
Recyclers SA application for authorisation AA1000415

Statewide interested party submissions

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1 Introduction

We refer to the ACCC's letter dated 23 March 2018 inviting submissions from Can Recycling (S.A.) Pty. Ltd. trading as Statewide Recycling (**Statewide**), as an interested party, with respect to the Recyclers of South Australia Inc. (**Recyclers SA**) application for authorisation AA1000415 (**Application**).

The Application seeks authorisation for conduct involving the collective negotiation and advice by Recyclers SA on behalf of each of its competing collection depot members (of which it represents over 80% of depots in South Australia) (**proposed conduct**). It seeks authorisation for such conduct with respect to the cartel, anti-competitive agreements and concerted practices provisions of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Statewide is an authorised super collector of used containers within the meaning of the Container Deposit Scheme of South Australia (**CDS**).¹ Under the CDS, Statewide must accept beverage containers collected by collection depots, and remit the amount per unit prescribed by legislation to the collection depot.

The CDS has operated since the 1800s on a voluntary basis by soft drink and local beer manufacturers (who would recover and refill glass bottles) before the original container deposit legislation was introduced in 1975.² For over 40 years, South Australia has successfully operated the scheme with the support of the beverage industry (including consumers, manufacturers and collectors), and has seen significant potential for innovation and competition between collection depots. In this time, there has been a number of new entrants, expansion of existing entrants, and innovations in the industry (in the absence of any authorisation of the proposed conduct).

Statewide has serious concerns that the Application by Recyclers SA:

- will not, and is not likely to, result in any of the public benefits identified by Recyclers SA – rather, it will likely differentially enhance the private rights of a few collection depots to the detriment of the industry as a whole; and
- will likely result in significant public detriment and anti-competitive outcomes for reasons including that it is seeking authorisation for price fixing conduct and will result in distorting the otherwise competitive and effective landscape for CDS.

Accordingly, it is submitted that the Application fails to satisfy the requisite test under ss 90(7)(b) and 90(8) of the CCA.

2 Background

2.1 The CDS

The CDS is currently contained in the *Environment Protection Act 1993* (**EP Act**).

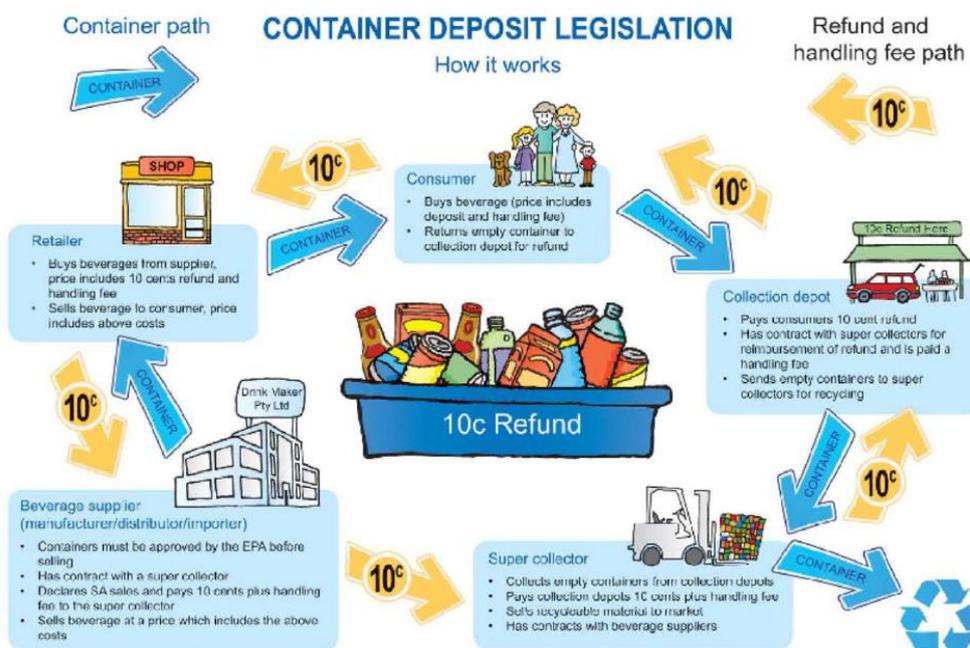
Generally, the scheme operates on a 'polluter pays' principle, meaning that whichever participant in the supply chain that does not recycle the container by passing it onto the next link in the chain, forfeits the chance to be refunded the deposit they paid in obtaining

¹ *Environmental Protection Act 1993*.

