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CT- 2021-006

Lindsay Vincelli for / pour  
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

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**CT-2021-**

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

**AND IN THE MATTER OF** the acquisition of Terrapure Environmental Ltd. by GFL Environmental Inc.

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to 92 of the *Competition Act*;

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

**GFL ENVIRONMENTAL INC.**

**Respondent**

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**NOTICE OF APPLICATION**

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**TAKE NOTICE** that the Commissioner of Competition (the “**Commissioner**”) will make an application to the Competition Tribunal (the “**Tribunal**”), on a day and place to be determined by the Tribunal, pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C- 34, as amended (the “**Act**”) for an order:

- (a) requiring the Respondent, GFL Environmental Inc. (“**GFL**”), to dispose of the assets as are required, as well as such other assets, if any, as are required to remedy the likely substantial lessening of competition in the markets described in the Statement of Grounds and Material Facts below;
- (b) requiring the Respondent to provide the Commissioner with at least 30 days advance written notice of any future proposed merger, as such term is defined by section 91 of the Act, involving the Respondent for a period of five years, where the proposed merger would not otherwise be subject to notification pursuant to Part IX of the Act;
- (c) requiring the Respondent pay the costs of this proceeding; and
- (d) such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

**AND TAKE NOTICE** that if you do not file a response with the Registrar of the Tribunal within 45 days of the date upon which this Application is served upon you, the Tribunal may, upon application by the Commissioner and without further notice, make such Order or Orders as it may consider just, including the Orders sought in this Application.

**AND TAKE FURTHER NOTICE** that the Applicant will rely on the Statement of Grounds and Material Facts below in support of this Application and on such further or other material as counsel may advise and the Tribunal may permit.

**AND TAKE FURTHER NOTICE** that a concise statement of the economic theory of the case is attached hereto as Schedule "A".

THE ADDRESSES FOR SERVICE ARE:

For GFL Environmental Inc.:

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Attention: Michael Kilby

The Applicant proposes that the hearing of this matter be held in Ottawa, Ontario and heard in English.

For the purposes of this Application, service of all documents on the Commissioner may be served upon:

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor  
Gatineau QC K1A 0C9

Tel: 647.625.6782  
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Attention: Jonathan Hood  
Marie-Hélène Gay  
Jonathan Bitran

## STATEMENT OF GROUNDS AND MATERIAL FACTS

### I. OVERVIEW

1. On August 17, 2021, as part of its strategy to grow through acquisition and consolidation, GFL removed one of its closest competitors for industrial waste management when it acquired Terrapure Environmental Inc. (“**Terrapure**”), significantly enhancing concentration in markets across Western Canada. GFL’s acquisition likely substantially lessened competition in the markets for:
  - a. the collection and processing of industrial waste generated across Western Canada, including, Central Alberta, Vancouver Island, and the British Columbia Interior, referred to as IWS; and
  - b. the collection, processing and re-sale of used oil and related materials generated in Vancouver Island, the Lower Mainland of British Columbia, the Okanagan, the British Columbia Interior, the Peace Region, Central Alberta, Southern Alberta and the Kootenays, and Central Saskatchewan, referred to as ORS.
2. GFL’s purchase of Terrapure, its closest competitor in many of the markets at issue, is the most recent acquisition in an industry that has been consolidating around large industrial waste platforms. Since commencing operations in 2007, GFL has completed over 140 acquisitions further to its stated goal in numerous public documents of “pursuing strategic and accretive acquisitions”.
3. With the acquisition, GFL has consolidated the markets for IWS and ORS such that it has new or enhanced market power providing the ability to harm a wide range of industrial customers across Western Canada. GFL can exercise its market power through raising prices, or deteriorating service quality.

4. The limited remaining competition for IWS and ORS in Western Canada is insufficient and will be ineffective to constrain the exercise of market power by GFL.
5. Barriers to entry and expansion are high. New entrants and existing competitors face regulatory, financial and reputational barriers. In addition, given GFL's size as a result of its acquisition of Terrapure, new entry or expansion is not timely, likely, or sufficient to constrain the exercise of market power by GFL.
6. The Commissioner seeks an order requiring GFL to divest of such assets necessary to remedy the likely substantial lessening of competition that GFL has caused in the markets described below.

