non-glass recyclable materials.



*“There are a large number of undertakings currently engaged in operating civic amenity sites on behalf of local authorities and a number of others that regularly tender for such contracts. In addition, almost 60% of all civic amenity sites are managed directly by the relevant local authority. Local authority’s, therefore, have the option of managing such sites themselves in the event of any post-merger price increase. The large number of undertakings engaged in this market indicates that the proposed transaction is unlikely to result in any SLC in the market for managing civic amenity sites on behalf of local authorities.”*

#### *Views of the Commission*

106. The Commission considers that the Proposed Transaction raises no horizontal competition concerns in the management of local authority civic amenity sites in the State for the following reasons.
107. First, following implementation of the Proposed Transaction, Pandagreen’s share of the potential market for the management of local authority civic amenity sites in the State will increase by only [5-10] percentage points (from [5-10]% to [10-15]%).
108. Second, as illustrated in Table 3 above, Pandagreen will continue to face a competitive constraint from a number of other firms active in the management of local authority civic amenity sites in the State following completion of the Proposed Transaction. Currently [55-60]% of all civic amenity sites in the State are managed directly by local authorities. There are currently a wide number of national waste operators which are active in the management of local authority civic amenity sites in the State, including Oxigen ([5-10]%), BnM ([0-5]%), and Thorntons ([0-5]%). In addition, there are also regional and local waste operators active in the management of local authority civic amenity sites in the State such as Barna Waste Disposal Limited ([0-5]%), Mulleady’s Limited ([0-5]%), and Bryson Recycling ([5-10]%).
109. Third, the Commission’s market enquiries confirmed that contracts for the management of local authority civic amenity sites are awarded through tenders. None of the local authorities contacted by the Commission raised any concerns about competition in the potential market for the management of local authority civic amenity sites in the State following implementation of the Proposed Transaction. One county council expressed the following view to the Commission about the likely impact of the Proposed Transaction: *“there [will] remain a sufficient choice of waste operators that could manage the [civic amenity] sites”*. One county council which is currently running a tender process for the management of civic amenity sites informed the Commission that there is sufficient choice of waste operators available to manage such sites, noting that they had received tenders from five waste operators. One county council expressed the following view to the Commission: *“we do not believe this transaction will have any impact on local authority civic amenity sites in the State, other than to reduce the number of relevant companies by one.”*

110. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the potential market for the management of local authority civic amenity sites in the State.

### **Vertical Competitive Assessment**

#### **The Processing of Waste Collected from Domestic and C&I Customers in Counties Louth, Meath and Monaghan.**

111. As explained above, Pandagreen provides waste processing services in its transfer station in Beauparc, Co. Meath to third party waste operators in counties Louth, Meath, and Monaghan. Exomex informed the Commission that it disposes of individual C&I waste in Pandagreen's transfer station in Beauparc, Co. Meath. The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in relation to the processing of waste collected from domestic and C&I customers in counties Louth, Meath, and Monaghan.
112. The Commission considers that Pandagreen would not have either the ability or incentive to foreclose third party waste collectors active in counties Louth, Meath and Monaghan. As noted in paragraph 99 above, all waste collectors (domestic and/or C&I) currently active in counties Louth, Meath and Monaghan, except for Mahony's in Co. Monaghan, operate their own transfer station and/or waste processing facility. This means that each waste collector, other than Mahoney's, can process the domestic and individual C&I waste that they collect in counties Louth, Meath and Monaghan. Mahony's currently disposes of its waste in the transfer station operated by Blue Dolphin, which is also located in Co. Monaghan. There are a number of waste operators other than the Parties that are active in counties Louth, Meath and Monaghan which operate a waste processing facility should Mahony's decide to switch to a different waste processor (such as, for example, Oxigen or BnM).
113. There is also a vertical relationship between the Parties in the processing of waste collected from domestic and C&I customers as Pandagreen currently delivers approximately 12 tonnes of waste per week to Exomex's transfer station in Haggardstown, Dundalk. The volume of waste which Pandagreen delivers to Exomex is minimal. The Commission therefore considers that this vertical relationship will not lead to any vertical foreclosure concerns in the processing of waste collected from domestic and C&I customers in counties Louth, Meath and Monaghan.