² Environmental Protection Authority (SA), *Container deposit legislation – a South Australian environmental success story*, September 2015 (EPA 074/15).

that container. The amount of the deposit for each container is set by the *Environment Protection Regulations*,³ and is currently set at 10c per container. The transfer of funds within the scheme is shown in **Figure 1** below.

Figure 1 Overview of South Australian container deposit legislation



Source: Environmental Protection Authority (SA), *Container deposit legislation – a South Australian environmental success story*, September 2015 (EPA 074/15).

There are two types of costs that move through the scheme: a deposit (currently 10c per container) and handling fees. The super collector recovers from beverage suppliers the costs of the CDS, including the deposit and handling fees that are required for the scheme to operate. These costs are passed through to consumers at the discretion of the manufacturers. The consumer may choose to recoup the deposit from a collection depot.

Each participant in the CDS is incentivised to participate by passing on a container to the next, and thereby recovering the deposit. In addition, collection depots and super collectors are further incentivised as they are entitled to charge a handling fee for the collection and/or transport of containers from one participant to another.

The scheme has been very successful with around 136 depots established due to the business opportunity that involvement in the scheme presents. There have been very few depots that have left the market since its inception in 1975 and new depots are regularly established, with at least 21 new depot operators/owners in the last 5 years. In addition, the fact that a number of depots have been operating for decades is a testament to the benefits they receive from participation in the scheme.

³ *Environment Protection Regulations 2009*, r 44

Queensland, New South Wales, Australian Capital Territory and the Northern Territory have all modelled elements of their container deposit schemes off the South Australian scheme due to its effectiveness.

2.2 Industry participants

(a) Super collectors

Super collectors collect, handle and deliver containers received from collection depots, for reuse or recycling.⁴

Super collectors are compulsory participants in the CDS. The EP Act requires beverage suppliers to participate in the CDS and by extension, for the super collectors with which they contract, to participate. The beverage suppliers are the customers of super collectors. Super collectors must accept beverage containers collected by collection depots, and remit the 10c deposit prescribed by regulations to the collection depot together with the contracted handling fee.

(b) Collection depots

Collection depots are defined in the EP Act as facilities or premises for the collection and handling of containers that are delivered to the depots.⁵ When collecting containers collection depots remit the 10c deposit prescribed by regulation to customers. Owners and operators of collection depots vary from small family businesses to large commercial businesses and community groups. Collection depots then arrange for super collectors to collect the containers they have accumulated.

The deposit remitted to collection depots from super collectors is 10c per container collected. The mechanisms for determining the number of containers provided by collection depots varies depending on the depot's operations. For example, the mechanism for determining the number of containers collected will vary depending on whether the product is delivered loose to Statewide, provided in bins, bales or blocks. Handling fees are negotiated by Recyclers SA on behalf of its Participating Members.

There are presently around 136 collection depots in the South Australia market (121 of which are members of Recyclers SA). It is important to note that collection depots have significantly varied operations and sizes. As identified by the Application, Participating Member revenue varies from less than \$2 million to up to \$25 million per annum, and employees vary from less than 15 to 50 per depot operator. Accordingly, their commercial interests will vary (eg, a smaller operation will not be interested in determining appropriate commercial terms for large processing or baling of containers) and their position within the Recyclers SA will vary.

(c) Beverage suppliers

Beverage suppliers are compulsory participants in the scheme. Section 69B of the EP Act prohibits the sale of beverages to retailers, or for consumption, unless the beverages are served in category A or category B containers. In addition, beverage suppliers are required to contract with a super collectors to collect all used containers that originate from their facilities.⁶

⁴ EP Act, s 65.

⁵ EP Act, s 65

⁶ EP Act, s 68(3)(iii)

Suppliers provide super collectors with both a deposit (which constitutes the amount that super collectors must remit to collection depots upon the collection of containers), and a handling fee. Suppliers may determine whether or not they wish to pass these costs onto retailers, and if so to what extent. However, in Statewide's view, it would likely be uneconomic and unsustainable for suppliers to completely absorb these costs.

(d) Consumers

Consumers bear the ultimate cost of the CDS through their beverage purchases. However, consumers do have the choice to return their used beverage container to a collection depot to recover the deposit amount.

2.3 Vigorous and effective competition and innovation within the industry

This industry is characterised by a high level of competition and innovation.

As mentioned above, the CDS scheme operates on a 'per unit' reward basis. Collection depots are compensated by super collectors by reference to the number of containers collected – both in terms of the deposit to which they are entitled for each container, and the handling fee which is also calculated by reference to either the number of units, the weight or the volume of the containers collected.

