



Draft Determination and interim authorisation

Application for authorisation AA1000414

lodged by

Council Solutions & Ors

in respect of

joint procurement, negotiation and contracting for
kerbside waste collection services

Date: 20 July 2018

Authorisation number: AA1000414

Commissioners:

Keogh
Rickard
Court
Featherston

Summary

The ACCC proposes to grant authorisation to Council Solutions, Adelaide City Council and the Cities of Charles Sturt, Marion and Port Adelaide Enfield (the Participating Councils) to jointly procure the collection of domestic waste, recyclables and organics through kerbside collection, including the supply and maintenance of mobile garbage bins.

The ACCC proposes to grant authorisation until 30 June 2031.

The ACCC also grants interim authorisation for Councils Solutions and the Participating Councils to enable them to commence the tender and contract negotiation process. Interim authorisation does not extend to entering into or giving effect to any waste collection contracts.

The ACCC will seek submissions in relation to this draft determination before making its final decision.

Council Solutions and the Participating Councils (together, the Applicants) are seeking authorisation to conduct a joint procurement process to appoint to the Participating Councils a single supplier of kerbside waste collection within their municipalities, using a 3-Bin System (domestic waste, recyclables and organics).

The Participating Councils consider that the proposed joint procurement will provide value for money, improve waste management and reduce waste, to achieve environmental and economic benefits for their communities.

Based on the information before it, the ACCC proposes to grant authorisation until 30 June 2031. This allows for the tender process, commissioning of collection trucks and a proposed contract length of up to 10 years (initially seven years with a three-year extension option).

It is common practice throughout Australia for local councils to collaborate to procure waste services to reduce transaction costs, pool resources and expertise and achieve economies of scale. The ACCC has authorised 30 such arrangements, concluding they were likely to result in a net public benefit through improved service quality at lower cost. The joint procurement process for which the Applicants have sought authorisation is similar to a number that the ACCC has authorised.

In 2016, the ACCC denied authorisation for Council Solutions and five Adelaide Councils (the four councils participating in the current process plus Tea Tree Gully) to jointly procure kerbside waste collection services, receipt and processing services and waste disposal services via a single Request For Proposal process. Under the Request for Proposal, each council would have individually decided which supplier to appoint for each service stream, meaning there was the potential for a large number of possible service stream and supplier combinations.

The ACCC was concerned that the size and scope of the 2016 proposed joint procurement, covering multiple waste service streams, and the uncertainty about the possible outcomes arising from the Request for Proposal process, would reduce or eliminate transaction cost savings and may mean that some businesses were unable to participate.

In this 2018 application, Council Solutions has sought to address the issues associated with the 2016 application by:

- running a separate tender process for three service streams; kerbside waste collection services, processing services and ancillary services
- issuing a more tightly prescribed Request for Tender for each service stream, instead of a Request for Proposal, and
- appointing a single kerbside collections supplier for all four councils.

Council Solutions and the Participating Councils have lodged separate applications for authorisation to jointly procure processing services and ancillary waste services and the ACCC expects to release draft determinations about these applications in August 2018.

The ACCC acknowledges the many submissions from industry participants, both concerned about, and supporting, the proposed arrangements. The Applicants and other interested parties have given the ACCC an extensive amount of information, on a public and confidential basis.

The ACCC considers that the current application addresses the concerns identified in 2016 as they relate to joint procurement of kerbside waste collection services by simplifying the process and providing greater certainty.

The ACCC considers that the proposed conduct is likely to generate public benefits in the form of transaction cost savings compared with each participating council conducting its own procurement process.

The ACCC also considers that the proposed conduct is likely to generate public benefits through small improvements in:

- efficiency in managing kerbside waste collection contracts
- efficiency in the supply of kerbside waste collection services
- environmental outcomes.

Some interested parties have raised concerns that combining the kerbside collection needs of the Participating Councils into a single contract covering around 180,000 rateable properties will limit competition and exclude some potential suppliers who would be likely to compete to supply these services if each council tendered separately.

The ACCC's inquiries, including discussions with potential suppliers and other groups who have undertaken similar joint procurement processes, do not support this concern. The bidders for, and winners of, municipal kerbside collection work in Australia, whether supplying individual councils or groups of councils, generally come from a defined pool of large long-standing suppliers. The ACCC considers that most potential suppliers who would be likely to compete to supply the Participating Councils if they each ran separate tender processes are also likely to compete for the joint contract.

The ACCC considers that the joint procurement process is likely to result in some public benefit by stimulating additional competition to provide kerbside waste collection for the Participating Councils. In particular, the proposed conduct is likely to offer potential suppliers some transaction cost savings and other efficiency gains that could be passed on in lower cost or improved services. Further, a guaranteed contract of around 180,000 rateable properties, for at least seven years, is likely to provide greater incentives for these suppliers to compete for the tender.

The ACCC has also considered whether the proposed conduct may, in the longer term, reduce competition to supply collection services to the Participating Councils and other councils in Adelaide. However, the ACCC considers that there will be enough opportunities for those suppliers who do not win the contract with the Participating Councils to remain active in waste services in South Australia (SA) and elsewhere in Australia. Most also have municipal collection contracts in SA or elsewhere in Australia and barriers to expanding into new geographic areas for large, established operators, do not appear to be high.

The ACCC considers that the public benefits of the proposed conduct are likely to outweigh any public detriment.

The ACCC will invite further submissions in response to this Draft Determination for consideration before issuing its Final Determination.

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The application for authorisation

1. On 14 March 2018 Council Solutions Regional Authority (Council Solutions), on behalf of itself, the Corporation of the City of Adelaide and the Cities of Charles Sturt, Marion and Port Adelaide Enfield (the **Participating Councils**) (together, the **Applicants**) lodged application for authorisation AA1000414 with the Australian Competition and Consumer Commission (**ACCC**). Council Solutions, on behalf of itself and the Participating Councils, is seeking authorisation to jointly procure the collection of domestic waste, recyclables and organics through kerbside collection, including the supply and maintenance of mobile garbage bins for 13 years.¹
2. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (the **Act**). Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the Act but nonetheless consider it is not harmful to competition and/or there is an offsetting public benefit from the conduct.²
3. The Applicants also requested interim authorisation to enable them to commence the tender and contract negotiation process by August 2018.³ The Applicants requested that interim authorisation be considered at the time that the ACCC issues a draft determination.

The proposed conduct

4. Council Solutions and the Participating Councils seek authorisation for:
 - Council Solutions, on behalf of the Participating Councils, to conduct a collaborative competitive tender process for Waste Collection Services, to evaluate the responses in collaboration with the Participating Councils and to negotiate on behalf of the Participating Councils the contractual framework
 - the Participating Councils to individually enter into a contract on a joint and not several basis with the successful supplier, and
 - ongoing administration and management of the resultant contracts to be undertaken jointly by Council Solutions and the Participating Councils.⁴
5. The Applicants describe the Waste Collection Services the subject of the application as follows.
6. Waste Collection Services involves the collection of domestic waste, recyclables and organics in each of the respective Participating Councils' areas through

¹ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 1, available: [ACCC Public Register](#).

² Detailed information about the authorisation process is available in the ACCC's Authorisation Guidelines at www.accc.gov.au/publications/authorisation-guidelines-2013.

³ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 1, available: [ACCC Public Register](#).

⁴ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 1, available: [ACCC Public Register](#).

utilisation of the 3-Bin System, including the supply and maintenance of the Mobile Garbage Bins (MGBs).⁵

7. Waste Collection Services utilise custom designed waste collection vehicles to traverse the area to be serviced and empty MGBs that have been placed at the kerbside by residents with their unwanted recyclables, organic and residual wastes. The waste collection vehicles are fitted with data-gathering systems to record the service delivery and inspect waste as it is unloaded from the MGBs into the vehicle.⁶
8. Once sufficient waste has been collected into the body of the vehicle, the driver transits from the collection area to a designated drop-off point where the waste is unloaded.
9. The waste is subsequently processed or discarded to landfill, as appropriate for the type of waste material.⁷ Application AA1000414 does not extend to such processing or disposal.
10. The successful supplier will be required to provide weekly and fortnightly services. Waste Collection Services may include the supply and maintenance of MGBs and/or fitting of radio-frequency identification (RFID) tags with the supply of the MGB, or supply and/or retrofitting of RFID tags.⁸
11. Waste Collection Services, for the purpose of the current application, does not include Bulk Bins, Hard Waste and Street Litter Bins.⁹
12. The Applicants seek authorisation until 30 June 2031. This period comprises:
 - publication of the Request For Tender (RFT) for Waste Collection Services in August 2018
 - tender open period of six to eight weeks
 - tender evaluation period that allows for contracts to be awarded by May 2019
 - nine to twelve months to allow for the purchase and commissioning of new trucks
 - contract commencement from May 2020, with a rolling start across the Participating Councils to allow for current contractual arrangements to conclude, with all contracts commenced by May 2021, and
 - a proposed maximum 10-year contract operating term.¹⁰