#### **The Supply (for sale) of Non-Glass Recyclable Materials in the State.**

114. There is a vertical relationship between the Parties in the supply (for sale) of non-glass recyclable materials in the State. Pandagreen collects dry recyclable waste materials throughout the State which it prepares for export. Exomex currently supplies a small volume of dry recyclable waste materials to Pandagreen. Exomex also currently supplies small volumes of dry recyclable waste materials to Recyco Limited and Regen SW.



115. The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in relation to the supply (for sale) of non-glass recyclable materials for the following reason. Given that Exomex currently supplies a minimal amount of non-glass recyclable materials to other companies, the Proposed Transaction will have a minimal impact on Pandagreen's share of the supply (for sale) of non-glass recyclable materials in the State. Following completion of the Proposed Transaction, there will remain a large number of waste operators in the State who are also active in the supply (for sale) of non-glass recyclable materials for export, including BnM, Quality Recycling Limited, Thorntons and Barna Waste Disposal Limited.
116. In light of the above, the Commission considers that the Proposed Transaction will not lead to any vertical foreclosure concerns in the supply (for sale) of non-glass recyclable materials in the State.

#### **The Disposal of Residual Waste in Counties Louth, Meath and Monaghan.**

117. Exomex sends residual waste material to the Knockharley landfill which is owned and operated by Pandagreen. Exomex only supplied 2,000 tonnes to the Knockharley landfill in 2020. The Compecon Report states the following:

*"In 2020, approximately 205,000 tonnes in total of residual waste was supplied to Knockharley, of which approximately two thirds was recovery material and the balance was disposal. Thus, Exomex accounts for just 1% of material supplied to the Knockharley landfill. Nothing will change as a result of the proposed transaction as Exomex does not supply material to other landfills."*

118. The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in relation to the disposal of residual waste in counties Louth, Meath and Monaghan.
119. The Proposed Transaction will not give Pandagreen the ability to foreclose upstream waste collection service providers by refusing access to Knockharley landfill, or by increasing the price of disposal services in Knockharley landfill. In *M/018/053 – Pandagreen/Knockharley*, the Commission concluded that *"Pandagreen is unlikely to have the ability or incentive to harm upstream disposal and recovery competitors through vertical customer foreclosure"*. Given that Exomex currently accounts for a negligible proportion of the total volume of waste supplied to Knockharley landfill, the Commission considers that the Proposed Transaction will have no impact on Pandagreen's ability to engage in a vertical foreclosure strategy.<sup>45</sup>

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<sup>45</sup> Exomex also supplies a small amount of residual waste material to Pandagreen. Pandagreen uses this waste to produce solid recovered fuel and refuse derived fuel which is then supplied to cement kilns. The Commission considers that the Proposed Transaction will not result in any change as Exomex does not supply such material to other undertakings.



120. In light of the above, the Commission considers that the Proposed Transaction will not lead to any vertical foreclosure concerns in the disposal of residual waste in counties Louth, Meath and Monaghan.

### Conclusion

121. In light of its analysis as set out in this determination, and having taken the Proposals into account, the Commission has determined that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

