



Our ref: AA1000415
Contact officer: Miriam Kolacz
Contact phone: (03) 9658 6476

23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1111

fax: (02) 6243 1199

adjudication@acc.gov.au

www.acc.gov.au

17 May 2018

Rebecca Halkett
Director
Kain Lawyers

By email: rebecca.halkett@kainlawyers.com.au;
madelaine.donovan@kainlawyers.com.au

Dear Ms Halkett

Authorisation AA1000415 submitted by Recyclers of South Australia Inc (Recyclers SA) – request for further information

I refer to your application for authorisation lodged with the Australian Competition and Consumer Commission (the **ACCC**) on 16 March 2018.

Following on from your responses to interested party submissions on 1 May 2018 and 7 May 2018, and to assist with its assessment of this application, the ACCC is seeking further information from Recyclers SA which is set out at **Attachment A** to this letter.

Please provide the requested information as soon as possible and in any case by no later than **COB 1 June 2018**. The information may be provided by email to adjudication@acc.gov.au.

I note that some of the information requested may be confidential to Recyclers SA and/or its members. Under s 89 of the *Competition and Consumer Act 2010*, the ACCC may exclude documents or information from its public register by reason of the confidential nature of any of the matters contained in the document. If Recyclers SA does wish to request exclusion from the public register for any documents or information provided in response to the ACCC's request, please clearly indicate and provide brief reasons when providing the documents.

Subject to our consideration of any request for exclusion from the public register, a public version of Recyclers SA's submission with the confidential sections redacted will be placed on the ACCC's public register once Recyclers SA provides the requested information.

This letter will also be placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Miriam Kolacz on (03) 9658 6476 or at miriam.kolacz@acc.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G Jones', with a long horizontal flourish extending to the right.

Gavin Jones
Director
Adjudication

Attachment A – ACCC Information Request

Sorting processes

We note that submissions by Recyclers SA and interested parties refer to collection depots sorting category B containers into 'bins', 'bales' or 'blocks' for delivery to super collectors, and/or containers being delivered loose, and that the mechanism to determine the number of containers differs depending on which of these processes is used.

1. Please describe each of these processes and the mechanism used to determine the number of containers for each.

Sorting arrangements

Recyclers SA has stated that members sort the containers by material and responsible agent into bins (for example, glass, aluminium or liquid paperboard) and further sort certain categories (for example, glass containers by colour and aluminium containers by brand) for delivery to the relevant super collector. Recyclers SA has further stated that due to the operation of agreements between the super collectors, to which Recyclers SA and its members are not privy, members are not required to sort the balance of the containers they collect by brand.

2. Please provide further information about how each category of material is sorted (for example, into colours or brands) and which super collector it is delivered to.

Recyclers SA has submitted that Flaglass Pty Ltd is a purchaser of glass cullet to those depots in the South Australian scheme that choose to contract with it. It has further submitted that within the scheme, glass containers obtained by depots are owned by those depots, not Flaglass, and that depots are then free to sell glass containers to whichever entity they choose for processing. Elsewhere, Recyclers SA says that collection depots sort category B containers, including glass, for delivery to the relevant super collector.

3. What is glass cullet?
4. How do depots come into possession of glass cullet?
5. Please clarify how Flaglass operates alongside super collectors in the scheme. In particular, please describe the circumstances under which a collection depot will:
 - a. deliver glass, or glass cullet, to super collectors for a refund and handling fee
 - b. sell glass, or glass cullet, to glass contractors such as Flaglass.
6. What does Flaglass do with the glass cullet purchased from a collection depot?

Homogeneity of the bargaining group

Recyclers SA has stated that the proposed conduct would involve negotiating streamlined and transparent procedures, including audit processes. Interested parties have submitted that operators of collection depots range from small family businesses to large commercial businesses, whose scope of operations, sorting and collection processes for delivery to the super collectors, and commercial interests vary. These parties have raised concerns that collectively negotiating across all these variations is unlikely to improve efficiencies, may increase costs or may result in one-size-fits all contracts that favour some industry participants.

7. Please provide a response to this issue.
8. Please explain whether Recyclers SA proposes to negotiate for a single weighing system or auditing process that applies to all collection depots and/or collection processes, or whether it proposes to negotiate different such arrangements for different types of collection depots and/or collection processes.