⁵ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

⁶ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

⁷ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

⁸ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

⁹ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

Proposed tender structure

13. The Applicants describe the proposed tender process as follows.
14. Council Solutions will undertake a competitive RFT process for the provision of Waste Collection Services to all four Participating Councils collectively. The RFT process will be open to all suitably qualified suppliers. Council Solutions will make the tender documents available on the SA Tenders & Contracts website, which provides access to all publicly available bidding opportunities. An RFT advertised on SA Tenders & Contracts is the primary method by which SA Councils procure Waste Management Services.¹¹
15. Prior to release of the RFT, an evaluation plan will be established dealing with the evaluation process and criteria against which all tenderers will be assessed. The evaluation criteria will be outlined in the RFT documentation. Evaluation of responses will be undertaken by an evaluation team comprising of Council Solutions, a Waste Service Management Project team consisting of a representative from each participating council and expert advisors.¹²
16. At the time of releasing the Waste Collection Services RFT to the market, the final locations for delivery of the collected materials will not have been confirmed. Accordingly, to support an effective and equitable tender and evaluation process, prices will be sought from potential suppliers to deliver the materials collected to one of two central locations (referred to as 'centroids') for receipt, transfer (where applicable) and processing by the relevant processor. These centroids have been selected based on the general locations of current receipt, transfer and processing facilities in SA in relation to the Participating Councils.¹³
17. The potential suppliers will be asked to provide a price for each Participating Council for delivery to each of the centroid locations to ensure that topographical and service density differences between each local government area are accounted for in tendered prices. However, the contract will be awarded for supply by one supplier to all Participating Councils. A price for transportation of collected materials beyond the centroids will also be sought in the RFT process to allow for potential suppliers located outside the centroids to compete. At the time of finalising the evaluation process and awarding of the contract for Waste Collection Services, the locations for receipt, transfer and processing of collected materials will be known.¹⁴

Ongoing administration of contracts¹⁵

18. As part of the ongoing contract management and administration Council Solutions and representatives from each Participating Council will participate in joint

¹⁰ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 12, available: [ACCC Public Register](#).

¹¹ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 9, available: [ACCC Public Register](#).

¹² Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 9, available: [ACCC Public Register](#).

¹³ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 9, available: [ACCC Public Register](#).

¹⁴ Council Solutions submission in support of application for authorisation, dated 14 March 2018, pp. 9-10, available: [ACCC Public Register](#).

¹⁵ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 10, available: [ACCC Public Register](#).

decisions, activities (including the sharing of information) and discussions which may include, but are not limited to:

- contamination management
 - community education
 - reporting waste audits, and
 - assessment of supplier performance.
19. Council Solutions will perform a central contract management role, being primarily responsible for and taking the lead on:
- pricing reviews
 - exercising contract options
 - reviewing and verifying data, and
 - measurement and monitoring of Key Performance Indicators.
20. Each of the Participating Councils will retain some contract management responsibility, such as:
- maintenance of bin and Service Entitled Premises register
 - internal reporting
 - approval of new and removal of expired services, and
 - providing the customer interface to their communities.

The rationale for the Proposed Conduct

21. The Applicants submit that the Proposed Conduct, which it terms the Waste Service Management Project, seeks to establish strategic partnerships that provide the best possible benefits and services to the Participating Councils' communities. They submit that these strategic partnerships will provide value for money, improve waste management and deliver waste reduction outcomes and environmental sustainability across multiple municipalities to achieve environmental and economic benefits for their communities.¹⁶

The Applicants

Council Solutions

22. Council Solutions is a regional subsidiary established in December 2012 in accordance with the *Local Government Act 1999* (SA). Its constituent councils are

¹⁶ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 12, available: [ACCC Public Register](#).

Adelaide City Council and the Cities of Charles Sturt, Marion, Onkaparinga, Salisbury and Tea Tree Gully.¹⁷

23. Council Solutions' primary purpose is to improve the financial sustainability of its constituent councils through collaborative strategic procurement, contract negotiation and management.¹⁸ During 2016/17 more than \$63.5 million of Council expenditure was undertaken utilising Council Solutions' collaborative contract arrangements.¹⁹
24. Council Solutions is owned by the constituent councils and governed by a Board of Management, formed by the Chief Executive Officers of each of the six constituent councils and an Independent Chair.²⁰

Participating Councils

25. The Participating Councils and Council Solutions are an unincorporated joint venture with the purpose of undertaking the Proposed Conduct.²¹
26. The Participating Councils are:
 - the Corporation of Adelaide City Council and the Cities of Charles Sturt and Marion (each being constituent members of Council Solutions), and
 - the City of Port Adelaide Enfield (which is not a constituent member of Council Solutions).²²
27. The Participating Councils are local government authorities and bodies corporate incorporated under the provisions of the *Local Government Act 1999* (SA). The functions of each participating council include providing services and facilities that benefit its area, its ratepayers and residents, and visitors to its area, in respect of waste collection and control or disposal services or facilities.²³
28. The sizes of the Participating Councils are outlined in Table 1.

¹⁷ The Cities of Onkaparinga, Salisbury and Tea Tree Gully are non-participating councils for the purpose of the proposed joint procurement process for which authorisation is sought.

¹⁸ The governing charter as gazetted 20 December 2012.

¹⁹ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 4, available: [ACCC Public Register](#).

²⁰ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 4, available: [ACCC Public Register](#).

²¹ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 4, available: [ACCC Public Register](#).

²² Council Solutions submission in support of application for authorisation, dated 14 March 2018, pp. 4-5, available: [ACCC Public Register](#).

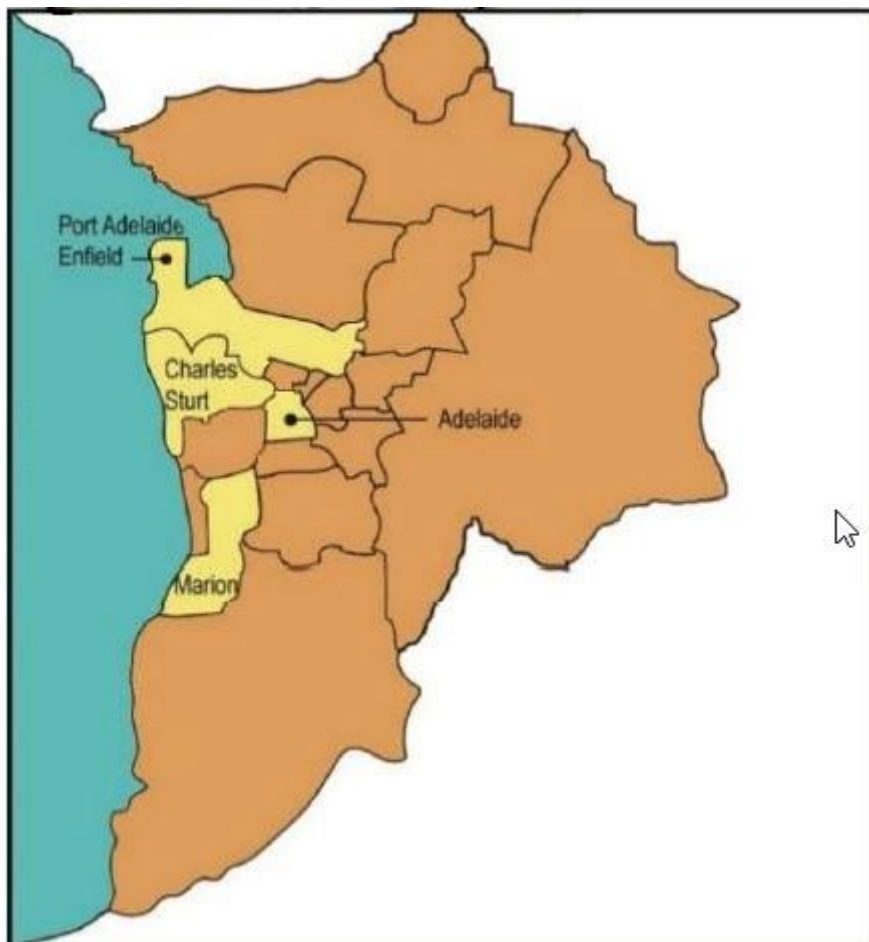
²³ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 7, available: [ACCC Public Register](#).

Table 1: Statistical data for the Participating Councils

Council	Population	Rateable Properties	Land Area
City of Adelaide	23,396	22,435	15.6
City of Charles Sturt	114,688	55,175	54.8
City of Marion	90,602	41,376	55.6
City of Port Adelaide Enfield	123,947	61,026	91.8
TOTAL	352,633	180,012	217.8
All Greater Adelaide Region Councils	1,429,122	686,236	10,882.50

29. The Participating Councils are situated within the Adelaide metropolitan area. A map showing the location of each of the Participating Councils is provided in Map 1, below.

Map 1: Location of the Participating Councils within the Metropolitan Adelaide area²⁴



²⁴ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 6, available: [ACCC Public Register](#).

Previous application for authorisation

30. In December 2016, the ACCC issued a determination denying authorisation to Council Solutions and a group of five metropolitan councils in SA, which had applied to jointly procure waste management services.
31. Council Solutions, on behalf of Adelaide City Council, Charles Sturt, Marion, Tea Tree Gully, and Port Adelaide Enfield, sought authorisation for 17 years (with a proposed maximum contract term of 10 years) to jointly procure the supply of:
 - waste collection services
 - the receiving and processing of recyclables
 - the receiving and processing of organics, and
 - waste disposal services.
32. Council Solutions proposed to run a joint process to procure all these waste management services streams at once, via a single Request for Proposal process.
33. Under the Request for Proposal process, tenderers would not have been required to tender to service all councils or all these waste management service streams. Each council would have individually decided which supplier to appoint for each service stream, meaning there was the potential for a large number of possible service streams and supplier combinations. The effect of this arrangement would have been that unless a provider wanted to limit itself to one option, it would have been required to prepare a proposal that covered multiple permutations and combinations of waste streams, in case only part of the proposal was successful.
34. The ACCC concluded that the proposed conduct was likely to result in some public benefits in the form of:
 - small improvements in efficiency related to community education
 - small improvements in efficiency in the supply of recyclables and organics processing, and
 - small improvements in environmental outcomes.
35. The ACCC considered that the conduct was likely to result in some public detriment constituted by a lessening of competition through:
 - deterring or preventing some potential suppliers from tendering, or from submitting competitive bids
 - reducing competition for the supply of waste services to Participating Councils in the longer term, and
 - reducing competition for the supply of waste services to non-participating councils.