## **II. THE PARTIES**

7. The Applicant, the Commissioner, is responsible for the administration and enforcement of the Act.
8. GFL, headquartered in Toronto, Ontario, is a diversified environmental services company with more than 17,000 employees that provides a range of environmental solutions including non-hazardous solid waste management, infrastructure, and soil remediation services across a platform of facilities in Canada and the United States. GFL is listed on the Toronto Stock Exchange and earned approximately \$4 billion in revenue in 2020.
9. Terrapure was an industrial waste management and environmental services company that offered a range of services across Canada. It was headquartered in Burlington, Ontario. Terrapure employed over 1,600 people and operated an integrated network of 46 industrial waste management facilities and 24 yards and other sites across Canada. Terrapure generated revenue of approximately \$365 million in 2020.

### III. TRANSACTION

10. Pursuant to a share purchase agreement dated March 15, 2021, GFL proposed to acquire all the shares of Terrapure for approximately \$927 million (the “**Acquisition**”). GFL completed the Acquisition on August 17, 2021.

### IV. INDUSTRY BACKGROUND

11. GFL and Terrapure were often the leading and each other’s closest competitors across industrial waste management markets in Western Canada. Prior to the Acquisition, both companies’ integrated networks overlapped in two areas relevant to this application:
  - a. Industrial Waste Services (“**IWS**”), which involve the collection and processing of waste predominately generated by Canada’s industrial and manufacturing sectors; and
  - b. Oil Recycling Services (“**ORS**”), which involve the processing of used lubricating oil and related materials collected from various sources, most notably vehicle oil change and repair shops, for subsequent sale as industrial fuel oil.

#### A. IWS.

12. Prior to the Acquisition, GFL and Terrapure competed vigorously with one another to provide services related to the collection, processing and disposal of “**Industrial Waste**”.
13. In this application, Industrial Waste refers to hazardous and non-hazardous liquid, semi-liquid, solidified or substantially similar waste streams generated from any type of activity, but excludes non-hazardous household waste. Industrial Waste encompasses various organic and inorganic waste streams such as light and

heavy fuels, solvents, detergents and soaps, herbicide and pesticide wastes, and paint, pigment and coating residues. The composition of the waste will determine the type of processing and disposal options available.

14. Industrial Waste is typically generated by industrial and manufacturing businesses in a wide swath of the economy who have to use IWS to comply with local laws and environmental standards but also includes hazardous waste generated by households and commercial businesses. For example, GFL collects and processes hazardous materials used by households such as paints and solvents.
15. IWS comprise a supply chain of services that can be segmented into three levels: collection, processing, and disposal.
16. *Collection.* Collection is where Industrial Waste first enters the supply chain. Industrial Waste is collected by IWS suppliers like GFL using vacuum trucks (for pumping out tanks of liquid waste), hydrovac trucks (pumping out water and other debris from excavation activities), or box trucks (for drums and totes of liquid or solid waste). The collection of Industrial Waste occurs on both a scheduled and on-demand basis depending on the needs of the Industrial Waste customer. IWS suppliers transport Industrial Waste to permitted processing sites.
17. *Processing.* Industrial Waste processing encompasses a broad range of activities. Less sophisticated IWS processing sites are limited in the range of wastes they can handle or in the sophistication of their treatment processes. Consequently, they are often used to offload Industrial Waste collection from trucks and to aggregate these wastes for shipment to more advanced processing sites.
18. More sophisticated Industrial Waste processing sites, such as those operated by GFL and the former Terrapure, have the ability to treat a greater range and volume of Industrial Waste, including hazardous streams of waste.

19. *Disposal.* Industrial Waste disposal involves disposing of whatever residual matter remains after processing. There are two principal ways that Industrial Waste can be disposed of: burning in facilities such as incinerators, or kilns or containment in facilities such as landfills and caverns.
20. *Competition between IWS collectors.* Customers of Industrial Waste Services select their IWS collection supplier based on a number of factors including: price, quality, the ability to handle the multiple waste streams generated by the customer, and the extent to which the waste streams will be processed and disposed of in a manner consistent with the environmental sustainability objectives of that particular customer.