Multiple office holdings

Some interested parties have submitted that certain directors or executives of Recyclers SA have interests in Container Deposit Systems (CDS), which they describe as a joint venture between Southern Recyclers (SA) Pty Ltd and Auto Sort Technology Australia Pty Ltd. These interested parties have raised concerns that these directors or executives have an interest to promote the use of a new sorting and counting technology developed by CDS, which may be contrary to the interests of some collection depots and super collectors. Recyclers SA has responded that CDS is not a joint venture between the above two entities.

9. Please explain all the direct and indirect interests that executives and directors of Recyclers SA have in CDS.
10. If any interests are identified, please provide details of the technology developed by CDS as referred to in some interested party submissions and how it operates.

Recyclers SA submission in support of the application for authorisation explains that of the six directors of one of the super collectors, Flagcan Distributors Pty Ltd (Flagcan), three directors hold positions in Recyclers SA (two as executives with voting power and one as the Chief Executive without voting power) and one director is also a consultant to Recyclers SA. Recyclers SA has submitted that members of Recyclers SA's executive and its directors will comply with their respective duties, including by recusing themselves from any discussions, negotiations or advice in which they are conflicted. Some interested parties have submitted that recusal of Flagcan's directors from any negotiations between each remaining super collector and Recyclers SA may not be sufficiently effective to avoid 'spill over' of information from Recyclers SA back to Flagcan.

11. Please confirm that these directors will recuse themselves from any and all discussions, negotiations or advice in relation to Recyclers SA members collectively negotiating with any super collector.
12. Beyond these directors recusing themselves from discussions, negotiations or advice in which they are conflicted, does Recyclers SA propose to put any arrangements in place to ensure that these directors do not have direct or indirect access to any information about such discussions, negotiations or advice? If so, please provide details.

Market share of super collectors

We note Recyclers SA estimates that among the super collectors, Flagcan currently holds an approximately 5 per cent market share, with Marine Stores and Statewide holding the remainder.

13. Please provide an estimate of the respective market shares of Marine Stores and Statewide.

Scope of negotiations

Recyclers SA has submitted that it seeks to represent its members in 'contractual negotiations' with the respective super collectors and that collection negotiations and advice will not address the quantum of the refund amount and/or handling fee. Recyclers SA further submits that standard-form contracts between collection depots and super collectors contain various procedures for handling, delivery of containers, audit, calculation and payment of the refund amount and handling fee. Recyclers SA has outlined that it proposes to collectively negotiate and advise members regarding the weight auditing system in particular.

14. Please explain whether any, and if so which, other terms of the contracts between collection depots and super collectors Recyclers SA envisages may be amenable to collective negotiations and advice.

Recyclers SA has submitted that authorisation is likely to reduce transaction costs for both super collectors and collection depots. Some interested parties have submitted that transaction cost savings are unlikely to eventuate because while auditing procedures or weight calculations may be collectively negotiated, other commercial terms (including handling fees) would still be negotiated individually between each collection depot and super collector.

15. Please provide a response to this issue.
16. Please also explain how handling fees are negotiated between collection depots and super collectors and the basis on which handling fees may vary between collection depots.

Length of authorisation

Some interested parties have submitted that the length of authorisation sought (10 years) is too long considering that this is an industry where authorisation has not previously been granted, and the risk of public detriment. Some interested parties have suggested that two years would be more appropriate.

17. Please provide a response to this issue.

Other questions

We note that Recyclers SA has provided a summary of the annual revenue of its members, including a category comprising of 73 members with less than \$2 million in annual revenue.

18. Please provide a further breakdown of the estimated revenue of members with less than \$2 million in annual revenue. For example, less than \$100,000, between \$100,000 and \$500,000 and between \$500,000 and \$2 million.

Recyclers SA has noted that members' contractual arrangements with super collectors are overwhelmingly standard-form documents, subject to any terms negotiated individually by members with the relevant super collector.

19. Please describe the types of terms about which individually members typically negotiate.
20. If available to Recyclers SA, please provide an example of the standard-form contract used by each super collector.