36. On balance the ACCC was not satisfied that the net public benefit test was met.
37. Council Solutions has sought to address the ACCC's concerns with the conduct the subject of the previous application in the following ways:
 - Council Solutions has split the conduct into three separate tenders for different service streams: Waste Collection Services, processing services and ancillary services. The current application relates to Waste Collection Services only. As discussed below, separate applications have been lodged covering the processing and ancillary service streams.
 - Council Solutions proposes to issue a more tightly prescribed RFT for each service stream, instead of a Request for Proposal.
 - Council Solutions proposes to appoint a single supplier to provide kerbside collection services to all four Participating Councils.
 - Council Solutions seeks authorisation for 13 years, with a proposed maximum contract term of 10 years.
38. The application also covers four, instead of five, councils. The City of Tea Tree Gully is no longer participating.

Related applications

39. On 4 May 2018, Council Solutions lodged two further applications for authorisation for itself and the Participating Councils in respect of the following service streams:
 - **Council Solutions & Ors (processing), AA1000419:** joint procurement of waste processing services, comprising the receiving and processing of recyclables, receiving and processing of organics and receiving and processing or disposal of residual waste.
 - **Council Solutions & Ors (ancillary), AA1000420:** joint procurement for the collection of ancillary waste services, comprising the multi-unit collection of Bulk Bins and processing or disposal of the waste (including the supply and maintenance of the bins), kerbside collection and processing or disposal of Hard Waste and collection of park and footpath litter and/or recycling bins and disposal or processing of the waste.
40. The ACCC expects to release Draft Determinations about both applications in August. The applications and public submissions received are available on the ACCC's Public Register: [processing](#) and [ancillary](#).
41. The ACCC's draft determination in this matter should not be taken to indicate its likely view of the other two applications for authorisation.

Other authorisations

42. It is common practice throughout Australia for groups of local councils to collaborate to jointly procure waste services.²⁵ The objective of such collaboration is to reduce transaction costs, pool resources and expertise and achieve economies of scale.
43. The ACCC has authorised 30 arrangements of this type, concluding that these were likely to result in a net public benefit through improved quality of services at lower cost to the councils participating. Many of these have involved the procurement of kerbside waste collection services.²⁶
44. The ACCC has granted authorisations for the joint procurement of kerbside collection services for periods ranging from 10 to 19 years.
45. The joint procurement process that the Applicants have proposed in their current application for authorisation is similar to a number of those which the ACCC has previously authorised.

Consultation

46. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process.
47. The ACCC invited submissions from a range of market participants, including waste and recycling service providers, industry agencies, government agencies/bodies, neighbouring councils and parties who provided a submission in response to the 2016 application.²⁷
48. The ACCC received submissions from 19 interested parties in response to Council Solutions' application for authorisation:
 - seven in support of the application (including one from each of the four Participating Councils)
 - 10 opposing the application, and
 - two which did not express a view about whether authorisation should be granted.
49. The submissions in support of the application argue that the Proposed Conduct will result in cost savings for the Participating Councils through increased service efficiencies and the administration of a single joint tender process; and promote competition for the supply of waste collection services, providing better value for money for ratepayers.
50. The submissions opposed to the application argue that:

²⁵ SA examples include procurements related to Barossa Regional Procurement Group, Adelaide Hills Region Waste Management Authority, Northern Adelaide Waste Management Authority and East Waste.

²⁶ See at www.accc.gov.au/authorisationsregister: Bathurst, Blue Mountains and others; Shellharbour and Wollongong; Loddon Mallee; Hunter Resource Recovery and Brisbane Redlands.

²⁷ A list of the parties consulted and the public submissions received is available from the ACCC public register: www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register

- Administrative cost savings are unlikely to be realised because all four councils will need to remain heavily involved in the tender process and the ongoing management of collection services in their respective council areas.
 - Efficiencies in the provision of collection services are also unlikely to be realised because the successful tenderers will still need to tailor their services to the specific needs of each individual council; and each council's individual population is of sufficient size for the service provider to realise economies of scale, so aggregating the councils' demand is unlikely to realise further efficiencies.
 - A tender process of the proposed size will exclude or deter a number of suppliers, particularly small businesses, from tendering.
 - Awarding a contract of the proposed size to a single provider could result in fewer waste services providers in Adelaide, which would impact competition in the long term.
51. In particular, two associations that count current collectors for the Participating Councils among their members have expressed concerns to the ACCC. These are:
- The Waste & Recycling Association of SA (WRASA). WRASA's position is supported by member firm Solo Resource Recovery, the current kerbside collector for the Cities of Adelaide, Charles Sturt and Marion. WRASA has also listed waste-services firm JJ Richards as a member.
 - The Waste & Recycling Industry Association of SA (WRISA). Port Adelaide Enfield's current kerbside collector, Cleanaway, is a member of WRISA and has written in support of WRISA's submission.
52. In addition, the ACCC directly contacted and held discussions with a number of parties including other Adelaide councils, groups of councils in other states who jointly procure collection services and potential suppliers of collection services. These discussions were initiated by the ACCC and conducted on a confidential basis.
53. The submissions by Council Solutions, Participating Councils and interested parties, and the information obtained through the ACCC's market inquiries, are considered as part of the ACCC's assessment of the application for authorisation below.
54. Public submissions received to date, any further public submissions received and other information which relates to the application for authorisation may be obtained from the [ACCC's Public Register](#).

ACCC assessment

55. Pursuant to subsections 90(7) and 90(8) of the Act, the ACCC must not make a determination granting authorisation in relation to conduct unless it is satisfied in all the circumstances that the conduct would result or be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the conduct.

Relevant areas of competition

56. The ACCC does not consider it necessary to precisely define the relevant areas of competition in assessing the Proposed Conduct.
57. The four Participating Councils are all in what is called the Greater Adelaide Region (GAR), consisting of 27 councils. About 19 of the councils may be considered to be within metropolitan Adelaide, while the remainder touch the fringes of Adelaide, being in areas such as the Barossa region and Fleurieu Peninsula.
58. For the purposes of best assessing the Proposed Conduct, the ACCC has focused on an area of competition for the acquisition of services for the kerbside collection of municipal/domestic waste, recyclables and organics in metropolitan Adelaide.
59. At this stage, of the 19 councils in metropolitan Adelaide:
- Eight councils each independently procure domestic waste collection from the private sector (seven from Solo and one from Cleanaway), including the four Participating Councils.
 - One council, City of Onkaparinga, 'self-supplies' (runs bin collection in-house) to collect domestic waste destined for landfill, while contracting out collection of recyclables and organics to Solo.
 - Seven councils procure their collection services from East Waste. East Waste is a Regional Subsidiary, or statutory body corporate, established and owned by these councils to jointly operate collection services in their areas.
 - Three councils procure waste services from or through another Regional Subsidiary, Northern Adelaide Waste Management Authority (NAWMA), which has arranged for Suez to carry out kerbside collections.

Future with and without

60. To assist in its assessment of the Proposed Conduct against the authorisation test, the ACCC compares the benefits and detriments likely to arise in the future with the conduct for which authorisation is sought, against those in the future without the conduct the subject of the authorisation.

61. The ACCC considers that, in the future without the Proposed Conduct, each council would procure kerbside-collection services individually.²⁸
62. Where the Participating Councils individually procure kerbside waste collection services, the timing of each tender process is likely to vary because existing contracts are due to expire at different times. Participating Councils would be free to offer and award contracts of a length of their choice.

Public benefit

63. The Act does not define what constitutes a public benefit and the ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (Tribunal) which has stated that the term should be given its widest possible meaning, and includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.²⁹

64. Having regard to the submissions of the Applicants and interested parties and information available to the ACCC, the ACCC has considered five claimed public benefits of the Proposed Conduct
 - transaction cost savings
 - improved efficiencies through combined contract management
 - improved efficiency in the supply of kerbside waste collection services
 - improved environmental outcomes, and
 - stimulation of competition.
65. The ACCC's assessment of the likely public benefits from the Proposed Conduct follows.

Transaction cost savings

66. Council Solutions submits that tender processes to procure waste management services involve considerable time and resources across each council. For potential suppliers, there is also significant time and resources involved in responding to multiple tender processes conducted by individual councils, as each council would ordinarily have its own service specifications, contract conditions and evaluation criteria.³⁰ Council Solutions submits the Proposed Conduct will result in transaction cost savings, for both the Participating Councils

²⁸ City of Marion has previously obtained some waste services in partnership with the cities of Holdfast Bay and West Torrens but the ACCC considers that the most appropriate comparison to the Proposed Conduct is individual procurement.

