

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 964

1 October 2021

## COMPETITION COMMISSION

## NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:

AVERDA SOUTH AFRICA PROPRIETARY LIMITED

AND

A- THERMAL RETORT TECHNOLOGIES (PTY) LTD, AND A- THERMAL RESOURCES  
(PTY) LTD AND CECOR ALLIED TECHNOLOGIES (PTY) LTD

2020AUG0002

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission', that it has prohibited the transaction involving the above-mentioned firms:

1. The primary acquiring firm is Averda South Africa (Pty) Ltd ("Averda SA"), a firm incorporated in South Africa. Averda SA is in turn jointly controlled by Averda Holdings SA (Pty) Ltd ("Averda Holdings"), BPESAM II Limited ("BPESAM") and Clearwater Finance No 1 (Pty) Ltd ("Clearwater Finance").
2. Averda Holdings is wholly controlled by Averda Holdings A1 Limited, which in turn is wholly controlled by Averda Holdings International Limited ("Averda International"). Averda International is controlled by Envirohold Limited and GrowthGate Capital Corporation BSC, whose respective shares are widely held. BPESAM is controlled by Summit Trust (Mauritius) Limited whilst Clearwater Finance is controlled by Clearwater Capital Holdings (Pty) Ltd.

3. Averda SA controls several firms in South Africa. Averda SA, the firms controlled by Averda SA, the firms controlling Averda SA and all the firms controlled by those firms, will collectively be referred to as the "Averda".
4. The primary target firms are A-Thermal Retort Technologies (Pty) Ltd ("A-Thermal"), A-Thermal Resources (Pty) Ltd ("A-Thermal Resources") and Cedor Allied Technologies (Pty) Ltd ("Cedor"). A-Thermal, A-Thermal Resources and Cedor are collectively referred to as the "Target Firms".

#### **Activities of the parties**

5. Averda is an end-to-end provider of waste management services globally and in South Africa. Averda's activities in South Africa include the collection, transportation, treatment and disposal of general waste (domestic and industrial) and hazardous waste management (which includes general hazardous and hazardous healthcare waste management). Of relevance to this merger assessment is that Averda operates several waste treatment facilities which treat hazardous waste using burn technology (i.e. incineration) and non-burn technologies (e.g. electro thermal deactivation) to treat/neutralise waste. Averda owns the Vlakfontein and Bulbul Class A landfills located in Gauteng and in KwaZulu-Natal respectively, which themselves are a means of disposing hazardous waste as well as the Class B Genesis landfill in Gauteng. Averda's waste treatment facilities are located in Gauteng, North West and Western Cape as set out in Table 1 below.

**Table 1: Description of the Averda treatment facilities**

<b>Name of facility</b>	<b>Location of facility</b>
Averda Healthcare City Deep	Unit 7, Production Park, 83 Heidelberg Rd, Johannesburg
Averda Healthcare Klerksdorp	Goudweg str, Dawkinsville, Klerksdorp
Averda Healthcare Killarney	5 Hunt Rd, Killarney Gardens, Cape Town, 7441
Averda Healthcare George	1 Ring Road. George Industrial, George, 6529

6. The Target Firms, through A-Thermal, operate an incinerator which can treat all forms of healthcare risk waste. A-Thermal also operates a thermal desorption facility which is a form of burn technology that treats waste via pyrolysis technology. Unlike an incinerator, the waste is not combusted but destroyed. The thermal desorption plant is licensed by the Department of Environment, Forestry and Fisheries ("DEFF") to treat hazardous pharmaceutical and chemical waste. Through Cedor, the Target Firms operate an autoclave which is a technology that treats healthcare risk waste such as medical sharps via

disinfection. The Target Firms' waste treatment facilities are located in Gauteng, as depicted in Table 2 below.

**Table 2: Description of the Target Firms treatment facilities**

<b>Firm</b>	<b>Location of facility</b>
A-Thermal	28 Keramiek Street, Olifantsfontein, Johannesburg
A-Thermal	28 Keramiek Street, Olifantsfontein, Johannesburg
Cecor	30 Keramiek Street, Olifantsfontein, Johannesburg

### **Relationship between the parties**

7. The merging parties' activities overlap horizontally in the provision of treatment of general hazardous waste and hazardous healthcare waste (referred to as healthcare risk waste). It bears mention that the Target Firms are only active at the treatment level of the waste management value chain.
8. There is also a vertical overlap as Averda is active in the collection and transportation of waste (which takes place prior to treatment) and in the disposal of treated waste in landfills (which take place after treatment).