### Ancillary Restraints

122. The Parties state in the notification that certain ancillary restraints in relation to the Proposed Transaction are included in Clause 10.1.1 to 10.1.4 of the SPA.
123. The scope and duration of the restrictions set out in Clause 10.1.3 (non solicitation of customers) and 10.1.4 (non solicitation of suppliers) of the SPA do not exceed the maximum scope and duration acceptable to the Commission.<sup>46</sup> The Commission considers the restrictions set out in Clause 10.1.3 and 10.1.4 of the SPA to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State.
124. The Commission considers that the geographic scope of the non-compete provision in Clause 10.1.1 exceeds what is permitted in the European Commission's 2005 Notice on restrictions directly related and necessary to concentrations. The Commission considers that Clause 10.1.1 of the SPA contains a restrictive obligation which is not directly related and necessary for the implementation of the Proposed Transaction.
125. Clause 10.1.2 contains restraints relating to the non-solicitation of all employees of Exomex. The Commission considers that Clause 10.1.2 of the SPA contains a restrictive obligation which is not directly related and necessary for the implementation of the Proposed Transaction.
126. For these reasons, the Commission has not reached a view as to whether or not Clauses 10.1.1 and 10.1.2 of the SPA are directly related and necessary to the implementation of the Proposed Transaction. Clauses 10.1.1 and 10.1.2 of the SPA will not therefore benefit from the protections offered by sections 4(8) and 5(3) of the Act.

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<sup>46</sup> In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



## **Determination**

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), Pandagreen Limited has submitted to the Competition and Consumer Protection Commission (the “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 Pandagreen.

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 21(2)(a) of the Act, the result of the proposed acquisition whereby Pandagreen Limited would acquire sole control of Exomex (Ireland) Limited will not be to substantially lessen competition in any market for goods and services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**

**Member**

**Competition and Consumer Protection Commission**

## PROPOSALS BY PANDAGREEN TO THE CCPC (“Proposals”)

### PART I – PROPOSALS

#### RECITALS

- a) Pursuant to section 20(3) of the Act, Pandagreen has submitted to the CCPC the following Proposals for the purpose of ameliorating the CCPC’s competition concerns in respect of any effect of the Proposed Transaction on competition in markets for goods or services in the State, with a view to the Proposals becoming binding on Pandagreen on the date of the Determination.
- b) Panda has agreed with the CCPC to commit to sell the Divestment Package 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. Pandagreen identified Thorntons as a Suitable Purchaser of the Divestment Package.
  - ii. Pandagreen has entered into non-binding Heads of Agreement with Thorntons for the sale of the Divestment Package.

#### 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;

“**Completion**” means completion of the Proposed Transaction in accordance with the terms of the Share Purchase Agreement

“**Determination**” means the Determination of the CCPC pursuant to Section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

“**Divestment Customers**” means the [...] customers to whom Pandagreen provides Individual C&I Waste Collection Services on the date of the Determination in the areas of: Collon; Ardee; Dunleer; Dundalk/Blackrock; and Castlebellingham.

“**Divestment Package**” means the business consisting of the items listed in the Appendix to the Proposals;

“**Exomex**” means Exomex (Ireland) Limited.

**“Heads of Agreement”** means the heads of agreement entered into between Pandagreen and Thorntons dated 27 September 2021, which relates to the proposed acquisition by Thorntons of the Divestment Package;

**“Individual C&I Waste Collection Services”** means waste collection services provided to businesses and other non-domestic/residential customers, excluding customers whose relationship with Pandagreen requires collection of waste at multiple sites.

**“Material Change”** means a change whereby a purchaser of the Divestment Package no longer fulfils the requirements of a “Suitable Purchaser”, as defined below;

**“Notification Form”** means the merger notification form submitted to the Commission on 9 April 2021 in relation to the Proposed Transaction;

**“Pandagreen”** means Pandagreen Limited;

**“Proposed Transaction”** means the proposed acquisition by Pandagreen of sole control of Exomex as notified to the CCPC on 9 April 2021; and

**“Share Purchase Agreement”** means the agreement between Pandagreen and the sellers of Exomex, dated 1 April 2021 (a copy of which was provided to the CCPC with the Notification Form);

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

1) the acquisition by the purchaser of the Divestment Package 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 Pandagreen and Exomex;

3) the purchaser (or, in the case of separate purchasers, each purchaser) is able to maintain and develop the Divestment Package as an active competitive force; 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 Individual C&I Waste Collection Services to the Divestment Customers;

