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Dear Mr Jones

### **AA1000414 – Council Solutions – Submission**

I refer to your letter dated 27 March 2018 inviting interested parties to comment on an application for authorisation received from Council Solutions on 14 March 2018.

I note that the Australian Competition and Consumer Commission (ACCC) is seeking comments on *“the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangement”*.

Council Solutions seeks authorisation from the ACCC to the extent that the conduct proposed in its application may constitute a breach of the provisions of the *Competition and Consumer Act 2010* relating to cartel conduct (section 45AD) and/or anti-competitive agreements (section 45) on the grounds there will be a net public benefit and/or there will be no substantial lessening of competition.

I maintain the position put forward in my submission dated 1 March 2016 in response to Council Solution’s original application received by the ACCC on 30 November 2015, although I note two main points of difference between the two applications as follows:

1. The current application is for collection services only. Council Solutions intends to submit further applications for processing service streams and ancillary services streams at a later date.
2. The contract term is for 10 years rather than 17 years (with a seven-year initial term and an option for a three-year extension period).

I outline below my concerns with Council Solution’s current application.



### Three separate applications

I note that the current application relates to waste collection only, and that Council Solutions intends to lodge two further applications for processing and ancillary services in the near future. It appears that Council Solutions is trying to achieve the same end point as its original application by dividing the information into three separate applications, which is totally inappropriate. It appears Council Solutions is using the application as a “Trojan Horse” to push the applications through without due consideration or scrutiny.

### Contract Term

It is my submission that the proposed contract term of 10 years is a significant and unreasonable period of time given that the landscape of the waste management market can change dramatically and unexpectedly during that time. The supposed benefits outlined in Council Solution’s application could quite easily evaporate as a result of a change in the market that could not have been predicted.

A relevant example of this arises from the Chinese Government’s recent decision to enforce stringent quality requirements for imported recycled materials intended for re-processing (to as low as 0.5% contamination for some commodities), which has resulted in a sharp reduction in exports of recycled materials from Australia to China.

In a joint letter to the Minister for Environment and Water, the Hon David Spiers MP, dated 28 March 2018, Waste Management Association of Australia Chief Executive, Gail Sloan, and SA Branch President, Mark Rawson, said that the South Australian Government needed to provide a support package in the order of \$7.2 million to help councils address cost impacts of the China National Sword. They went on to say:

*“There has not been an issue as big or as critical as the China National Sword impacting on the South Australian waste and resource recovery industry in three (3) decades of ongoing reform.”*

In her article in *The Advertiser* dated 23 April 2018, Clare Peddy noted:

*“Recycling, once a revenue raiser, is now a cost to councils. Waste management companies are scrambling to renegotiate contracts and councils are clamouring for state government help, to buy time before they start cost shifting to residents by increasing rates.”*

This situation could not have been foreseen 5 years ago. It is for this very reason that I oppose such a lengthy contract term.

### Lack of transparency

I note at page 13 of the application:

*“Relevant papers have been provided to the ACCC at Annexure 1 of this submission. However as these are not public documents or are commercial in confidence they are CONFIDENTIAL and are not published on the public register.”*

I further note at page 29 of the application:

*"The Applicants have provided the Board papers and details on the consultation conducted to the ACCC on a confidential basis".*

I am deeply concerned over the lack of transparency relating to Council Solution's application. In my view, there is a failure to provide full and frank disclosure to all interested parties. At the very least, interested parties should be provided with a list of the documents provided to the ACCC on a "confidential" basis so there is a better understanding of the nature of the documents which have been withheld from the public register.

### **Failure to provide public benefit**

At page 17, Council Solutions submits that the conduct proposed in its application will result in significant public benefits, including:

- (a) tender process cost savings and efficiencies by reducing the replication of work for both Participating Councils and potential suppliers through alignment of specifications and service standards and the administration of a single tender process;*
- (b) environmental benefits from the increased diversion of waste from landfill;*
- (c) lower costs for Participating Councils through improved purchase power;*
- (d) increased competition from the stimulation of the market; and*
- (e) increased service efficiencies.*

I question whether the proposed conduct for waste collection services will result in the "significant public benefits" outlined above, particularly in the absence of Annexure 1 being made available for scrutiny.

In my view, if the ACCC grants the authorisation for Council Solutions to lawfully exercise cartel behaviour, it will place a significant number of small businesses in the waste collection industry at risk.

I find it difficult to see how the proposed conduct will lead to increased competition "*from the stimulation of the market*". It seems more likely that it will lead to a substantial lessening of competition in Adelaide's waste management market, and will potentially impact on a number of small businesses.

While the proposed conduct may result in some public benefits, such as increased service efficiencies, I am of the view that these benefits will not outweigh the potential public detriments. On this basis, the 'net public benefit test' will not be met and the application should fail.

Finally, it appears that Council Solutions is not prepared to provide details of the financial benefits that Participating Councils will supposedly receive from the proposed conduct. In the absence of any detailed financial information, this application is without merit.

For the reasons set out above, I strongly oppose Council Solution's application.



If you would like to discuss my 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**

26<sup>th</sup> April 2018