#### **B. ORS.**

21. Prior to the Acquisition, GFL and Terrapure competed to provide ORS related to the collection, processing and resale of used oil and related materials. “**ORS Waste**” comprises four principal wastes streams: used oil (i.e. used for lubricating and motor oil), used oil filters, used antifreeze, and used oil and antifreeze containers. Used oil is the largest and most profitable of these streams.
22. There are three levels in the ORS supply chain: collection, processing, and the sale of recycled products.
23. *Collection.* Collection involves the use of vacuum, pump and box trucks by ORS suppliers to collect ORS Waste. It is common for GFL and its competitors (including Terrapure prior to the Acquisition) to handle all four ORS waste streams created by ORS Waste customers. ORS Waste customers include transportation companies, vehicle repair shops, oil change shops, and a vast array of industrial clients that rely on oil to lubricate their manufacturing and production processes, as well as individual households that discard their used oil, used oil filters, antifreeze and containers at provincially designated collection sites. Collection occurs on both a scheduled and on-demand basis.



24. *Processing.* Processing involves the application of specific processes to each waste stream in order to render it saleable in the markets for recycled products. In particular, used oil is filtered to remove solid contaminants and then is purified through a number of methods in order to separate the oil from other contaminants present (such as water). Used antifreeze is filtered to remove hydrocarbon and solid contaminants and is then run through a distillation process to purify it for re-use as antifreeze. Used oil filters and plastic containers are cleaned to recover any used oil contained therein and are subsequently crushed and shredded, with the resulting plastic and metal pellets being sold to specialized third parties for appropriate re-use.
25. ORS collectors and processors compete to serve ORS Waste generators on three dimensions: price, quality of service, and the ability to offer additional services. Because of incentive payments from provincial stewardship programs to encourage recycling of ORS Waste, the breadth and quality of service often take on increased prominence in the collection markets. For example, ORS collectors compete on frequency of service, the ability to provide service on demand, and the collection of the ORS Waste in a minimally intrusive manner.
26. *Sale of recycled ORS products.* Prior to the Acquisition, GFL and Terrapure competed vigorously with one another to sell recycled oil obtained from ORS Waste for use as industrial fuel oil (“**IFO**”) in regional markets across Western Canada. The customers for IFO are predominantly road paving companies that purchase IFO to economically fuel their portable asphalt plants, which are used in road paving projects. Other users of IFO include industrial customers that by virtue of their location cannot viably access alternative fuels, for instance because they are not situated on the natural gas distribution network.
27. In addition to being sold as IFO, ORS Waste is used as feedstock for oil refineries. These facilities refine used ORS Waste to create base oils, high quality lubricants or other refined products for a variety of purposes. GFL owns a re-

refinery in Instow and as a result of the Acquisition acquired the largest re-refinery in Western Canada from Terrapure, which is located in North Vancouver.

### **C. Vertical and horizontal integration of GFL in Western Canada**

28. GFL (and prior to the acquisition Terrapure), unlike most of its competitors at the collection level, is vertically integrated into the collection and processing levels of both the IWS and ORS value chain. In Western Canada, most of GFL's facilities are dual purpose, supporting both its IWS and ORS collection and processing operations.
29. One of the advantages of operating a vertically integrated IWS and ORS network is that GFL has the ability to secure preferential access to processing and disposal capabilities relative to its smaller competitors that are collection companies. As a result, smaller IWS and ORS collection companies who are not vertically and horizontally integrated are unable to effectively replace the rivalry that has been lost between GFL and the former Terrapure.
30. Furthermore, GFL and the former Terrapure were leading competitors in both IWS and ORS, with a broad range of capabilities that provided them with a competitive advantage over smaller competitors who are unable to offer the same range of services. For example, GFL can offer to manage all of an industrial customer's ORS Waste and Industrial Waste.