**“Thorntons”** means Pdraig Thornton Waste Disposal Limited, trading as “Thorntons Recycling”;

**“Trustee”** means the trustee approved by the CCPC in accordance with clause 4 of Part II of these Proposals.



**B. The Proposal to Divest**

2. Pandagreen undertakes, subject to the provisions set out herein, to effect the sale of the Divestment Package to Thorntons within [...] of the Determination.
- 2.1 Pandagreen agrees with the CCPC that the sale of the Divestment Package to Thorntons shall be upon the basis of the broad terms set out in the Heads of Agreement. Pandagreen shall immediately inform the CCPC if Thorntons exercises its rights in accordance with the Heads of Agreement to decide not to proceed with the acquisition of the Divestment Package.
- 2.2 Pandagreen shall be deemed to have complied with paragraph 2 above if, within a [...] period 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 the Divestment Package to Thorntons (subject to due diligence, regulatory permits and any other necessary conditions not within the control of Pandagreen or Thorntons provided that such sale is completed within a [...] period from the date of the binding contract (or such longer period as may be allowed by the CCPC).
- 2.3 Pandagreen shall immediately inform the CCPC if, having entered into a binding contract with Pandagreen for the acquisition of the Divestment Package, Thorntons exercises any relevant rights it has pursuant to such binding contract not to proceed with the acquisition of the Divestment Package.
- 2.4 When Pandagreen and Thorntons have entered into a binding contract for the sale of the Divestment Package, Pandagreen shall submit to the Trustee and the CCPC a copy of the binding contract together with a fully documented and reasoned report which enables the Trustee and the CCPC to verify that the conditions laid down in these Proposals are fulfilled and that there has been no Material Change to Pandagreen's knowledge since the Determination, subject to the CCPC agreeing to keep confidential all such information received.
- 2.5 Within two (2) weeks of the receipt by the Trustee and the CCPC of the binding contract for the sale of the Divestment Package and accompanying fully documented and reasoned report in accordance with paragraph 2.4, 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 as provided for in paragraph 2.4. If the CCPC does not communicate its approval or non-approval within thirty days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally.
- 2.6 Pandagreen recognises that, if at any time prior to completion of the sale of the Divestment Package to Thorntons the CCPC reasonably considers on the basis of information available to it that there has been a Material Change, the CCPC may withdraw its approval of Thorntons as a Suitable Purchaser of the Divestment Package. In the event that the CCPC withdraws its approval of Thorntons as a Suitable Purchaser of the Divestment Package as provided for in this paragraph, the procedure

provided for in paragraph 3 of these Proposals shall be followed.

**C. Divestment by Pandagreen to an Alternative Purchaser or Purchasers**

3. Pandagreen undertakes, subject to the provisions set out herein, to effect the sale of the Divestment Package 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:
- (a) if the CCPC withdraws its approval of the suitability of Thorntons as a purchaser of the Divestment Package for the reasons referred to in paragraph 2.6 of these Proposals;
  - (b) if Pandagreen informs the CCPC, pursuant to paragraph 2.1 of these Proposals, that Thorntons has exercised its rights in accordance with the Heads of Agreement not to proceed with the acquisition of the Divestment Package;
  - (c) if four (4) months (or such longer period as may be agreed by the CCPC) have elapsed after the date of the Determination without Pandagreen having entered into a binding agreement with Thorntons for the disposal of the Divestment Package; or
  - (d) if, having entered into a binding agreement with Thorntons for the acquisition of the Divestment Package, Pandagreen informs the CCPC, pursuant to paragraph 2.3 of these Proposals, that Thorntons has exercised its rights pursuant to such binding agreement not to proceed with the acquisition of the Divestment Package.
- 3.2 Pandagreen agrees with the CCPC that the sale of the Divestment Package shall be upon such conditions as the CCPC may reasonably consider proper and that the sale of the Divestment Package to a prospective purchaser (or purchasers) must not be likely to create, in light of information available to the CCPC, *prima facie* competition concerns.
- 3.3 Pandagreen agrees that for a prospective purchaser (or purchasers) to obtain the CCPC's approval, such purchaser (or purchasers) shall:
- (a) be unconnected to and independent of Pandagreen and Exomex;
  - (b) be able to maintain and develop the Divestment Package as an active competitive force; and
  - (c) have, or be reasonably likely to obtain, all permits and access to assets required to provide Individual C&I Waste Collection Services to the Divestment Customers.