This creates competition between depots as there is a strong financial benefit associated with attracting more customers, and thereby more containers. This incentive has led many depots to invest in providing more and better services to customers, and in attracting larger commercial customers. The primary means by which depots compete with each other for customers include:

- extending opening hours;
- increasing staff to customer ratios (some depots allow each customer to be served by multiple employees to decrease service time);
- providing pick-up services (including to large industrial customers);
- providing sorting services; and
- providing recycling services for additional materials (e.g. scrap metal)

A summary of the different services offered by specific depots is at **Annexure A**.

2.4 Recyclers SA

Recyclers SA was registered as an association in September 2002. Recyclers SA's Application for authorisation states that it represents 84 collection depot owners, who operate 111 collection depots (**Participating Members**), and potentially up to 100% of depots. The Application states that Recyclers SA provides various services to its members including training, networking and advocacy, however there does not appear to be a clear mandate for the association. South Australia is the only jurisdiction in Australian in which an association exists for recycling depots operating in a Container Deposit Scheme.

[C-I-C]

The Application identifies the following individuals as having a leadership role in Recyclers SA:⁷

- John Lester
- Neville Rawlings
- Philip Martin
- Trevor Hockley

Each of these individuals, with the exception of John Lester, also owns and operates recycling depots:

- Neville Rawlings is an owner of Daws Road Bottle Co.; and
- Philip Martin is an owner of P&T Recycling Seaford;

Trevor Hockley is an owner of TJH Management Services Pty Ltd, and provides consultancy services to the industry.

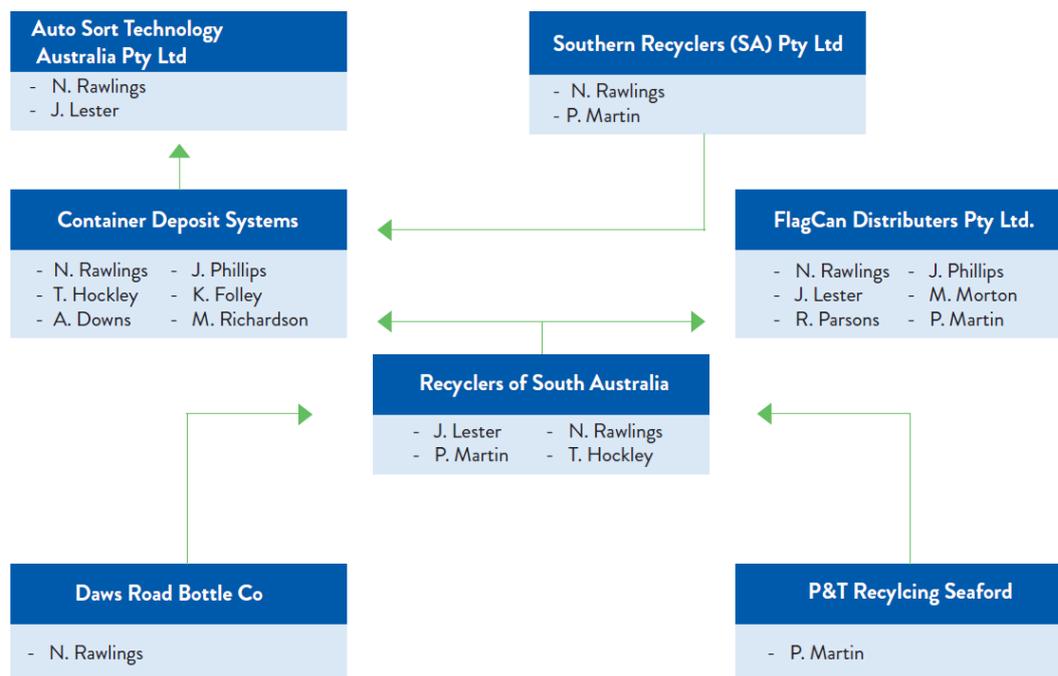
Neville Rawlings and John Lester are also directors of FlagCan Distributors Pty Ltd. (one of the three super collectors the target of this Application for authorisation).

In addition, Neville Rawlings, Trevor Hockley, Philip Martin and John Lester are all either directors or part owners of Container Deposit Systems. Container Deposit Systems is a joint venture between Auto Sort Technology Australia and Southern Recyclers (SA) Pty Ltd. The venture has developed technology that counts and sorts containers for the purpose of recycling. Container Deposit Systems provides the service of integrating this technology into the existing facilities of collection depots.

The interrelationship between these individuals is demonstrated in Figure 2 below.

⁷ Application at para 7(i).

Figure 2. Interrelationship between large Participating Members and other industry participants



Source: ASIC searches and publicly available information.

As demonstrated above, the key individuals of Recyclers SA have significant financial interests in every level of the supply chain of the container deposit scheme of South Australia, and should be considered as having conflicted interests (**Conflicted Participating Members**).