²⁹ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

³⁰ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 17, available: [ACCC Public Register](#).

and potential suppliers, by reducing the complexity of the process compared with each council tendering individually.³¹

67. Under the Proposed Conduct, Council Solutions intends to centrally undertake a number of tasks relating to the administration and documentation of the RFT. Whilst the Participating Councils will still have a role in reviewing and endorsing the documentation, Council Solutions submits that their individual contribution to the administration of the process will be substantially reduced.³²
68. Council Solutions submits that a single joint tender process will remove the duplication of work required to prepare, present, respond, negotiate, evaluate and award suppliers for four councils individually.³³ The Participating Councils would issue a single tender document to the market for the provision of waste collection services, with, to the greatest extent possible, aligned specifications, service standards, data capture and reporting and bin types.³⁴
69. Council Solutions further submits that the Proposed Conduct will result in transaction cost savings through shared technical, legal and probity advice and streamlining contract management, as activities such as price reviews, extension negotiations and monitoring of KPIs can be undertaken jointly.³⁵
70. WRISA and WRASA submit that the Proposed Conduct will not result in tender process cost savings because the involvement of Council Solutions adds an extra layer of bureaucracy.³⁶
71. WRISA submits that while resources for each of the Participating Councils are being reduced, the work required is merely being transferred to Council Solutions.³⁷ WRISA also submits that it is unlikely the Participating Councils will benefit from any cost savings in relation to ongoing administration because such advice will still be required in relation to the specific service requirements for each of the Participating Councils.³⁸
72. WRASA submits that each step of the tender process, from tender specification to contract award, will still need to be reviewed and agreed by each council through their independent internal review processes. WRASA therefore considers that, because individual councils are required to negotiate and agree with other councils and Council Solutions, the work involved is greater and more complex than current practice, thereby increasing coordination costs.³⁹

³¹ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 9, available: [ACCC Public Register](#).

³² Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 18, available: [ACCC Public Register](#).

³³ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 10, available: [ACCC Public Register](#).

³⁴ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 18, available: [ACCC Public Register](#).

³⁵ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 22, available: [ACCC Public Register](#).

³⁶ Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 7, available: [ACCC Public Register](#), Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 3 available: [ACCC Public Register](#).

³⁷ Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 5, available: [ACCC Public Register](#).

³⁸ Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 5, available: [ACCC Public Register](#).

³⁹ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 39 available: [ACCC Public Register](#).

73. In response, Council Solutions submits that it will perform numerous tasks that each council would need to undertake individually if conducting its own tender process.⁴⁰
74. The ACCC has received information in the course of this review and in previous reviews, from collections procurers and providers in and outside SA, supporting the view that transaction cost savings can result from collaborative procurement by councils: by facilitating the reduction of unnecessary duplication of costs incurred by councils and/or suppliers to conduct or participate in individual tender processes.
75. In this case, the ACCC considers that the proposed conduct is likely to reduce or remove some duplication by Participating Councils of tender-related tasks such as tender documentation preparation, briefing sessions for prospective tenderers and contract preparation. The greater involvement of Council Solutions in the coordination and management of the tender process increases the potential for the realisation of such cost savings.
76. Similarly, a single tender process is likely to reduce duplication of work required by tenderers.
77. The ACCC considers that transaction cost savings from reducing duplication are likely to be somewhat, although not wholly, offset by the cost required to coordinate internally within the group of councils. The Participating Councils will be responsible for endorsing the procurement process and will have representatives on the evaluation panel, responsible for evaluating tenders received. This will involve coordination to determine the characteristics, objectives and preferences of each council.
78. Overall, the ACCC considers that the Proposed Conduct is likely to result in a public benefit in the form of transaction cost savings, for councils and suppliers, relative to each participating council separately conducting its own procurement process.

Improved efficiencies through combined contract management

79. Council Solutions submits that contract management tasks include:
- benefits realisation reporting, data analysis and feedback and identification of changes that can improve efficiencies – to be undertaken by Council Solutions
 - compliance with contractual requirements such as safety inductions, license and accreditation updates, insurance certificates and any other objective compliance measure – to be undertaken by Council Solutions with Participating Councils contributing as required
 - conformance, ensuring that both parties adhere to their requirements under the contract including monitoring KPIs, data review and certification, pricing reviews and document management – to be undertaken by Council Solutions, and

⁴⁰ Council Solutions further submission, dated 18 May 2018, p.16, available: [ACCC Public Register](#).

- ensuring that services are delivered (that is, bins emptied and waste deposited at the agreed facility as per agreed timings) – to be undertaken by the Participating Councils with support from Council Solutions.⁴¹
- 80. Council Solutions submits that with designated contract management provided by it across the four councils, duplicated effort associated with these tasks will be removed and a dedicated focus will be applied in extracting maximum value and performance from the contract.
- 81. In particular, Council Solutions submits that good data, consistent across the four councils, will assist in policy and strategy development, monitoring and evaluation of service delivery and investment decisions.⁴²
- 82. WRISA submits that after awarding the contract, administration will fall back to the individual councils and, as such, cost savings will not be realised.⁴³
- 83. The ACCC notes that most of the day-to-day operation contract management would be undertaken by each participating council. However, the ACCC considers that there is some potential for cost savings to be realised through Council Solutions undertaking some contract management tasks in relation to issues common to the four councils. Although the ACCC also notes that potential savings are likely to be somewhat offset by the cost required to coordinate internally within the group of councils in relation to these issues.
- 84. Overall, the ACCC considers that there is likely to be some, small, public benefit resulting from likely efficiencies from combined contract management.
- 85. The ACCC considers that centrally coordinated data analysis and review also has the potential to assist in policy and strategy development and monitoring and evaluation of service delivery to the extent that the issues around operational delivery being analysed are common across the four councils. However, based on the information provided, the extent of the commonality across the four councils, and accordingly the utility of aggregated data, is unclear. Therefore, based on the information currently before it, the ACCC is not in a position to conclude that it is likely that this data sharing will result in a material public benefit.

Improved efficiencies in the supply of kerbside waste collection services

- 86. Council Solutions submits that the Proposed Conduct is likely to result in increased service efficiencies, particularly in allowing collection vehicles to service more than one Participating Council in any run. In particular:
 - The successful tenderer will be able to optimise collection routes without regard to council borders.
 - In response to a missed service, a vehicle currently serving another council will be able to be re-tasked rather than sending out a new vehicle.

⁴¹ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.21, available: [ACCC Public Register](#).

⁴² Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.21, available: [ACCC Public Register](#).

⁴³ Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 6, available: [ACCC Public Register](#).

- All spare vehicles will similarly have freedom of movement, reducing the overall number of trucks required.
 - The successful tenderer will be able to maximise utilisation of vehicles through optimisation of collection routes.⁴⁴
87. WRISA submits that cross border efficiencies are unlikely to be realised because the Participating Councils do not share enough common borders.⁴⁵ WRISA also submits that no fewer trucks will be required because there is a direct proportionate relationship between the number of tenements serviced and the number of trucks required and this does not change with the size of the contract.⁴⁶ WRISA similarly submits that the geographic spread of the councils undermines their ability to realise cost savings.⁴⁷
88. WRISA also submits that the size of the contracts let by the councils individually are already large enough to realise economies of scale and that beyond a certain point, the aggregation of waste volumes does not have a substantial impact on price and the approach of contractors submitting tenders.⁴⁸
89. WRISA submits that contracts larger than the size of each individual participating council exhibit diseconomies of scale: that it is easier and more cost effective to run a kerbside collection contract of a 'sweet-spot' size of 20,000 to 50,000 households.⁴⁹ The four Participating Councils together have about 180,000 rateable properties.
90. WRISA also lodged a report prepared by Brian Dollery on behalf of New England Education and Research Pty Ltd. Professor Dollery's examination of Queensland councils reportedly found that no scale economies were observed for domestic waste collection and removal expenditure. Similarly, on broad expenditures by local governments, he reportedly found that there is a great deal of uncertainty about whether economies of scale exist in local government service provision, and if they do exist, at what scale they commence and cease.⁵⁰
91. A report prepared for WRISA by Economic Research Consultants also questions the significance of service efficiencies under Council Solutions' proposed arrangements. This includes noting that participating council City of Marion, which does not share a border with the three northern participating councils, is a 'considerable distance apart' from the other three councils.⁵¹
92. Business SA also questions whether the inclusion of the City of Marion would realise efficiencies, given its geographic isolation from the other participating councils.⁵²
93. The City of Marion has submitted that the Proposed Conduct will deliver resident value through increased service efficiencies. Council Solutions has submitted that

⁴⁴ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.27, available: [ACCC Public Register](#).

⁴⁵ Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 3, available: [ACCC Public Register](#).

⁴⁶ Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 10, available: [ACCC Public Register](#).

⁴⁷ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 17 available: [ACCC Public Register](#).

⁴⁸ Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 7, available: [ACCC Public Register](#).

⁴⁹ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 30 available: [ACCC Public Register](#).

⁵⁰ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p.39, available: [ACCC Public Register](#).

⁵¹ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p.55, available: [ACCC Public Register](#).