- 3.4 Pandagreen shall be deemed to have complied with paragraph 3 of these Proposals if, within a [...] period after the occurrence of any one of the events set out in paragraph 3 above (or such longer period as may be allowed by the CCPC or as may result from the delays referred to in paragraph 3.8 below), it has entered into a binding contract for the sale of the Divestment Package to a single prospective purchaser, or alternatively to separate prospective purchasers (subject to due diligence, regulatory permits and any other conditions not within the control of Pandagreen or the purchaser(s)), provided that each such sale is (or sales are) completed within a [...] period from the date of the relevant binding contract (or such longer period as may be allowed by the CCPC).
- 3.5 Pandagreen shall immediately inform the Trustee and the CCPC if, having entered into a binding contract with Pandagreen for the acquisition of the Divestment Package, a prospective purchaser exercises any relevant rights it has pursuant to the binding contract not to proceed with the proposed acquisition.
- 3.6 Pandagreen shall:
- (a) promptly inform the Trustee and the CCPC in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase the Divestment Package, and to whom Pandagreen is seriously considering the sale of the Divestment Package, in order to enable the Trustee and the CCPC to verify the suitability of the prospective purchaser or purchasers;
  - (b) when the parties have entered into a binding contract for the sale of the Divestment Package, submit a fully documented and reasoned report relating to the sale to the Trustee and the CCPC (including a copy of the binding contract) in order to enable the Trustee and the CCPC to verify that the conditions laid down in these Proposals are fulfilled and that there has been no Material Change since the CCPC assessed that purchaser's suitability under paragraph 3.6(a), subject to the CCPC agreeing to keep confidential all such information received.
- 3.7 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 3.6(a). Separately, within two weeks of the receipt by the CCPC of a binding contract and accompanying fully documented and reasoned report in accordance with paragraph 3.6(b), 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 as provided for in paragraph 3.6(b).
- 3.8 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 and/or report in accordance with paragraph 3.6(a) or paragraph 3.6(b) shall in each case suspend the running of the [...] period established in paragraph 3 above until the CCPC communicates its approval or non-approval. If the

CCPC does not communicate its approval or non-approval within thirty days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally.

- 3.9 In the case of a plurality of offers from prospective purchasers to whom the CCPC does not object, Pandagreen shall be free to accept any offer or to select the offer it considers best.
- 3.10 The sale of the Divestment Package shall not prevent or delay the Completion.