### **Market definition**

9. The Commission considered local and international jurisprudence when considering the relevant product market. However, the demand and supply side assessment conducted indicates that the DEFF's licensing regime determines the technology (i.e. burn or non-burn) that can be utilised to treat specific waste streams. Within the healthcare risk waste stream, which is the area of overlap between the merging parties, non-burn technologies can only treat infectious waste and sharps waste. Incinerators on the other hand can treat a broad category of healthcare waste including infectious waste, sharps waste, pharmaceutical waste and anatomical waste. Thermal desorption can only treat pharmaceutical waste within the healthcare waste stream.
10. The merging parties both treat general hazardous waste and healthcare risk waste. The more significant overlap between the merging parties is regarding the treatment of healthcare risk waste and this was thus the primary (but not only) focus of the merger assessment.

11. In previous cases, the competition authorities considered a broad market for the treatment of healthcare risk waste using both burn and non-burn technologies. This was predicated on the basis that a large proportion (at least 85%) of healthcare risk waste treated is infectious and sharps waste, which can be treated using both burn and non-burn technology. In this case, the Commission found evidence indicating segmentation between burn and non-burn technologies in the treatment of various streams of healthcare risk waste. Specifically, the Commission found that anatomical and pharmaceutical healthcare waste streams (which constitute 4% and 6% of volumes treated) are only capable of being treated by burn technology.
12. A large part of this transaction, including its rationale, pertains to thermal desorption technology which relates to the treatment of only pharmaceutical waste within the healthcare risk waste streams. If the competitive assessment only considered a broad market for burn and non-burn technology this would essentially inflate the alternative technologies available to treat pharmaceutical waste and anatomical waste. In order to properly assess the impact of the merger in the areas of overlap between the merging parties, and in light of the rationale for the merger which is explicitly linked to the acquisition of unique thermal desorption technology, one would need to consider the technologies available to treat various healthcare risk waste streams. It is therefore on this basis that the Commission also segments the market by waste streams to take into account the technologies that can treat the specific waste streams.
13. However, the Commission also considered the fact that some waste generators produce a mix of waste and that waste management companies would deal with a mix of waste which can be treated using burn and non-burn technologies. Therefore, the portfolio of waste treatment facilities / technologies at a particular firms' disposal is relevant when assessing the ability of competing firms to compete and the extent to which competing firms depend on each other's facilities.
14. For purposes of assessing the proposed transaction, the Commission considered products markets at both a broad and narrow level. The Commission considered product markets by the methods of waste treatment and narrower product markets by type of waste treated. The relevant markets to be considered are outlined below.

- 14.1. The market for the treatment of healthcare risk waste using burn and non-burn technologies
  - 14.2. The market for the treatment of healthcare risk waste using burn-technologies.
  - 14.3. The market for the treatment of healthcare risk waste using non-burn technologies.
  - 14.4. The market for the treatment of pharmaceutical waste using burn technologies.
  - 14.5. The market for the treatment of anatomical/pathological waste using burn incineration technologies.
  - 14.6. The market for the treatment of infectious and sharps waste using non-burn and burn incineration technologies.
15. In determining the geographic scope, the Commission considered international and local precedent but was primarily guided by interactions with competitors and customers of the merging parties. While not concluding on the scope of the relevant market, the Commission deemed it appropriate to consider each of the product market overlaps from the perspective of (i) a national scope; and (ii) a narrower geographic scope comprised of the inland provinces of Gauteng, Limpopo, Mpumalanga, North West, Free State as well as KwaZulu-Natal. The competition assessment however focussed on the narrower market. Within this narrower geographic market, the Commission still considers the extent to which some treatment facilities outside of Gauteng actually compete for Gauteng generated waste and the transport costs of utilising those facilities.

#### **Market share assessment**

16. The Commission estimated market shares of the merging parties and their competitors based on (i) the annual installed treatment capacity of each technology for each competitor and (ii) volumes treated by each competitor in respect of its technologies. The Commission based its estimates on data obtained from DEFF which is collected as part of the reporting required for healthcare risk waste treatment facilities.