⁵² Business SA submission, dated April 2018, p. 8, available: [ACCC Public Register](#).

the City of Marion, and the other councils, will achieve a range of benefits via the Proposed Conduct that have nothing to do with whether Marion shares direct boundaries with other councils – for example: truck, fuel and maintenance purchasing in bulk; and running one customer-service interface (such as a call centre).⁵³

94. In response to a request from the ACCC, WRASA submitted information and data in support of their submission that there is a sweet spot for kerbside collection of between 20,000 and 50,000 households and that beyond that kerbside collection exhibits diseconomies of scale.
95. The ACCC considers that the information and data provided does not support this claim. Rather, it suggests that there is great variation in spending on collection services between councils, but with costs reducing slightly as the number of households being serviced increases. However, the data suggests no significant correlation between the size of councils and the cost of waste services in those councils and does not suggest diseconomies of scale for larger contracts.
96. The ACCC also put the 'sweet spot' contention to a range of market participants including suppliers of collection services and councils during its consultation. Most did not consider that it applied to their operations.
97. More generally, during the ACCC's market inquiries, service providers and councils expressed a range of views about whether joint procurement has realised efficiencies in the supply of kerbside waste collection services in other instances where it has been used. Some service providers identified greater efficiencies with respect to fleet optimisation and other costs in supplying services. Others indicated either that aggregating the requirements of a number of councils had either not resulted in greater efficiencies or that whether it had done so was unclear.
98. Some councils also identified greater efficiencies, resulting in lower prices, whereas others considered that either cost savings had not resulted or that the extent to which they had was unclear. No council the ACCC spoke to considered that joint tendering for collections had resulted in higher prices.
99. The ACCC notes the range of views put forward, by parties with first-hand experience in joint supply of council waste services, about the extent of any efficiency gains in the delivery of these services. The views received likely reflect that the realisation of greater efficiencies is, to a large extent, dependent on factors specific to each arrangement, noting that such efficiencies are only one of the benefits that may be achieved through joint procurement.
100. With respect to the Proposed Conduct, the ACCC considers that that the Proposed Conduct is likely to offer suppliers some efficiencies: that it is likely to enable waste collectors servicing the Participating Councils to reduce costs by:
 - Providing opportunities for the design of more efficient collection routes across Participating Councils. This would be facilitated, in part, by the service provider being allowed to mix waste from the four councils in their trucks and thereby optimise their routes.

⁵³ Council Solutions response to submissions from interested parties 18 May 2018, p23, available: [ACCC Public Register](#).

- Reducing the number of spare trucks needed to cover repairs and breakdowns across Participating Councils.
101. However, the ACCC considers that the magnitude of any likely efficiency gains is unclear.
 102. With respect to the participation of the City of Marion in the Proposed Conduct, the ACCC notes that any efficiencies through providing opportunity for the design of more efficient collection routes across Participating Councils is likely to be confined to councils close to each other. Therefore these benefits would be unlikely to extend to the City of Marion, since it is located about 12 to 15 kilometres to the south of the closest other participating councils, Adelaide and Charles Sturt.
 103. The ACCC notes that Council Solutions does not propose to require uniform pricing across the Participating Councils. The Proposed Conduct involves tendered prices accounting for topographical and service-density differences.⁵⁴
 104. As noted, the ACCC has also received submissions that the City of Marion, and the other councils, will achieve a range of benefits via the Proposed Conduct that have nothing to do with whether it shares direct boundaries with other councils. The ACCC has not received information or submissions indicating that the City of Marion's participation in the Proposed Conduct would be likely to negate benefits likely to accrue to the three northern participating councils.
 105. Overall, the ACCC considers that the Proposed Conduct is likely to result in a small public benefit in the form of facilitating improved efficiencies in the supply of kerbside waste collection services. The ACCC acknowledges that there is potential for more significant efficiencies to be achieved. However, the ACCC does not have sufficient evidence before it to conclude that significant efficiencies are likely to be achieved.

Improved environmental outcomes

106. Council Solutions submits that the Proposed Conduct would allow for a unified education program, which can help reduce contamination and increase diversion of waste from landfill.⁵⁵ Council Solutions notes that each participating Council currently has its own independently generated educational material available for their respective communities, but considers that while there is some consistency in educational materials across the Participating Councils, there are also differences in presentation, content and detail. Council Solutions argues that confusion among residents about accurate waste separation practices can result in inadvertent contamination of the recyclable waste and organic streams, which can result in loads of potentially recoverable wastes being sent to landfill.⁵⁶
107. Council Solutions submits that a consistent educative approach across all Participating Councils would create more certainty for residents and visitors about correct waste separation practices, improving the likelihood the waste would be diverted from landfill. Council Solutions further submits that the Proposed Conduct

⁵⁴ Council Solutions submission in support of application for authorisation, dated 14 March 2018, pp. 9-10, available: [ACCC Public Register](#).

⁵⁵ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.24, available: [ACCC Public Register](#).

⁵⁶ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.22, available: [ACCC Public Register](#).

will enable the Participating Councils to work together to develop targeted educational material relevant to key issues, for example combined messaging across the Participating Councils where diversion is lowest, or consistent translated messaging for those from non-English speaking backgrounds.⁵⁷ It considers the proposed education program's increased focus on data capture and reporting, together with the commitment to feed the results to Green Industries SA, will allow the state wide education programs Green Industries SA facilitate to become more effective.⁵⁸ Council Solutions submits that this will contribute to the achievement of State government waste diversion strategies and targets.⁵⁹

108. The SA Environmental Protection Agency submits that the Proposed Conduct offers significant environmental benefits while Green Industries SA submits that the environmental aims of the proposed conduct align with priorities for action for landfill diversion targets as outlined in SA's waste strategy.⁶⁰
109. WRISA submits that the potential for environmental benefits and alignment with SA waste policy settings is overstated. WRISA submits that a joint procurement for waste collections services will not be a conduit for waste diversion, as this would more reasonably be attributed to the introduction of new processing infrastructure and processing services that are not part of the Proposed Conduct.⁶¹ In response, Council Solutions submits that a holistic approach is required to improve waste diversion rates, and that "front line" intervention is required by collection drivers to identify households where contamination of recyclables and organics is occurring.⁶²
110. WRASA submits that authorisation is not necessary to implement joint community education initiatives, as councils nationwide can and do already share educational resources without the need for a joint collection tender process.⁶³ WRASA argues that, for consistent educational messaging to result in cost savings, it is necessary for all Participating Councils to have the same bin system, with the same colour lids – and, at present, the colour of bin lids is not uniform across the Participating Councils. WRASA submits that the cost to align bin systems would be significant.⁶⁴
111. WRASA further submits that the Proposed Conduct will not be effective at diverting waste from landfill because evidence suggests that contracts which cover a large number of rateable properties have lower landfill waste diversion rates. WRASA considers this is due to the inflexibility of larger contracts over a longer contract term and because contracts above 'sweet-spot' size increases collection driver anonymity, which makes kerbside bin tagging more difficult to effect.⁶⁵ In response, Council Solutions provided data which it claims shows that

⁵⁷ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.23, available: [ACCC Public Register](#).

⁵⁸ Council Solutions further submission, dated 12 June 2018, p.2, available: [ACCC Public Register](#).

⁵⁹ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.22, available: [ACCC Public Register](#).

⁶⁰ Environment Protection authority SA submission, dated 20 April 2018, p 1, available: [ACCC Public Register](#). Green Industries SA submission, dated 12 April 2018, p 1, available: [ACCC Public Register](#).

⁶¹ Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 2, available: [ACCC Public Register](#).

⁶² Council Solutions further submission, dated 14 May 2018, p.5, available: [ACCC Public Register](#).

⁶³ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 9, available: [ACCC Public Register](#).

⁶⁴ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p.19, available: [ACCC Public Register](#).

⁶⁵ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p. 30, available: [ACCC Public Register](#).

diversion rates are more consistent and on average higher the larger the number of rateable properties under a contract.⁶⁶

112. The ACCC recognises that, to the extent that the proposed conduct facilitates diversion of residual waste from landfill, it has the potential to result in improved environmental outcomes by reducing the harmful effects associated with landfill.
113. The ACCC considers that by enabling a larger scale education program which facilitates collaboration to improve its effectiveness, the proposed conduct is likely to improve household waste separation practices and therefore increase the recovery of recyclable and organic material. This would result from the aggregation of education program requirements and resources, together with the coordinating role to be played by Council Solutions, which is likely to facilitate improvements in both design and delivery of community education programs across Participating Councils. This is likely to result in an environmental benefit in the form of landfill diversion.
114. However, the ACCC notes that the Participating Councils can, and currently do, undertake their own community education programs. Their incentives to do so will not change under the proposed conduct, such that any environmental benefit from improved education is likely to be small. Therefore, the ACCC considers that the proposed conduct is likely to result in a small public benefit in the form of improved environmental outcomes.
115. With respect to the concerns raised by WRASA that large contracts are less effective at diverting waste from landfill, the ACCC has not been provided with evidence to conclude that this is the case. The ACCC notes that there are a range of factors that can influence landfill waste diversion rates, such as government policy and regulation and local government initiatives such as those currently run by the Participating Councils and those proposed under the Proposed Conduct.

Stimulation of competition

116. Council Solutions submits that the opportunity presented by the Participating Councils under the Proposed Conduct will encourage all potential suppliers capable of providing Waste Collection Services to compete and submit tenders when the RFT is called. Council Solutions submits that there are currently at least six potential suppliers in the market who have the capacity to provide Waste Collection Services to the Participating Councils, but not all of these tender regularly for waste collection opportunities presented by SA Councils.⁶⁷
117. Council Solutions states that notwithstanding the diversity of potential suppliers in the market, as a result of procurement processes undertaken by Regional Subsidiaries and individual Councils, only three suppliers are currently contracted to provide services to the Greater Adelaide Region Councils which procure Waste Collection Services via tender; with one supplier, Solo, holding a 68 per cent market share.⁶⁸

⁶⁶ Council Solutions further submission, dated 29 June 2018, available: [ACCC Public Register](#).

⁶⁷ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.26, available: [ACCC Public Register](#).

⁶⁸ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.26, available: [ACCC Public Register](#).

