

SBC201807797



**Small Business  
Commissioner**  
SOUTH AUSTRALIA

Mr Gavin Jones  
Director, Adjudication  
ACCC  
GPO Box 520  
MELBOURNE VIC 3001

**BY EMAIL:** [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

T 08 8303 2026  
Toll Free 1800 072 722  
F 08 8303 0943  
E [sasbc@sa.gov.au](mailto:sasbc@sa.gov.au)  
GPO Box 1264,  
Adelaide SA 5001  
ABN 34 643 517 562  
[www.sasbc.sa.gov.au](http://www.sasbc.sa.gov.au)

Dear Mr Jones

**AA1000414 – Council Solutions – further submission following pre-decision conference**

I refer to the pre-decision conference held on 27 August 2018 and my previous submission dated 6 June 2018.

I write to make further submissions for the consideration of the Australian Competition and Consumer Commission (ACCC) prior to the final determination being issued. These submissions are made in light of the oral submissions provided at the pre-decision conference and further information provided to me by small businesses in the waste industry.

**Three separate tenders to be run concurrently**

As mentioned during my oral submission, I find it difficult to understand how the ACCC can consider this application separately to the other two applications lodged by Council Solutions (AA1000419 - processing and AA1000420 - ancillary) when it is proposed that all three streams will commence from May 2020, with all contracts commenced by May 2021 and a proposed maximum 10-year operating term. I submit that the three separate applications will essentially achieve the same result as the 2016 application, and that result will be detrimental to competition in the South Australian waste industry.

I remain of the view that the proposed conduct under the three applications amounts to cartel conduct and therefore constitutes a breach of the *Competition and Consumer Act 2010* (Cth). I note that others attending the pre-decision conference hold the same view.

**Substantial lessening of competition**

I share the concerns of other interested parties that the proposed conduct will limit competition and exclude some potential suppliers who would otherwise compete for the supply of those services if each council tendered separately.



Mr Greg Turner of Waste Contractors and Recyclers Association of NSW (WCRA) submitted that large complex contracts of the size proposed by Council Solutions are likely to reduce competition.

As Mr Robert Richards of Solo Resource Recovery (Solo) said:

*“tendering for four councils at different times staggered over time is very different to tendering for all four councils at the same time.”*

There would be a significant reduction in the number of market opportunities available if the ACCC grants authorisation to Council Solutions.

### **Capital requirements and bank guarantees**

As I pointed out at the pre-decision conference, the bank guarantees required for the contract proposed by Council Solutions will preclude small businesses from bidding.

Mr Scott Geer, member and spokesperson for the Waste and Recycling Association of South Australia (WRASA), submitted that the capital requirements and bank guarantees for a contract of the size that is proposed are beyond the reach of small to medium size businesses, which means that only some of the larger companies in the industry will be able to bid for the contract.

Mr Paul Welch, General Manager of JR Richard and Sons, said that the size of the proposed contract and the associated risks would deter his company from tendering for the contract. His company has been operating in the waste industry for 60 years and has around 30 collection contracts in New South Wales.

Mr Richards mentioned that Solo will not be able to bid for the collection tender as proposed by Council Solutions, despite having 80 years' experience in the industry and 650 staff. He said that companies of a similar size will have the same difficulty.

The evidence given at the pre-decision conference clearly demonstrates that small businesses are not in a position to tender for the proposed contract, thereby leading to an anti-competitive agreement.

### **Summary**

In summary, I support the views and opinions put forward by the small business representatives of the waste industry, and I strongly oppose Council Solutions' application.

The Office of the Australian Small Business and Family Enterprises Ombudsman has advised me that it supports this submission.

If you would like to discuss my further submission in further detail, please do not hesitate to contact me on 08 8303 0927 or [john.chapman@sa.gov.au](mailto:john.chapman@sa.gov.au).

Yours sincerely



John Chapman  
**Small Business Commissioner**

12<sup>th</sup> September 2018