## **V. THE RELEVANT MARKETS**

### **A. Relevant Product Market**

#### **i. IWS.**

31. The collection and processing levels of the IWS supply chain are the relevant product markets for assessing the effects of the Acquisition. Each of these levels performs activities that are not functionally interchangeable.

32. Industrial Waste must be collected and processed in accordance with environmental regulations. It cannot be handled in a manner contrary to those regulations and must therefore be placed under the care of a permitted handler.
33. The key dimension of competition at issue in this application is the vigorous rivalry between GFL and Terrapure to provide IWS services that has been eliminated. Prior to the Acquisition, both were vertically integrated IWS platforms designed to handle the collection and processing of a broad range of waste streams. They competed vigorously to handle large quantities of a wide spectrum of Industrial Waste and were often each other's closest competitors for collection and processing of Industrial Waste in the regions in Western Canada described below.
34. As a result, while customers often require the collection of multiple streams of Industrial Waste and different streams of Industrial Waste may require different handling capabilities, for the purposes of this application, the streams of Industrial Waste can be aggregated for assessing the effects of the Acquisition on IWS into each of the collection and processing of Industrial Waste.

**ii. ORS.**

35. The collection and processing of ORS Waste are the relevant product markets for assessing the effects of the Acquisition. It is typical for suppliers (both at the collection and processing levels) to handle all ORS Waste streams. Furthermore, while collection and processing involve different functions, GFL (and Terrapure prior to the Acquisition) both collects and processes ORS Waste. As a result, for the purposes of assessing the anticompetitive effects of the Acquisition, these two product markets can be aggregated.
36. Generators of ORS Waste have few alternatives to relying on ORS collectors and processors. Environmental regulations prohibit the indiscriminate discharge of these materials into the environment. Certain sophisticated industrial users of lubricating oil, such as pulp and logging operations, may have on-site capacity to

re-use and recycle their used lubricating oil and therefore do not rely significantly on ORS collectors and processors. However, the vast majority of ORS Waste passes through the ORS supply chain.

37. The sale of IFO is a distinct product market. IFO is the most cost effective source of fuel for its present users. Suppliers of alternative fuel sources such as compressed natural gas and propane generally do not offer cost effective alternatives to IFO.

#### **B. Relevant Geographic Market**

38. Transportation costs play a central role in the IWS and ORS supply chain. In their raw forms, Industrial Waste and ORS Waste are bulky, heavy, geographically diffuse and of relatively low value. They are therefore usually routed towards the nearest permitted processing facilities. In most geographies, this means that Industrial Waste and ORS Waste will tend to be collected and undergo initial processing within the same regions in which they are generated.
39. As Industrial Waste and ORS Waste are aggregated and condensed through various treatment processes, they become more economical to transport. In the IWS and ORS supply chains, the geographic area serviced by a facility therefore increases as you move from the collection into the processing level. This is also accentuated by the fact that there are fewer permitted facilities as you move from processing into the disposal level of the IWS, due to both regulatory and commercial barriers to entry.
40. The result is that collection markets are fundamentally regional—focused around the territory that can be covered by a collection truck in a single day. Processing facilities can serve broader geographies, provided that they have access to a collection network that can consolidate volumes into larger and more economical tanker or tractor-trailer shipments.
41. The geographic market for the sale of IFO is regional. Road paving is a time sensitive and low margin activity. Paving companies are typically responsible for

transporting IFO from the supply point (e.g., an ORS processing facility) to the location of the road construction project. Paving companies are therefore sensitive to the monetary, transportation and opportunity costs of procuring IFO. Their strong preference is to obtain that fuel from the most proximate sources—which in much of Western Canada, prior to the Acquisition, were GFL and Terrapure.