118. Council Solutions states that feedback provided by potential suppliers during its consultation with the market indicated that the contract opportunity presented via the Proposed Conduct is attractive. The collaborative approach of four Councils utilising a single RFT with standardised specifications, reducing the tendering workload for the potential suppliers, further encourages competition. Council Solutions submits that receiving the maximum number of tenders will allow the Participating Councils to compare all the service options available and unlock the best possible value for money for ratepayers.⁶⁹
119. Council Solutions also submits that by jointly procuring Waste Collection Services, the Participating Councils may also benefit from a preparedness on the part of some tenderers to reduce the margin they apply to their tendered prices, because large waste collection contracts are seen as representing a solid base load of work with significant and reliable cash flow and reduced commercial risk.⁷⁰
120. WRISA submits that a tender process of the size Council Solutions is proposing will significantly limit competition and exclude a number of market participants who would likely bid for waste from Participating Councils if offered through individual tender processes, due to upfront investment and risk. WRISA submits that the proposed contracts are highly capital intensive and require significant upfront investment.⁷¹
121. WRISA states that the greatest stimulation of a market occurs when there is a dynamic market with a consistent pipeline of opportunities available to all or most contractors. WRISA argues that the Proposed Conduct contradicts this and is likely to result in fewer suppliers responding to the RFT.⁷²
122. Port Adelaide Enfield's current kerbside collector, Cleanaway, is a member of WRISA and has written in support of WRISA's submission.⁷³
123. WRASA similarly submits that the proposed joint procurement is too large for some potential suppliers as the capital requirements and bank guarantees required by the tender may be beyond the means of smaller contractors who normally bid for individual council contracts.⁷⁴ WRASA further submits that the risk of pricing such a large contract incorrectly will also deter some bidders.⁷⁵ Therefore, WRASA submits, the Proposed Conduct is likely to result in fewer firms bidding than would otherwise be the case and favour a small number of larger firms.⁷⁶
124. As noted in the ACCC's assessment of the public benefits of the proposed conduct, WRASA's position is supported by Solo, the current kerbside collector for the Cities of Adelaide, Charles Sturt and Marion.

⁶⁹ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p.26, available: [ACCC Public Register](#).

⁷⁰ Council Solutions submission in support of application for authorisation, dated 18 May 2018, p.24, available: [ACCC Public Register](#).

⁷¹ Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 2, available: [ACCC Public Register](#).

⁷² Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 8, available: [ACCC Public Register](#).

⁷³ Cleanaway Waste Management Ltd, submission of 25 April 2018, available: [ACCC Public Register](#).

⁷⁴ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p.10, available: [ACCC Public Register](#).

⁷⁵ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p.31, available: [ACCC Public Register](#).

⁷⁶ Waste & Recycling Association of SA Inc submission, dated 26 April 2018, p.25, available: [ACCC Public Register](#).

125. Business SA also raises concerns that increased capital requirements may result in fewer bidders.⁷⁷
126. In response, Council Solutions submits that there are no small businesses which provide 3-Bin System Waste Collection Services to either the Participating Councils or any of the Greater Adelaide Region Councils. Additionally, any of the potential suppliers which could demonstrate the experience and financial capacity that would convince any Council in the Greater Adelaide Region, regardless of size, to confidently enter into a contract for Waste Collection Services are not small businesses.
127. Council Solutions further submits that:
- Collection services in Adelaide are currently supplied by a relatively small number of participants with the demonstrated experience and financial capacity that would convince any council, regardless of size, to confidently enter into a 10-year contract for 3-Bin System collection.
 - Each of these providers is a known entity with substantial resource backing in respect of human, financial and physical assets, and they are not small businesses.⁷⁸
128. In response to a request from the ACCC, WRASA submitted information and data in support of their submission that individual council tender processes / smaller tender processes attract more tenderers than joint / larger tender processes.
129. The ACCC also reviewed a number of joint procurement processes involving collection services in recent years, in and outside SA; and spoke to a number of council groups whose joint procurement arrangements have been authorised by the ACCC.
130. The ACCC also requested and received from the four Participating Councils confidential information about their most recent waste-services procurement processes involving collections.
131. While strong inferences can not necessarily be drawn from this sample size, the ACCC considers that the information available to it, including that provided by WRASA, does not support the argument that, all else being equal, councils of the size of the four Participating Councils would attract more tenders if they each ran individual tender processes than they would through the proposed joint tender process.
132. The ACCC's review of the Participating Councils' procurements for collection services and the other procurement exercises noted above indicates that, whether the job size is large or small or the procurement is for a single council or more than one council, the bidders for and winners of such kerbside collections work largely come from the defined pool of Australia's large, long-standing collections-services providers. These are: Cleanaway, Veolia, Suez, JJ Richards, Remondis and Solo (Solo being particularly prominent in Adelaide as a proportion of its national municipal kerbside collections business). Smaller firms rarely feature in the procurement exercises.

⁷⁷ Business SA submission dated April 2018, p2, available: [ACCC Public Register](#).

⁷⁸ Council Solutions submission in support of application for authorisation, dated 18 May 2018, p.15, available: [ACCC Public Register](#).

133. As noted, Council Solutions has submitted that, rather than being a deterrent, collaborative-procurement opportunities that aggregate service volumes are highly desirable to suppliers and attract significant competition. The ACCC notes that it is unlikely that the Participating Councils would have established the proposed joint procurement arrangement unless they consider this to be the case.
134. In this respect, the ACCC notes that three of the six large collection suppliers identified at paragraph 132 above, Veolia, JJ Richards and Remondis, do not currently supply collection services to any councils in Adelaide. If one or more of these entities were enticed to submit a tender by the opportunity to win the joint contract, this would provide additional competition to the incumbent providers.
135. As discussed above, the ACCC considers that the Proposed Conduct is likely to offer suppliers some transaction-cost savings and other efficiencies compared with tendering for and supplying services to the Participating Councils individually.
136. Further, the ACCC considers that the Proposed Conduct, by offering a guaranteed contract of around 180,000 rateable properties, for at least seven years, is likely to provide a greater incentive for the suppliers noted above which typically tender for municipal waste collection contracts, to compete for the contract.
137. Accordingly, the ACCC considers that the proposed conduct is likely to result in some public benefit by stimulating additional competition to provide kerbside collection services to the Participating Councils.

ACCC conclusion on public benefits

138. The ACCC considers that the proposed conduct is likely to generate public benefits in the form of transaction cost savings compared with each participating council conducting its own procurement process. The ACCC also considers that the joint procurement process is likely to result in some public benefit by stimulating additional competition to provide kerbside collection services to the Participating Councils.
139. The ACCC also considers that the proposed conduct is likely to generate public benefits through small improvements in:
 - efficiency in managing kerbside waste collection contracts
 - efficiency in the supply of kerbside waste collection services, and
 - environmental outcomes.

Public detriment

140. The Act does not define what constitutes a public detriment and the ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as :

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁷⁹

⁷⁹ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

141. As discussed in the ACCC's consideration of the public benefits of the proposed conduct, some interested parties have raised concerns that the proposed conduct will lessen competition by deterring or preventing some suppliers from tendering or bidding competitively.
142. However, the ACCC considers that this is unlikely in practice, as there are few businesses that have the necessary capabilities to win a contact to service one council, but could not tender to service all four councils. Rather than lessening competition, the net effect of the proposed conduct is likely to be to stimulate greater competition by leading to more tender participants than would otherwise be the case and / or tender participants bidding more keenly.
143. Some interested parties have also submitted that:
- The Proposed Conduct may, in the longer term, reduce competition to supply collection services to the Participating Councils and non-participating councils in Adelaide.
 - The Proposed Conduct may reduce competition to supply mobile garbage bins to the Participating Councils and non-participating councils in Adelaide.
144. The ACCC's assessment of these potential public detriments from the proposed conduct follows.

Longer-term reduction in competition for the supply of waste services to the Participating Councils and non-participating councils

145. WRISA submits that the Adelaide market is smaller than Melbourne and Sydney and the tendering of such a large percentage of the available waste would significantly limit the competitiveness of other parties (i.e. service providers which do not win the contract). WRISA argues that essentially, the winning provider would have an almost unassailable lead in capturing market share, as their competitors would not have sufficient volume of work to sustain competitive operations. WRISA states that its members have made it clear that the lessening of competition to this degree would lead to other providers divesting their interests and searching for new opportunities and new investments in other states or territories, thus further reducing competition into the future.⁸⁰
146. Business SA also raises concerns that a contract of the size proposed will lock up a significant proportion of the market, thereby distorting the collection services market.⁸¹
147. Council Solutions submits that, to the extent that the Participating Councils are competitors in the acquisition of waste collection services, their other existing competitors are the other metropolitan GAR Councils which provide the market with opportunities to tender for their waste collection services.
148. Council Solutions notes that one supplier, Solo, currently provides kerbside collection services to three of the four councils. Council Solutions submits that this concentration in the market has been occurring without the Proposed Conduct

⁸⁰ Waste & Recycling Industry Association of SA submission, dated 25 April 2018, p. 9, available: [ACCC Public Register](#).

⁸¹ Business SA submission dated April 2018, p10, available: [ACCC Public Register](#).

and that the only outcome where one provider would have a greater market share than is currently the case would be if Solo won the contract, in which case its market share would grow by one council. Council Solutions also submits that this outcome is possible both with and without the Proposed Conduct. That is, Port Adelaide is the only council contract not already held by Solo, and Cleanaway could be displaced if Port Adelaide procured collection services individually and Solo was the successful tenderer.

149. The ACCC has considered whether the Proposed Conduct may, in the longer term, reduce the number of suppliers of collection services in Adelaide.

150. This may be because, for example:

- new suppliers are more likely to enter the market if there are more frequent, incremental (essentially smaller-scale) opportunities to do so than afforded by the Proposed Conduct, and
- potential suppliers that do not win the joint work of the four Participating Councils refrain from participating in the market.