*National Market share estimates for the treatment of healthcare risk waste for burn and non-burn technology 2019.*

17. The Commission found that the merged entity will have an estimated combined market share of approximately 39% - 49% with an accretion of approximately 2% - 12%. The

Commission found that the merged entity will have high market shares post-merger. Although there are other players in the treatment of healthcare risk waste for burn and non-burn technology nationally, the Commission found that capacity at any point in time is uncertain.

*Market share estimates for the treatment of healthcare risk waste for burn and non-burn technology 2019 in respect of the narrower geographic market.*

18. The Commission found that the merged entity will have estimated combined market shares of approximately 38% - 48% with an accretion of approximately 4% - 14%. The Commission found that the merged entity will have high market shares post-merger. Although there are other players in the treatment of healthcare risk waste using burn and non-burn technology in the inland region, the Commission found that capacity at any point in time is uncertain.

*National market share estimates for healthcare risk waste based on treatment capacity for burn technology 2019*

19. The Commission found that the merged entity will have estimated combined national market shares of approximately 58% - 68% with an accretion of approximately 36% - 46%. The Commission found that the merged entity will have high market shares post-merger.

*Market share estimates for healthcare risk waste based on treatment capacity for burn technologies for 2019 in respect of the narrower geographic market*

20. The Commission found that the merged entity's market shares will be approximately 58% - 68% with an accretion of approximately 41% - 51%. The Commission found that the merged entity will have high market shares post-merger.

*National market share estimates for healthcare risk waste based on volumes treated using burn technologies*

21. The Commission found that the merged entity will have market shares of approximately 51% - 61% with an accretion of approximately 12% - 22% based on 2018 figures and approximately 54% - 64% with an accretion of approximately 11% - 21% based on 2019

figures. The Commission found that the merged entity's market shares and market share accretions are high even in respect of the actual volumes treated using the burn technology. Although there are other players in the treatment of healthcare risk by volume of waste treated nationally, the Commission found that capacity at any point in time is uncertain.

*Market share estimates for healthcare risk waste based on volumes treated using burn technologies in respect of the narrower geographic market*

22. The Commission found that the merged entity will have estimated combined market shares of approximately 54% - 64% with an accretion of approximately 14% - 24% based on 2018 figures and approximately 58% - 68% with an accretion of approximately 13% - 23% based on 2019 figures.. The merged entity's market shares and market share accretions are high even in respect of the actual volumes treated using the burn technology.

*National market share estimates for healthcare risk waste based on treatment capacity for non-burn technologies 2019*

23. The Commission found that the merged entity will have an estimated combined national market shares of approximately 24% - 34% with an accretion of approximately 5% - 15%. Although there are other players treating healthcare risk nationally, the Commission found that their capacity at any point in time may be uncertain.

*Market share estimates for healthcare risk waste based on treatment capacity for non-burn technologies in 2019 in respect of the narrower geographic market*

24. The Commission found that the merged entity will have estimated combined market shares of approximately 20% - 30% with an accretion of approximately 7% - 17%. Although there are other players treating healthcare risk in the inland region, the Commission found that capacity at any point in time may be uncertain.

*National market share estimates for healthcare risk waste based on volumes treated using non-burn technologies*

25. The Commission found that merged entity will have estimated combined national market shares of approximately 26% - 36% with an accretion of approximately 1% - 5% based on 2018 figures and approximately 31% - 41% with an accretion of approximately 2% - 6% based on 2019 figures. Although there are other players treating healthcare risk nationally using non-burn technology, the Commission found that capacity at any point in time may be uncertain.

*Market share estimates for healthcare risk waste based on volumes treated using non-burn technologies in respect of the narrower geographic market*

26. The Commission found that the merged entity will have estimated combined national market shares of approximately 20% - 30% with an accretion of approximately 1% - 5% based on 2018 figures and approximately 27% - 37% with an accretion of approximately 3% - 7% based on 2019 figures.

*National market share estimates for the treatment of pharmaceutical waste using burn technologies*

27. The Commission found that the merged entity will have estimated combined national market shares of approximately 81% - 91% with an accretion of approximately 70% - 80% based on 2018 figures and approximately 74% - 84% with an accretion of approximately 67% - 77% based on 2019 figures. The Commission notes that Averda is the third largest company treating pharmaceutical waste (with the Target Firms being the largest). Although there are other players treating pharmaceutical waste nationally using burn technology, the Commission found that capacity at any point in time may be uncertain especially using incinerators.