## **VI. THE PROPOSED TRANSACTION IS LIKELY TO SUBSTANTIALLY LESSEN COMPETITION**

### **A. IWS.**

42. The Acquisition has eliminated the competitive rivalry between GFL and Terrapure, two vertically integrated IWS platforms, and has likely substantially lessened competition in a number of IWS markets in Western Canada as described below. Prior to the Acquisition, GFL and Terrapure each built, organically and through acquisition, comprehensive networks of industrial processing facilities across Western Canada that provided them with transportation cost advantages with respect to Industrial Waste collection and processing in the following regions in Western Canada:
- a. Vancouver Island;
  - b. Interior British Columbia; and
  - c. Central Alberta.
43. *Vancouver Island.* The Acquisition is likely to substantially lessen competition in the collection and processing of Industrial Waste on Vancouver Island.
44. Prior to 2019, GFL did not have a significant presence on Vancouver Island. That changed in 2019 when GFL acquired Coast Environmental, the Island's last major Industrial Waste collector and processor, other than Terrapure. Since that time, GFL has significantly increased its presence on the Island. GFL succeeded in ending Terrapure's ten year incumbency as the hazardous waste services provider to the City of Victoria.

45. The loss of the City of Victoria account to GFL had a major impact on Terrapure, causing it to take various tactical and strategic actions, including lowering prices and addressing service quality failures to more effectively compete against GFL. GFL has also secured other significant Industrial Waste accounts on the Island and, prior to the Acquisition, Terrapure was concerned about losing further key accounts to GFL.
46. In addition, prior to the Acquisition, GFL intended to further expand its Industrial Waste processing capabilities on the Island through the addition of a sludge treatment facility in the Greater Victoria area and a hazardous waste processing facility in Chemainus. These projects were driven by GFL's competition with Terrapure, which is now lost.
47. GFL and Terrapure were the only two firms operating Industrial Waste processing facilities on Vancouver Island and were the two leading collectors of Industrial Waste. As a result of the Acquisition, Industrial Waste generators on Vancouver Island are likely to pay higher prices and/or receive decreased service for collection of their Industrial Waste.
48. *Interior British Columbia.* The Acquisition is likely to substantially lessen competition in the collection and processing of Industrial Waste in the Interior of British Columbia – the region of British Columbia for which Prince George is the service center.
49. Prior to the Acquisition, GFL and Terrapure operated the only two Industrial Waste processing facilities in the region – located across the street from each other in Prince George. They were also leading collectors of Industrial Waste in the region.
50. As a result of the Acquisition, Industrial Waste generators in the interior of British Columbia are likely to pay higher prices and/or receive decreased service for

collection of Industrial Waste. This is due to the effects of the Acquisition in combining two large IWS collectors and the only two IWS processors in the region.

51. *Central Alberta*. The Acquisition is likely to substantially lessen competition in the collection and processing of Industrial Waste in Central Alberta.
52. Prior to the Acquisition, GFL operated large processing facilities in Edmonton and Onoway, while Terrapure operated a large processing facility in Edmonton. Both were leading collectors of Industrial Waste in the region, competing vigorously for the same customers.
53. In the absence of this rivalry, Industrial Waste generators in Central Alberta are likely to pay higher prices and/or receive decreased service for collection of their Industrial Waste. The anti-competitive effects of the Acquisition in Central Alberta are likely to be further amplified by GFL's plans to close its Onoway facility as a result of the Acquisition, thereby removing choice and service from the market.

## **B. ORS**

54. The Acquisition is likely to cause a substantial lessening of competition in the provision of ORS Waste collection and processing and the sale of IFO in the following regions in Western Canada:
  - a. Vancouver Island,
  - b. the Lower Mainland of British Columbia;
  - c. the Okanagan;
  - d. the British Columbia Interior;
  - e. the Peace Region;
  - f. Central Alberta;
  - g. Southern Alberta and the Kootenays; and
  - h. Central Saskatchewan.
55. In British Columbia and Alberta, GFL and Terrapure were the first and second largest providers of ORS and each other's closest competitors. They were also

close competitors in Saskatchewan. By eliminating that rivalry, ORS Waste generators in these three provinces are likely to face higher collection prices and/or lower service quality. Similarly, purchasers of IFO are likely to face higher procurement costs, which could lead to higher costs for publicly-funded road paving projects across Western Canada.