#### **D. The Divestment Package**

##### ***The Divestment***

4. Pandagreen undertakes to dispose of the entirety of the Divestment Package.
5. Pandagreen further undertakes that, for a period of [...] from the date of completion of the sale of the Divestment Package in accordance with paragraph 2 (or as applicable paragraph 3) of these Proposals, Pandagreen will not actively canvass or solicit any Divestment Customer in relation to the provision of Individual C&I Waste Collection Services. For the avoidance of doubt, this does not preclude Pandagreen from responding to an unsolicited request from a Divestment Customer to provide Individual C&I Waste Collection Services or from conducting general marketing activities which are not specifically targeted at the Divestment Customers. During the relevant [...] period referred to in this paragraph 5 of these Proposals (the “**Non-solicitation Period**”):
- (a) in the event that a Divestment Customer submits an unsolicited request to Pandagreen for a quotation for the provision of Individual C&I Waste Collection Services by Pandagreen, Pandagreen shall respond in writing in a timely manner (the “**Offer**”). If the Offer is accepted Pandagreen shall not, during the Non-solicitation Period, subsequently amend the price or terms and conditions for the provision of the Individual C&I Waste Collection Services contained in the Offer, although Pandagreen may provide clarifications on the Offer, which must also be in writing, in response to a specific query received from that same Divestment Customer. Pandagreen shall not comment on the prices or terms and conditions offered by a competing supplier of Individual C&I Waste Collection Services if asked to do so by a Divestment Customer. Pandagreen shall retain copies of the Offer and written responses for a period of [...] after communication to the relevant Divestment Customer and must provide copies of the Offer and written responses to the CCPC upon the request of the CCPC;
- (b) Pandagreen shall submit to the CCPC within six (6) months after the date of the Determination a written report (the “**First Report**”) demonstrating Pandagreen’s compliance with its obligations set out in paragraph 5(a) of these Proposals since the date of the Determination. Pandagreen shall submit to the CCPC within six (6) months after the date of submission of the First Report and at intervals of six (6) months thereafter, a written report





(each, a “**Compliance Report**”) demonstrating Pandagreen’s continued compliance with its obligations set out in paragraph 5(a) of these Proposals until the expiry of six (6) months after the Non-solicitation Period. 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 Individual C&I Waste Collection Services received by Pandagreen from Divestment Customers during the preceding six (6) month period; (ii) how Pandagreen dealt with each such unsolicited request received from a Divestment Customer during the preceding six (6) month period, including the price and terms and conditions for the provision of Individual C&I Waste Collection Services contained in any Offer made by Pandagreen to a Divestment Customer and clarifications on any Offer made by Pandagreen; (iii) the total number of Divestment Customers who, as a result of an unsolicited request to Pandagreen, commenced receiving Individual C&I Waste Collection Services from Pandagreen during the preceding six (6) month period.

6. Pandagreen confirms that it will not impose, as a condition of sale of the Divestment Package, an obligation on the purchaser to acquire any associated assets or staff from Pandagreen (except where such assets or staff are requested by the purchaser to be included and agreed by Pandagreen).

***Interim Position of the Divestment Package***

7. Following the Determination and pending the sale of the Divestment Package, Pandagreen undertakes to continue to provide Individual C&I Waste Collection Services to the Divestment Customers and to preserve the economic viability, marketability, and competitiveness of the Divestment Package until the date of divestment in accordance with good commercial practice.
8. Pandagreen undertakes to protect the value of the Divestment Package during the period from the date of the Determination until the date of divestment of the Divestment Package and, more specifically:
  - (i) to continue to operate the collection routes that service the Divestment Customers in the manner it had done in the twelve (12) months prior to the Determination and without any material reduction in service quality for the Divestment Customers, except where it can be demonstrated by reference to circumstances outside Pandagreen’s control that this was not possible; and
  - (ii) to refrain from terminating any contracts with any of the Divestment Customers (other than for breach of a term or terms of the relevant contract giving rise to a termination right thereunder).

For the avoidance of doubt, the foregoing obligations in paragraphs 7 and 8 shall cease immediately on divestiture of the Divestment Package or (where relevant and appropriate) at such later time as may be agreed between Pandagreen and the purchaser of the Divestment Package.



9. Pandagreen undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of the Divestment Package until the date of its divestment. Further, Pandagreen undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of the Divestment Package.

***Review clause***

10. 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 Pandagreen or, if applicable, 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 Pandagreen or, if applicable, the Trustee showing good cause waive, modify or substitute, in exceptional circumstances, any provision in these Proposals.