*Market share estimates for the treatment of pharmaceutical waste using burn technologies in respect of the narrower geographic market*

28. The Commission found that the merged entity will have estimated combined market shares of approximately 82% - 92% with an accretion of approximately 72% - 82% based on 2018 figures and approximately 75% - 85% with an accretion of approximately 68% - 78% based



on 2019 figures. Pre-merger, Averda is the third largest company treating pharmaceutical waste behind the Target Firms.

*National market share estimates for the treatment of anatomical waste using burn (incineration) technology*

29. The merged entity will have estimated combined national market shares of approximately 18% - 28% with no accretion based on 2018 figures and approximately 35% - 45% with an accretion of approximately 1% - 3% based on 2019 figures. The above shows that A-Thermal did not treat any anatomical waste in 2018 and treated very minimal volumes of anatomical waste in 2019.

*Market share estimates for the treatment of anatomical waste using burn incineration technologies in respect of the narrower geographic market*

30. The merged entity will have estimated combined market shares of approximately 19% - 29% with no accretion based on 2018 figures and approximately 30% - 40% with an accretion of approximately 1% - 3% based on 2019 figures. The above shows that A-Thermal did not treat any anatomical waste in 2018 and treated very minimal volumes of anatomical waste in 2019.

*National market share estimates for the treatment of infectious and sharps waste using burn and non-burn technologies*

31. The merged entity will have estimated combined national market shares of 30% - 40% with an accretion of approximately 1% - 5% based on 2018 figures and approximately 36% - 46% with an accretion of approximately 1% - 5% based on 2019 figures... There are other players treating infectious and sharp waste nationally using burn and non-burn technology.

*Market share estimates for the treatment of infectious and sharps waste using burn and non-burn technologies in respect of the narrower geographic market*

32. The merged entity will have estimated combined market shares of approximately 26% - 36% with an accretion of approximately 1% - 5% based on 2018 figures and approximately

35% - 45% with an accretion of approximately 2% – 7% based on 2019 figures. There are other players treating infectious and sharp waste in the inland region using burn and non-burn technology.

### **Competition analysis**

#### **Substitution between thermal desorption and incineration**

33. The Commission found that both incinerators and thermal desorption facilities are licensed to treat pharmaceutical waste. The Commission learnt that incinerators treat a lower volume of pharmaceutical waste because of mechanical and air emission limitations. The assessment found that while incinerators do have technology in place (in the form of filtration systems) to assist in reducing the pollutants emerging from treating pharmaceutical waste, incinerator operators remain cognisant of ensuring that an optimal mix of healthcare risk waste treated is achieved to allow for incinerating facilities to not breach their air emissions targets.
34. Therefore, while there are some limitations to volumes of pharmaceutical waste that incinerators can treat, functionally, the two are interchangeable. This is evidenced by the fact that the merging parties both treat pharmaceutical waste using different burn technologies.
35. From a pricing perspective, the Commission found that thermal desorption is able to attract a price premium above incineration. A-Thermal charges a price that is roughly in the range of 27% to 47% above Averda's prices for the treatment of pharmaceutical waste. However, incineration remains an option for pharmaceutical customers of A-Thermal and price is still a factor which is considered by these customers.
36. On the basis of the evidence gathered, the Commission concludes that there is substitution between thermal desorption and incinerators for the treatment of pharmaceutical waste and pricing of each technology is likely to be constrained by the other.

#### **Unilateral effects**

37. The Commission has considered the extent to which unilateral effects may arise post-merger. This assessment is done under the context of the high market shares likely to

emerge post-merger. Further, the Commission is cognisant that the merger will result in Averda acquiring additional burn technology capacity. The unilateral effects assessment considered the extent to which the additional burn technology capacity may make the merged entity's competitors more reliant on it for access to burn technology capacity for the treatment of healthcare risk waste (particularly in situations where there are capacity constraints due to maintenance of their own facilities, or volumes).