56. The anticompetitive effects of the Acquisition are likely to be further increased amplified as GFL now controls the only two re-refineries in Western Canada. As a result of the Acquisition, GFL has the ability to recapture the incremental re-refining margin earned on used oil collections that would otherwise have been lost to Terrapure and fed to its re-refinery.

**VII. SECTION 93 FACTORS SUPPORT A LIKELY SUBSTANTIAL LESSENING OF COMPETITION**

57. A number of section 93 factors support the conclusion that the Acquisition is likely to lessen competition substantially in the collection and processing of IWS and ORS and the sale of IFO in the markets identified above.

**A. Barriers to Entry**

58. GFL's new or increased market power as a result of the Acquisition will not likely be constrained by entry or expansion as barriers to entry and expansion are high. These barriers include:
- a. multi-year regulatory barriers associated with obtaining approval for a network of permitted processing facilities to handle a spectrum of Industrial Waste and ORS Waste streams;
  - b. sunk costs required to build processing facilities;
  - c. sunk costs associated with building and densifying a collection and processing network;
  - d. the maturity and expected decline of the IFO market; and
  - e. the strong incumbency position of GFL, which was further strengthened by the Acquisition of Terrapure, including its ability to entrench itself with customers across many waste streams.



**B. Removal of a Vigorous and Effective Competitor**

59. As described above, the Acquisition eliminated the vigorous head-to-head rivalry between GFL and Terrapure in many markets across Western Canada. In many of these markets, GFL and Terrapure were each other's closest competitor.

**C. Insufficient Effective Remaining Competition**

60. In the markets described above, there is insufficient remaining competition to constrain an exercise of market power by GFL. The remaining competitors at the collection and processing levels are differentiated in their capabilities and their geographic locations such that they are unlikely to sufficiently constrain GFL. None of the remaining competitors in the regions identified above have the scale and scope of operations that GFL does.

**VIII. RELIEF SOUGHT**

61. As described in detail above, the Acquisition is likely to result in a substantial lessening of competition in many different relevant markets across Western Canada. Therefore the Commissioner requests the relief sought in the Notice of Application above.

**DATED AT** Ottawa, Ontario, this 30<sup>th</sup> day of November, 2021

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Commissioner of Competition

## SCHEDULE “A” – CONCISE STATEMENT OF ECONOMIC THEORY

### IWS

1. Prior to the Acquisition, GFL and Terrapure were engaged in the supply of IWS in various regions across Western Canada.
2. IWS companies collect and process Industrial Waste. Industrial Waste consists of hazardous and non-hazardous liquid, semi-liquid, solidified liquid or substantially similar waste streams generated from any type of activity, but excludes non-hazardous household waste.
3. Due to environmental regulations, Industrial Waste generators rely on IWS companies in order to ensure that Industrial Wastes are handled, processed and ultimately disposed of in a safe manner. There are no viable alternatives to IWS.
4. Within the IWS supply chain, the collection and processing of Industrial Waste each encompass distinct sets of activities that are not functionally interchangeable. A hypothetical monopolist in the collection and processing of Industrial Waste would likely be able to impose a small but significant and non-transitory increase in price (“**SSNIP**”). The collection and processing of Industrial Waste constitute distinct product markets for the purposes of antitrust analysis.
5. IWS involves the handling of a broad spectrum of Industrial Wastes, each of which has a particular set of collection and processing requirements. The extent to which different IWS companies are able to offer similar sets of collection, processing and disposal capabilities determines the extent to which they offer services that are closely substitutable.
6. Due to transportation costs, most Industrial Waste is collected and received for initial processing by IWS firms located within the region in which the Industrial Waste was generated. A hypothetical monopolist in a region would likely be able to impose a SSNIP in the relevant geographic markets. The geographic markets

for Industrial Waste collection are therefore regional. As raw waste is aggregated and condensed by regional Industrial Waste processors, it can be economically transported to more sophisticated receiving facilities for final processing and disposal. As a result, processing facilities can serve broader geographies.