151. As explained at paragraphs 57 and 59, at this stage, of these 19 potential individual customers for municipal waste collection services in the metropolitan GAR:

- Eight councils each independently procure domestic waste collection from the private sector (seven from Solo and one from Cleanaway), including the four Participating Councils.
- One council, City of Onkaparinga, 'self-supplies' (runs bin collection in-house) to collect domestic waste destined for landfill, while contracting out collection of recyclables and organics to Solo.
- Seven councils procure their collection services from one Regional Subsidiary, East Waste.
- Three councils procure waste services from or through another Regional Subsidiary, NAWMA, which has arranged for Suez to carry out kerbside collections.

152. WRASA accordingly submits that only about half of the metro-GAR councils are currently 'contestable'.

153. The ACCC considers that all the councils are likely to be contestable over the longer term. For example, City of Onkaparinga is currently running an in-house operation to collect 'red-bin' waste but could, in the future, choose to outsource. Some councils are more imminently and / or readily contestable than others.

154. As noted, East Waste, a Regional Subsidiary (government authority) serves seven councils and the other councils are served by just three firms: Cleanaway (servicing one council, applicant Port Adelaide Enfield), Solo (eight councils, including three of the four Participating Councils) and Suez (three councils, through NAWMA).

155. As noted by Council Solutions, the result of the proposed joint procurement process is that one provider will service all four councils, which is not substantially different to the current situation where Solo services three of the four councils.

156. However, the relevant question for the ACCC to consider is what impact the four councils' Waste Collection Services contracts being jointly awarded to a single tenderer would have on the ability of other suppliers to compete to supply these services to the Participating Councils and other councils in the future.
157. In this respect, as discussed from paragraph 132, municipal waste collection contracts of the size that each of the Participating Councils would individually tender for are usually awarded to Australia's large, long-standing collections services providers: Cleanaway, Veolia, Suez, JJ Richards, Remondis and Solo. This is likely to remain the case with or without the proposed conduct. Therefore the ACCC does not consider that the proposed conduct significantly impacts the ability of other, smaller suppliers, to compete to supply these services to municipal councils. Although the proposed conduct may have some impact at the margin by removing four opportunities for a smaller supplier seeking to expand to do so incrementally, one council at a time.
158. The ACCC also considers that the duration of the contract Council Solutions proposes to offer, being seven years with options to extend for three, appears to be standard for and accepted in the industry. For example, it is calibrated to the likely reasonable economic life of the principal capital assets needed to perform the service, the collection trucks.
159. Accordingly, the ACCC has focused on the likely impact of the proposed conduct on the ability of the other, unsuccessful, larger providers, and potential large scale new entrants, to compete to supply services to the Participating Councils and other councils in the future.
160. As noted, the ACCC considers that all the Adelaide councils are likely to be contestable over the longer term (some are more imminently and / or readily contestable than others). The four councils represent a significant part of, but ultimately only a subset of, opportunities in the wider area of competition. In this context, the ACCC has considered the likelihood of firms generally entering, expanding in and exiting the area of competition over the longer term.
161. Firms have proven they can enter and expand in waste-services markets in Australia, including in kerbside collections in Adelaide. Challenges to such establishment and growth appear surmountable. Examples include:
- Solo moving beyond its base in the Tweed region of New South Wales to win work elsewhere in NSW and in Victoria, SA and, most recently, Western Australia.
 - Within Adelaide, Solo has expanded from its first contract, City of Marion, won in the mid-1990s, to take on contracts including: collecting organics and recycling for the largest council in Adelaide, City of Onkaparinga (about 75,000 to 80,000 rateable properties or households); and emptying all three kerbside bins for three of the four Participating Councils.
 - Suez winning the NAWMA collections work, covering about 107,000 rateable properties.
162. The ACCC notes the challenges firms face in lining up finance to win a collections contract and these challenges may be greater the larger the contract and the smaller the bidder. But the principal new investment needed, buying the collection

trucks, occurs only if and after the bidder wins the work and related income stream.

163. For established waste service providers, the amount of resources and investment needed to service a new collections contract appear relatively 'scalable' to the work won, as opposed to having to make large, upfront and perhaps largely fixed-cost investments to operate in the market even on a small scale. For example, the provider buys the number of trucks needed to match the volume of work won.
164. Examples of South Australian customers switching providers include:
 - Solo displacing Suez as supplier to Barossa Council (under a joint procurement run by BRPG) and to Mt Barker and Murray Bridge councils (under a joint procurement run by Adelaide Hills Region Waste Management Authority)
 - in Adelaide in 2017, East Waste winning the work of small council Prospect, from Solo, and
 - City of Marion proposing to participate in the Proposed Conduct and so leave its partnership relationship with the cities of Holdfast Bay and West Torrens.
165. Cleanaway, Veolia, Suez, JJ Richards, Remondis and Solo all retain municipal collections contracts either elsewhere in SA or in Australia. For example, Solo and Veolia have waste-services contracts in regional and rural SA and elsewhere in Australia; while Remondis has municipal contracts outside SA. Further, they all have alternative opportunities in other waste services streams, supplying both municipal councils and the private sector.
166. In this respect, barriers to expanding into new geographic areas for large, established operators do not appear to be high. As noted, Solo has moved beyond its base in the Tweed region of NSW to win work elsewhere in NSW and in Victoria, SA and, most recently, WA.
167. In short, the ACCC considers that, if these firms did not win the work of the Participating Councils, they would have other work 'to fall back on' and can remain active in waste services in SA or elsewhere in Australia. In this respect, the scope of the operations of Veolia, Suez, JJ Richards, Remondis, and their capacity to compete for further work, would be the same as it is currently. They will exercise their commercial judgment on the attractiveness of any subsequent work offered by the Participating Councils or any work offered by non-participating councils in Adelaide.
168. For these reasons the ACCC considers that the Participating Councils awarding a single contract for the supply of kerbside collection services for up to 10 years is unlikely to result in public detriment from reducing competition for the supply of waste collection services to the Participating Councils or other councils in Adelaide in the longer term.

Competition for the supply of mobile garbage bins

172. Trident Plastics, which manufactures moulded plastic products, including plastic mobile garbage bins, submits that the Proposed Conduct would lessen competition for the supply of mobile garbage bins. It submits that if each Participating Council separately acquired mobile garbage bins, each supplier

would have the opportunity to win work more frequently, albeit smaller volumes from each council. Trident Plastics further submits that the proposal for the Participating Councils to jointly procure mobile garbage bins inherently favours larger manufacturers enjoying easier access to capital.⁸²

173. Trident states that it sells its products to local government authorities in six Australian states. It submits that there are a number of Australian companies which manufacture and supply bulk mobile garbage bins to local authorities, including Sulo MGB Australia (a division of the Pact Group), Mastec Australia and Viscount Plastics Australia, with at least Trident, Sulo and Mastec supplying Adelaide councils. Sulo is based in NSW and Trident and Mastec are based in SA. Trident states that these companies regularly tender to supply mobile garbage bins in SA and other states.⁸³

174. Trident submits that:

- The Proposed Conduct would lock away over a quarter of the Adelaide metropolitan market to bin manufacturers for seven to 10 years.
- Smaller-to-medium-sized bin manufacturers may not participate in the proposed joint procurement as they may not have the production capacity to service a contract of the proposed size.⁸⁴

175. In response, Council Solutions notes that the procurement of mobile garbage bins will be at the discretion of the supplier appointed to provide kerbside waste collection services and will be a matter of negotiation between the successful tenderer and mobile garbage bin manufacturers.⁸⁵

176. The ACCC notes that the Participating Councils are not proposing to directly procure mobile garbage bins. Rather, they are proposing to appoint a single supplier to provide kerbside waste collection services, including supply or maintenance of mobile garbage bins. The successful tenderer will then be responsible for supplying mobile garbage bins and will make decisions about how these bins are acquired. This includes, for example, whether to manufacture the bins themselves or subcontract to a single supplier or multiple suppliers; and whether to enter into long term arrangements with subcontractors or offer opportunities to the market more regularly.

177. In this respect, Council Solutions submits that it is expected that the initial roll out of mobile garbage bins will only be for a proportion of the 540,000 bins required (three bins for each of the 180,000 rateable properties).⁸⁶

178. The ACCC expects that all tenderers for the supply of kerbside waste collection services to the Participating Councils will seek to adopt arrangements for the supply of mobile garbage bins that maximise competition for the provision of the bins. Any potential tenderer which did not do so would be at a disadvantage to other suppliers in competing for the kerbside waste collection services contract.

179. In addition, with respect to competition to supply mobile garbage bins to Adelaide councils in the longer term, similarly to the assessment above about kerbside

⁸² Trident Plastics submission, dated 18 April 2018, p.5, available: [ACCC Public Register](#).

⁸³ Trident Plastics submission, dated 18 April 2018, p.5, available: [ACCC Public Register](#).

⁸⁴ Trident Plastics submission, dated 18 April 2018, p.5, available: [ACCC Public Register](#).

⁸⁵ Council Solutions further submission, dated 14 May 2018, p 13, available: [ACCC Public Register](#).

⁸⁶ Council Solutions further submission, dated 14 May 2018, p 13, available: [ACCC Public Register](#).

waste collection services, the ACCC considers that supply of mobile garbage bins to all Adelaide councils is likely to be contestable over the longer term. In this respect, the Proposed Conduct is a significant part of, but ultimately only a subset of, opportunities in the wider area of competition. The ACCC notes the alternative opportunities for suppliers both in Adelaide and elsewhere.