38. The Commission found that capacity levels for the burn treatment of healthcare risk waste using burn technology are currently constrained and there are uncertainties regarding capacity restoration in the market. In light of this, the Commission found that there is limited spare capacity available in the market. The Commission also recognises that the capacity availability is also further constrained by plant breakdowns and air emission limitations of incinerators. The Commission considered the extent to which there may be a change in incentive to Averda post-merger given the limited available capacity in the market.
39. The Commission first considered the revenue generated from top 20 customers in 2019 for Averda. It was found that a large proportion of the revenue earned at the Klerksdorp facility is derived from the services provided to competing firms. Specifically, at least **[Confidential]** of Averda's revenues are derived from competitors at its Klerksdorp incineration facility.
40. Currently, the only competitor to utilise A-Thermal's incinerator was **[Confidential]** (A-thermal earned a revenue of **[Confidential]** from the services provided) whilst **[Confidential]** also makes use of the Target for general hazardous waste. Whilst the reliance of **[Confidential]** on the Target is not currently healthcare risk waste, the Commission is of the view that the reliance between the two remains relevant insofar as dependency on the merging parties by its waste management competitors in healthcare risk waste (or other hazardous waste) creates the ability to impact on their costs of treatment and facilitate collusive outcomes. Furthermore, as discussed next, waste management competitors and waste treatment competitors require 'back up' and access to capacity if they are to successfully tender for waste management contracts with generators. The target still remains one of those options even if not utilised currently which will be removed from the market even if currently A-Thermal is not relied upon by (and does not rely on) competitors as an alternative provider of healthcare risk waste treatment services in the same way competitors rely on Averda.

41. The Commission found that it is a feature of the waste treatment sector that competitors subcontract waste treatment to each other. At the treatment plant level, this occurs in instances where their own burn technology capacity is unavailable due to high volumes or maintenance or breakdowns. The foregoing market participants also indicate that the DEFF requires market participants to have a 'back-up' in the form of agreements with competitors for the treatment of healthcare risk waste for similar reasons.
42. At a waste management level of the market, many waste management companies may lack their own incineration capacity or be constrained in that regard. It bears mention that for the purposes of tenders, customers typically require bidders to indicate alternative facilities where waste can be treated in the event that the bidder's own capacity is unavailable or where the bidder either lacks its own burn technology or lacks sufficient capacity at its own facility. Further, participants who lack a specific type of waste treatment technology can still participate in tenders, provided that those participants do make arrangements to outsource the treatment of such waste to a licensed facility.
43. The Commission is cognisant that merger analysis is forward-looking and as such, a retrospective focus may lose the *potential constraint* that A-Thermal provides to Averda (at least in respect of treating healthcare risk waste using burn technologies). Given the high barriers to entry, acquiring an existing licensed facility is more expedient than investing in additional capacity at an existing facility or a greenfield capacity as that process could take upwards of 4 years.
44. The Commission has considered A-Thermal as a credible alternative in treating healthcare risk waste by competitors. Indeed, a competitor like **[Confidential]** has in place an incineration agreement with A-Thermal. Further, the role of A-Thermal is particularly important when we consider the fact that rival competitors to Averda's incineration facility appear to have limited spare capacity and other potential competitors are either experiencing mechanical issues with their facilities and additional capacity may take years to be commissioned due to the stringent and onerous licensing requirements.

45. The Commission is of the view that the removal of A-Thermal as a potential alternative provider of spare burn technology capacity to competitors is likely to change the competitive process and landscape in the market for the treatment of healthcare risk waste.
46. The acquisition of additional incinerator by a vertically integrated player of the magnitude of Averda, given the overall capacity constraints in the market enables the merged entity's ability to withhold supply of capacity to competitors, or price it at a level that makes competing firms less competitive in tendering for contracts. The merged entity may have the ability and incentive to contract on unfair contractual terms with competitors when outsourcing capacity. This may hinder the effective operations of the competitors, particularly SMME and HDI controlled competitors, that traditionally rely on outsourced capacity to effectively compete in the market. This is likely to substantially prevent or lessen competition in the relevant markets post-merger.