7. In various regions across Western Canada, GFL and Terrapure competed to collect and process Industrial Waste and both operate regional processing facilities.
8. By eliminating the rivalry between GFL and Terrapure in Central Alberta, Vancouver Island and the British Columbia Interior in which they competed to collect and process Industrial Waste, Industrial Waste generators in these areas are likely to face higher collection prices or lower service quality. Before the Acquisition, GFL and Terrapure would lose sales to each other if they were to implement a price increase or quality reduction to their customers. After the Acquisition, some of those lost sales will be diverted to or recaptured by the other merging party. Recaptured sales may then make price increases or quality decreases profitable after the merger that would not have been profitable before the merger.
9. The competitive effects of the Acquisition are unlikely to be sufficiently constrained by remaining competitors as these competitors are not sufficiently close substitutes to the parties as they do not offer the same range of services, may not be vertically integrated collectors and processors, and are limited in the geography that they can service.
10. The competitive effects of the Acquisition are unlikely to be sufficiently constrained by entry or expansion due to barriers to entry. These barriers include: a) multi-year regulatory barriers associated with obtaining approval for a network of permitted processing facilities to handle a spectrum of Industrial Waste and ORS Waste streams; b) sunk costs required to build processing facilities; c) sunk costs associated with building and densifying a collection and processing network; and

d) the strong incumbency position of GFL, which was further strengthened by the Acquisition of Terrapure, including its ability to entrench itself with customers across many waste streams.

## **ORS**

11. Prior to the Acquisition, both GFL and Terrapure were engaged in the supply of ORS in Western Canada.
12. ORS companies collect and process used oil from generators such as oil change shops, vehicle repair shops and industrial users of lubricating oil. ORS companies may also collect and process ancillary materials related to used oil, namely used antifreeze, used oil filters and plastic oil and antifreeze containers.
13. The used oil is processed to create IFO, which is predominantly used by road paving companies, and as feedstock for oil re-refineries.
14. ORS companies compete to collect and process used oil. They also compete to sell used oil as IFO.
15. The distinct product markets for the purposes of this application are i) the collection and processing of used oil, and ii) the sale of IFO. A hypothetical monopolist of ORS would likely be able to impose a SSNIP against both sets of customers.
16. Due to transportation costs, the relevant geographic markets for the collection and processing of used oil and the sale of IFO are likely regional. A hypothetical ORS monopolist in these regions would be able to impose a SSNIP in the relevant product markets.
17. In most regions of Western Canada, GFL and Terrapure are the largest providers of ORS and each other's closest competitor. By eliminating the rivalry between GFL and Terrapure, generators of used oil are likely to face higher collection prices and lower service quality to dispose of their used oil and ancillary materials. Similarly, purchasers of IFO are likely to face higher procurement costs, potentially

resulting in higher costs for publicly-funded road paving projects across Western Canada. Sales that GFL and Terrapure would have lost to each other in the regional markets for used oil collection and processing and the regional markets for the sale of IFO prior to the Acquisition will now be recaptured by GFL.

18. The anticompetitive effects of the Acquisition are likely to be further amplified as GFL now controls the only two re-refineries in Western Canada. As a result of the Acquisition, GFL has the ability to recapture the incremental re-refining margin earned on used oil collections that would otherwise have been lost to Terrapure and fed to its re-refinery.
19. The anticompetitive effects of the Acquisition are unlikely to be sufficiently constrained by remaining competitors as these competitors are not sufficiently close substitutes to the parties as they do not offer the same range of services, may not be vertically integrated, and are limited in the geography that they can service.
20. The anticompetitive effects of the Acquisition are unlikely to be sufficiently constrained by entry or expansion due to barriers to entry. These barriers include: a) multi-year regulatory barriers associated with obtaining approval for a network of permitted processing facilities to handle a spectrum of Industrial Waste and ORS Waste streams; b) sunk costs required to build processing facilities; c) sunk costs associated with building and densifying a collection and processing network; d) the maturity and expected decline of the IFO market; and e) the strong incumbency position of GFL, which was further strengthened by the Acquisition of Terrapure, including its ability to entrench itself with customers across many waste streams.