180. Accordingly, the ACCC considers that the Proposed Conduct is unlikely to result in a public detriment in the form of reducing competition for the supply of mobile garbage bins to the Participating Councils or other councils in Adelaide.

ACCC conclusion on public detriments

181. The ACCC consider that the Participating Councils awarding a single contract for the supply of kerbside collection services for up to 10 years is unlikely to result in public detriment from reducing competition for the supply of waste collection services, or mobile garbage bins, to the Participating Councils or other councils in Adelaide.

Balance of public benefit and detriment

182. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition
183. The ACCC considers that the Proposed Conduct is likely to generate public benefits in the form of transaction cost savings compared with each participating council conducting their own procurement process. The ACCC also considers that the joint procurement process is likely to result in some public benefit by stimulating additional competition to provide kerbside waste collection services to the Participating Councils.
184. The ACCC also considers that the proposed conduct is likely to generate public benefits through small improvements in:
- efficiency in managing kerbside waste collection contracts
 - efficiency in the supply of kerbside waste collection services, and
 - environmental outcomes.
185. For the reasons outlined in this draft determination, the ACCC is also satisfied that the Proposed Conduct is unlikely to result in public detriment because it is unlikely to reduce competition for the supply of waste collection services or mobile garbage bins to the Participating Councils or other councils in Adelaide in the longer term.
186. For the reasons outlined in this draft determination, the ACCC is satisfied that the proposed conduct is likely to result in a public benefit that would outweigh the likely public detriment, including the detriment constituted by any lessening of competition, that would be likely to result.
187. Accordingly, the ACCC proposes to grant authorisation.

Length of authorisation

188. The Act allows the ACCC to grant authorisation for a limited period of time.⁸⁷ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
189. In this instance, the Applicants seek authorisation for around 13 years (until 30 June 2031) to allow for the tender process, purchasing and commissioning of new trucks by the successful tenderer, contract commencement in May 2020, with a rolling start as existing contracts expire, and a contract length of up to 10 years (seven years with the option of a three year extension).⁸⁸
190. Business SA submits that its consultation supports the contention that a 10 year contact period is generally accepted for waste services contracts.⁸⁹
191. The SA Small Business Commissioner submits 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.⁹⁰
192. The ACCC considers that the proposed contract term of up to 10 years accords with generally accepted contract terms in the industry. In particular, contracts of this duration accord with the likely reasonable economic life of the principal capital assets needed to perform the service, the collection trucks. Having regard to the capital expenditure required to service the proposed contract, a contract of a shorter duration would be likely to attract less competitive bids from suppliers.
193. Accordingly, the ACCC proposes to grant authorisation until 30 June 2031.

Draft determination

The application

194. On 14 March 2018, Council Solutions Regional Authority (Council Solutions), on behalf of itself, the Corporation of the City of Adelaide and the Cities of Charles Sturt, Marion and Port Adelaide Enfield (the **Participating Councils**) (together, the **Applicants**) lodged application for authorisation AA1000414 with the ACCC.
195. The Applicants seek authorisation for:
- Council Solutions, on behalf of the Participating Councils, to conduct a collaborative competitive tender process for Waste Collection Services, to evaluate the responses in collaboration with the Participating Councils and to negotiate on behalf of the Participating Councils the contractual framework

⁸⁷ Subsection 91(1).

⁸⁸ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 12, available: [ACCC Public Register](#).

⁸⁹ Business SA submission, dated April 2019, p 5, available: [ACCC Public Register](#).

⁹⁰ Small Business Commissioner of SA submission dated 26 April 2018, p 2, [ACCC Public Register](#).

- the Participating Councils to individually enter into a contract on a joint and not several basis with the successful supplier for a period of seven years with the option of an extension for a further three years and
- ongoing administration and management of the resultant contracts to be undertaken jointly by Council Solutions and the Participating Councils.⁹¹

196. The Waste Collection Services the subject of this application involve the collection of domestic waste, recyclables and organics in each of the Participating Council areas through use of the 3-Bin System, including the supply and maintenance of the Mobile Garbage Bins (MGBs).⁹² Waste Collection Services, for the purpose of the current application, does not include Bulk Bins, Hard Waste and Street Litter Bins.⁹³

197. Subsection 90A(1) of the CCA requires that, before determining an application for authorisation, the ACCC shall prepare a draft determination.

The net public benefit test

198. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to subsections 90(7) and 90(8) of the Act, that in all the circumstances the Proposed Conduct for which authorisation is sought would result or be likely to result in a public benefit that would outweigh any detriment to the public that would result or be likely to result from the Proposed Conduct.

Conduct which the ACCC proposes to authorise

199. The ACCC proposes to grant authorisation AA1000414 to the Applicants for the Proposed Conduct outlined at paragraphs 195 and 196 of this Draft Determination, which may contain a cartel provision within the meaning of Division 1 of Part IV of the Act or may substantially lessen competition within the meaning of section 45 of the Act.

200. The ACCC proposes to grant authorisation until 30 June 2031.

201. This draft determination is made on 20 July 2018.

Interim authorisation

The request for interim authorisation

202. At the time of lodging the application, the Applicants requested that interim authorisation be considered at the time that the ACCC issues a draft determination in respect of the substantive application. At the time of lodging the Application, the Applicants advised that interim authorisation was being sought because they wished to approach the market in August 2018.

⁹¹ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 1, available: [ACCC Public Register](#).

⁹² Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

⁹³ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

203. In support of their request, the Applicants submit that a delay in publishing the RFT will impact on the timelines for running the tender process and will have a negative impact on the time allowed for the market to respond, the tenders to be evaluated and contracts to be negotiated, potentially reducing the value of the collaboration.⁹⁴
204. The Applicants further submit that allowing them to proceed in a timely manner, ensuring that the potential suppliers have the greatest opportunity to respond to and participate in the tender, could have the effect of increasing competition, ensuring that the full public benefits of the proposed conduct are realised.
205. Interim authorisation is not sought to enter into contracts for Waste Collection Services before the ACCC issues a final determination in relation to this application. Consequently, the Applicants submit that granting interim authorisation will not affect current arrangements in place with each Participating Council and interim authorisation will not affect competition in any relevant market.⁹⁵
206. The Applicants subsequently confirmed that their intention is to release the RFT for kerbside waste collection services the subject of the current application at the same time as the RFTs for waste processing services and ancillary waste services. However, the Applicants advised that this may be subject to change based on the status of the applications for authorisation for the three service streams. Specifically, depending on the time gap between the Final Determination for each (and, assuming in each case, a positive Draft Determination is given along with Interim Authorisation), it may be that the RFT for the processing service streams and/or the RFT for the ancillary service streams are released shortly after the Waste Collection Services RFT. However, the Applicants advised, it is the intent of the Participating Councils to release all RFTs as soon as possible following a positive determination, because:
- It will allow sufficient time for the evaluation of tenders, awarding of contracts and start up activities for transition into service provision to the Participating Councils from May 2020.
 - By having the RFTs in the market at the same time, a potential supplier which may be able to respond to more than one RFT will have a full understanding of the waste opportunity available and respond to each RFT accordingly. Understanding the full requirements may allow for innovative tender submissions that drive additional diversion or environmental outcomes.
 - Considering the tenders for each RFT and for all service streams concurrently will also allow the Participating Councils to ensure the best outcomes and value is achieved across all streams.⁹⁶

⁹⁴ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 29, available: [ACCC Public Register](#).

⁹⁵ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 29, available: [ACCC Public Register](#).

⁹⁶ Council Solutions further submission, dated 31 May 2018, p.1, available: [ACCC Public Register](#).

Consultation

207. No submissions were received commenting directly on the request for interim authorisation. As noted in the body of the draft determination, a number of submissions were received both in support of, and objecting to, the substantive application for authorisation.

ACCC assessment

208. The ACCC has decided to grant interim authorisation under subsection 91(2) of the CCA in respect of the application for authorisation AA1000414 for Council Solutions, on behalf of the Participating Councils, to

- conduct a collaborative competitive tender process to jointly procure the collection of domestic waste, recyclables and organics through kerbside collection, including the supply and maintenance of mobile garbage bins
- evaluate the responses in collaboration with the Participating Councils, and
- negotiate on behalf of the Participating Councils the contractual framework.

209. Interim authorisation is not sought nor granted to enter into or give effect to any waste collection contracts.

210. In granting interim authorisation, the ACCC has taken into account the following factors:

- The relevant areas of competition are unlikely to be permanently altered if interim authorisation is granted. The existing waste contracts will continue until the ACCC makes its final determination.
- Interim authorisation is not sought to enter into or give effect to any contracts. Contracts will only be entered into or given effect to if the ACCC decides to grant final authorisation.
- The Applicants' intention, following a tender open period of six to eight weeks and tender evaluation period, is to award the contract by May 2019 to allow nine to 12 months for the purchase and commissioning of new trucks before contract commencement from May 2020. Granting interim authorisation will support the Applicants in seeking to have a contract in place by May 2019.
- Conditions in the relevant markets are unlikely to vary significantly depending on whether or not interim authorisation is granted.
- The ACCC is unlikely to consider the Applicants' requests for interim authorisation in relation to the waste processing service streams and ancillary waste service streams until at least August 2018. However, while the Applicants would like to release the RFTs for all three services streams at the same time, they may release the RFT for Waste Collection Services earlier if interim authorisation is granted to do so before interim authorisation is considered for the other service streams.

211. Interim authorisation takes effect immediately and will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

Next steps

212. The ACCC now seeks submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.