*Unilateral effects arising from the broader portfolio of burn (and non-burn) technology available to Averda*

47. The Commission assessed the implications of Averda possessing both thermal desorption and incinerators post-merger.
48. The assessment found that there are two main groups of customers that generate healthcare risk waste, namely, (i) pharmaceutical companies who largely generate pharmaceutical waste and (ii) medical facilities and practitioners who generate different streams of healthcare risk waste. The Commission found that customers that generate different types of waste such as hospitals and medical practitioners prefer to use one supplier to provide the end-to-end treatment of waste.
49. The Commission considered the extent to which the merged entity may benefit from being in a position in which they are able to offer a portfolio of waste treatment capacity and technologies in healthcare risk waste.
50. The Commission is of the view that the likelihood of unilateral effects arising from the increased portfolio of technology available to Averda post-merger is further heightened when considering Averda's strategic rationale and context to the merger. The capacity and

portfolio of technologies used in HCRW places the merged entity in a unique position to contest for generator contracts. This also gives it an ability and incentive to engage in foreclosure of competitors because not only are competitors more dependent on the merged entity, but the capacity and treatment technologies means the merged entity can also benefit from the foreclosure by acquiring the generator contracts.

***Barriers to entry and expansion***

51. The Commission is of the view that barriers to entry into the healthcare hazardous waste markets are high. This is attributed to the significant investment and capital required, the specialist technical knowledge, costly and time-consuming regulatory requirements. Furthermore, the relevant markets have experienced limited entry. Some expansion has been observed but this expansion has not occurred organically but through acquisitions. In addition, the frequency of maintenance and breakdowns in burn technology in particular means that available capacity continually varies, with periods where there is limited capacity and a greater ability to exert market power. The current period is one such occasion where multiple facilities are out of commission simultaneously and are likely to only recommence operation over the next 12 months.

***Countervailing power***

52. Some pharmaceutical waste customers of A-Thermal seem to prefer the thermal desorption technology of A-Thermal to treat pharmaceutical waste. As found in the unilateral effects assessment, there is still substitution between thermal desorption and incinerators in the treatment of pharmaceutical waste despite a premium being charged. Despite the fact that some of the thermal desorption customers appear to be large entities, there is only incineration as the alternative means of treating their pharmaceutical waste. Averda's increased burn technology capacity as well as the limited capacity available to competitors may constrain any countervailing power post-merger.
53. Other healthcare risk waste generators and the waste management companies that service them appear to have limited numbers of reputable burn and non-burn waste treatment providers as alternatives. It is apparent that the bulk of the waste volumes go to more reputable waste treatment providers given the legal responsibility on the waste generator to dispose of the waste. The Target Firms are one such reputable alternative.

54. The Commission is of the view that the identified substantial lessening of competition is likely to negatively impact on the ability of customers to have alternative options in the market.

### **Creeping mergers**

55. In terms of the instant merger, the Commission is of the view that this merger allows for Averda to build a portfolio of waste treatment capacity and technologies in healthcare risk waste in the inland region. This capacity and technology will be unmatched by competitors. Given that competitors have become increasingly reliant on Averda, this merger is likely to further entrench this position. The Commission has also considered the extent of market concentration, Averda's rationale and growth strategy, the cumulative effects of historic transactions on the market structure currently observed as well as the high barriers to entry in place.
56. On this basis, the Commission is of the view that the instant merger is likely to lead to a substantial lessening and prevention in competition. The market is better served by organic growth which brings more capacity into the market and does not negatively alter the structure of the market.

### **History of collusion**

57. The Commission has investigated cartel and enforcement cases involving the acquiring firm, then Wasteman, and its Western Cape joint venture partner, Enviroserv Waste Management (Pty) Ltd ("Enviroserv"). The Commission's investigation found that Wasteman and Enviroserv reached agreement through the Vissershok joint venture about the price at which they will sell waste disposal services to their customers and agreed not to pursue each other's customers and they sustained this arrangement through exchanging cover quotes.
58. While noting that the cartel conduct previously investigated by the Commission pertained to landfills, the Commission notes that there are several features of the healthcare risk waste sector in particular and the waste treatment sector more generally which would be conducive for coordination in that market participants appear to have very frequent interactions and often sub-contract work to each other due to the need to rely on each other's burn technology capacity as well as within the different waste treatment value chains

(i.e. collection and transportation; treatment and disposal). This merger will increase the likelihood of collusion through the removal of an effective and reputable player in the market, leaving only a few players with meaningful capacity. This will make reaching a collusive arrangement easier.