***Continued Separation***

11. Pandagreen undertakes not to acquire any interest in Thorntons for a period of [...] following the date of the completion of the sale of the Divestment Package to Thorntons pursuant to these Proposals. Alternatively, in the event that Thorntons does not acquire the Divestment Package for one or more of the reasons set out in paragraph 3 of these Proposals and the Divestment Package is acquired by one or more alternative purchasers who have been approved by the CCPC in accordance with paragraph 3.7 or paragraph 3.8 of Part I or paragraph 9 of Part II of these Proposals, Pandagreen undertakes not to acquire any interest in the purchaser(s) of the Divestment Package for a period of [...] following the date of the completion of the sale of the Divestment Package (or relevant portion of the Divestment Package) pursuant to these Proposals.
12. Pandagreen undertakes that if it attempts by entering into a legally binding agreement, for a period of [...] following the expiry of the [...] period referred to in paragraph 11 of these Proposals, to acquire any interest in:
- (a) Thorntons; or
  - (b) in the event that Thorntons does not acquire the Divestment Package for one or more of the reasons set out in paragraph 3 of these Proposals, the purchaser(s) of the Divestment Package,

Pandagreen 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)

***Applicable Laws***



13. Pandagreen undertakes to ensure that the divestment of the Divestment Package is conducted in a manner that complies with all applicable laws, including without limitation data protection law, contract law and consumer protection law. Pandagreen shall procure that Thorntons or any other prospective purchaser(s) of the Divestment Package takes all necessary steps to ensure that the divestment of the Divestment Package is conducted in a manner that complies with all applicable laws, including without limitation data protection law, contract law and consumer protection law.

## APPENDIX TO THE PROPOSALS

The Divestment Package includes the following:

- (i) all books, records and correspondence relating to the Divestment Customers, including the full name, address and contact details of each Divestment Customer and any other relevant information relating to each Divestment Customer (including but not limited to account number, number and type of bins, billing frequency, billing charge, billing date, payment method, debtor balance and prepaid calculation), which are maintained by Pandagreen at the date of the Determination;
- (ii) the rights, interest and obligations under all contracts between Pandagreen and each of the Divestment Customers for the provision of Individual C&I Waste Collection Services which are in force at the date of the Determination;
- (iii) the bins at the sites of the Divestment Customers; and
- (iii) all debts (if applicable, less any deferred income calculated upon closing of the sale of the Pandagreen businesses) in respect of the Divestment Customers which are outstanding at the date of the Determination.

## PART II – APPOINTMENT OF TRUSTEE IN RESPECT OF THE PROPOSALS

### *Appointment of a Trustee*

1. Within ten (10) working days of the Determination being notified to Pandagreen, Pandagreen will propose to the CCPC a trustee, who is independent of Pandagreen and Exomex (the “**Proposed Trustee**”). The appointment of the Proposed Trustee is subject to the approval of the CCPC (such approval not to be unreasonably withheld). 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.
2. If the Proposed Trustee is rejected, Pandagreen will propose the name of a new trustee (the “**New Trustee**”) within five working days of being informed of the rejection. If the CCPC does not reject the New Trustee by notice in writing to Pandagreen within five working days of the new proposal, the New Trustee shall be deemed to have been approved.
3. If the New Trustee is rejected by the CCPC, the CCPC shall nominate a suitable trustee (the “**CCPC Trustee**”) within five working days which Pandagreen will appoint or cause to be appointed.

### *Trustee’s Mandate*

4. Within five 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, Pandagreen shall enter into a mandate agreement 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 carry out the mandate described in paragraphs 6 and 9 of Part II of the Proposals (the “**Mandate**”).
5. The Trustee shall be independent of Pandagreen and Exomex, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
6. Throughout the duration of the Trustee’s appointment, the Trustee shall, in respect of the Proposals:
  - (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 appointment of the Trustee, or at such other times or time periods as the CCPC may specify and are notified in writing to Pandagreen. Pandagreen shall receive a non-confidential copy of such Trustee Reports;