#### **Vertical assessment**

59. The Commission is of the view that the proposed transaction is unlikely to raise any vertical foreclosure concerns whether at the collection and transportation of waste or at the disposal of waste.

#### **Relevant counterfactual**

60. In assessing the relevant counterfactual to the proposed transaction, the Commission has considered the claims made by the merging parties that the relevant counterfactual is **[Confidential]**.
61. The Commission's assessment has revealed that A-Thermal shows increased growth in key metrics over time.
62. The Commission therefore considers the continued presence and operation of A-Thermal as the relevant counterfactual.

#### **Concerns raised by third parties**

63. The Commission received concerns that Averda has the largest portion of the market for the treatment of healthcare risk waste and if the merger is approved, they will further increase their market share in the sector. It is submitted that the merged entity will own and operate 7 or 50% of the plants licensed to treat hazardous healthcare waste in South Africa. In addition, the merger will result in the merged entity having the capacity to treat in the range of 30% - 50% of the country's healthcare hazardous waste. This will result in the merged entity commanding a dominant market position with market shares of between 50% - 60%. This could result in some of the smaller treatment plants no longer being able to compete with the merged entity and the closure of some facilities. Given that the demand for the burn treatment of hazardous healthcare waste currently outstrips capacity, the merged entity will likely to be able to exercise unilateral effects, to the detriment of competitors and customers.



64. Concerns relating to creeping mergers have also been raised. It is also submitted that if the merger is implemented, over the majority of South Africa's hazardous waste will be managed by foreign entities. Ultimately, such a position is not sustainable for the local economy and SMMEs within the country. It is also alleged that Averda increased the price at which competitors could treat COVID-19 waste by more than double the price and charged exorbitant prices for competitors' vehicles to enter this treatment plant.
65. These concerns indicated above, further exacerbate the competition concerns identified by the Commission.

### **Public Interest**

#### *Employment*

66. The merging parties provided an unequivocal undertaking that the merger will not result in any job losses.

#### *Ability of SMMEs and/or historically disadvantaged individuals (HDIs) to participate in and become competitive in the relevant market/s*

67. As indicated above, the Commission found that the merger raises unilateral effects concerns which preclude the ability of the merged entity's SMME and/or HDI competitors in waste management (and treatment) from being able to access the merged entity's burn technology capacity and/or face increased pricing from the merged entity post-merger. Waste management in particular has more scope for the entry and expansion of SMMEs and HDI competitors, but this requires that they are able to access treatment capacity on competitive terms. The vertical integration and enhanced market position arising from this merger makes this less likely. The implications of that competition outcome is that SMMEs and HDI competitors will be less able to compete against the merged entity and new SMME and HDI firms will face even greater barriers than those existing, to enter the burn technology waste treatment sector. The Commission is therefore of the view that the merger is negative from the perspective of this public interest.

### **Remedies**

68. As indicated in the competition assessment above, the merger will result in a substantial prevention and lessening of competition in the relevant markets. Further, the merger is likely

to negatively impact the ability of historically disadvantaged individuals or SMME's to become competitive or to participate in the relevant markets.

69. The Commission considered whether any remedies could address the competition and public interest concerns identified. In that regard, the Commission explored the merging parties' proposal to provide competitors with access to the merged entity's facilities post-merger, and to divest certain assets. However, the extent to which the Commission could fully engage on potential remedies was constrained by the Commission's inability to complete its analysis of the competition and public interest concerns identified. In particular, the Commission had requested the merging parties to provide it with all due diligence documents pertaining to the merger. The Commission has found in previous investigations that due diligence documents can provide insight into the dynamics of competition and to post-merger conduct. These insights may have further informed the Commission's assessment of the likely competition and public interest effects arising from the merger and would have assisted the Commission in evaluating the effectiveness of proposed remedies. However, notwithstanding the issuance of a summons, the merging parties did not provide all of the due diligence documents and the underlying data, citing legal privilege. Thus, the Commission was precluded from determining whether the due diligence documents that were not disclosed would have impacted on the assessment of the effectiveness of the remedies.
70. In circumstances where the Commission has identified significant competition concerns, further information has been requested by summons and the latter has not been fully complied with, the Commission can only draw a negative inference to the effect that the concerns identified cannot be remedied.
71. The Commission therefore prohibits the merger.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298