- (ii) monitor and advise the CCPC as to the development of the procedure for selecting a purchaser and as to the conduct of the negotiations;
  - (iii) monitor the maintenance of the nature, description, range and standard of the Individual C&I Waste Collection Services provided to the Divestment Customers by Pandagreen from the date of the Determination until completion of the sale of the Divestment Package;
  - (iv) monitor and advise the CCPC as to the effectiveness of the process by which the Divestment Customers are transferred to the purchaser; and
  - (v) monitor and advise the CCPC as to whether Thorntons or any other prospective purchaser(s) with whom Pandagreen or the Trustee intends to negotiate are likely to be, and pending completion of sale continue to be, a Suitable Purchaser, including providing a written report to the CCPC within five working days of receipt of a fully documented and reasoned proposal from Pandagreen, pursuant to clause 3.6(a) of Part I of these Proposals, verifying the suitability of a prospective purchaser or purchasers;
  - (iv) provide a written report to the CCPC within 5 working days of receipt of a fully documented and reasoned report from Pandagreen, pursuant clause 2.4 and/or clause 3.6(b) of Part I of these Proposals, verifying whether the requirements set out in these Proposals have been fulfilled and that there has been no Material Change.
7. The Trustee's duties and functions as set out above shall not be extended or varied in any way by Pandagreen, save with the express consent of the CCPC. Any instruction or request to the Trustee from Pandagreen which conflicts with the terms of the Mandate, and the duties and functions as set out above, will be considered null and void.
8. 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 Pandagreen is first given a reasonable opportunity to comment on any such orders or instructions in advance.
9. In the circumstances specified below, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Divestment Package to one prospective purchaser, or alternatively for the sale of the Divestment Package to one or more prospective purchasers, at no minimum price and upon such terms and conditions as it considers appropriate for an expedient sale to a viable and independent third party (subject to the CCPC having approved both the purchaser and the binding letter of intent or binding contract for the divestment of the Divestment Package in accordance with paragraphs 3.6, and paragraphs 3.7 or 3.8 of Part I of the Proposals):



- (i) If four (4) months (or such longer period as may be agreed by the CCPC or as may result from the delays referred to in paragraph 3.8 of these Proposals) have elapsed after the date of the occurrence of any one of the events set out in paragraph 3 above without Pandagreen having entered into a binding contract for the disposal of the entirety of the Divestment Package; or
- (ii) if a sale pursuant to a binding contract referred to in (i) above has not completed within a two (2) month period from the date of the relevant binding contract (or such longer period as may be allowed by the CCPC), or any prospective purchaser referred to in section C (i.e. an Alternative Purchaser or Purchasers) of these Proposals exercises any relevant rights it has pursuant to any binding contract with Pandagreen not to proceed with the proposed acquisition within that two (2) month period.

The Trustee shall have regard to the legitimate financial interests of Pandagreen in respect of such divestment, subject to Pandagreen's unconditional obligation to divest the Divestment Package at no minimum price.

#### **Miscellaneous**

10. Pandagreen will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with these Proposals. Pandagreen will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Pandagreen as the Trustee may require in carrying out its Mandate, and will pay reasonable remuneration for the Trustee's services.
11. In addition, at the expense of Pandagreen, the Trustee may (during the trustee divestment period referred to in paragraph 9 above) appoint advisors (in particular for corporate finance or legal advice), subject to Pandagreen'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 Pandagreen refuse to approve the advisors proposed by the Trustee, the CCPC may approve the appointment of such advisors instead, after first having heard Pandagreen. Only the Trustee shall be entitled to issue instructions to the advisors.
12. 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 Pandagreen.
13. Pandagreen 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 Pandagreen 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, fraud, or bad faith of the Trustee, its employees, agents or advisors.

14. The Mandate and the Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Pandagreen announces that the Proposed Transaction has been irrevocably abandoned.
15. The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.

***Review clause***

16. The CCPC may at its sole discretion extend any of the time periods provided for in relation to the appointment of the Trustee in response to a reasoned request from Pandagreen 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 Pandagreen or the Trustee showing good cause waive, modify or substitute, in exceptional circumstances, any provision in relation to the appointment of the Trustee.