3 Relevant market

Statewide submits that the proposed conduct should be analysed with respect to its potential impact on broader stakeholders in the South Australian CDS, including beverage consumers, suppliers, super collectors, and collection depots.

This is because the CDS operates in a highly interrelated environment (see **Figure 1**) meaning that the costs incurred by each stakeholder is inevitably passed on to the others, rather than being absorbed by any one party.

4 Public Benefits

4.1 Overview

In support of authorisation, the Application submits that there are three public benefits arising from the authorised conduct:

- it would result in a reduction of transaction costs;⁸
- it would improve the private bargaining power of Recyclers SA and its members, providing it benefits that will preserve incentives for Participating Members to continue to operate. Absent such authorisation, depots will likely exit the market;⁹ and
- it would improve the operation of the CDS through improving the commercial position of collection depots.¹⁰

Statewide submits that it is unlikely that any such public benefits would arise from the proposed conduct as:

- there is no a basis to conclude that there would be any meaningful reduction in transaction costs for collection depots. Collection depots vary significantly in their operations and activities, and accordingly, require different terms and conditions to continue to be negotiated individually with Statewide;
- The South Australian CDS has grown significantly since its introduction, and has seen the current economic incentives to be sufficient and meaningful to support entry, expansion and competition between collection depots. As compared to this factual, there is no basis to consider that the likely counterfactual in the absence of the authorisation is the exit of collection depots; and
- the CDS has delivered, and will continue to deliver, the public benefits (including environmental benefits) for which it was initially introduced. The proposed conduct will not improve or result in successful operation of the scheme.

4.2 Reduction in transaction costs

Recyclers SA has submitted that the proposed conduct will reduce the following transaction costs, thereby resulting in a public benefit:¹¹

- by streamlining the negotiation process for collection depots against super collectors, reducing time and cost;
- reducing the cost of negotiation to each participating member, including the costs associated with contract preparation, execution and ongoing administration; and
- creating circumstances where they can negotiate meaningfully (ie, obtain better terms).

Statewide submits that the proposed conduct will not result in a more efficient or cost effective process for individual depots or for Statewide:

- *General terms and conditions have varied application between depots: [C-I-C].* In this regard, collectively negotiating across all these variations is unlikely to result in any increased efficiencies. It could also result in increased costs for smaller depots [C-I-C] as they would be contributing to the cost of negotiating more complex audits for larger depots. Statewide consistently engages with depots to discuss and

⁸ Application at para 16.

⁹ Application at para 14.

¹⁰ Application at para 17.

¹¹ Application at para 16.

improve audit processes. There is no basis to consider that this would change or materially improve if authorisation were to be granted.

- *Substantive terms and conditions are depot-specific: [C-I-C].* The proposed conduct will not address or improve efficiencies for this process, as they are largely commercially sensitive and depot specific, and will continue to need to be negotiated on a depot by depot basis. For example, depots may offer processing services. This includes compacting and packing products into bales, and then delivering these bales to Statewide.
- *No evidence of significant transaction costs with negotiating contracts:* in Statewide's experience, there are not significant transaction costs with negotiating with collection depots. There are also rarely disputes with depots. To the extent disputes or significant transaction costs have arisen, they have arisen in relation to large depots with multi-sites and processing plants only. In this respect, these issues are unique to these depots and would not benefit from collective bargaining or joint advice. Accordingly, there is no evidence that the proposed conduct will materially improve the position of all members.
- *No evidence that joint advice will reduce transaction costs:* as discussed above, the arrangements between collection depots and Statewide will vary depending on the depot and its operations (which ranges from issues particular to small depot operations, and issues particular to large depot operations). Issues to date have been dealt with in circumstances unique to depots. The provision of joint advice therefore will not likely reduce transaction costs. In any event, to the extent there are issues common across the industry, Recyclers SA can (and perhaps does already) obtain legal advice on these issues without authorisation.

The Application has taken issue with the audit process for the counting/weighing of used containers. In particular, it has noted that these processes are costly and result in a "perceived" underpayment by super collectors to depots, and that there has been a bar to enforcing these rights.¹² Statewide submits that this has no weight as:

- *Submission relates to differentially enhancing a private right:* these claims do not pertain to any public benefit, rather a private benefit of certain Recyclers SA depots. The claim that the improvement of these private benefits would logically lead to more incentives to enter and improve the operation of the legislative scheme in Statewide's view is theoretical and lacks factual basis given the industry continues to see entry and growth of depots in South Australia *without* depots engaging in the proposed conduct.
- *No factual basis to support claims of actual underpayment:* the Application notes that the concern is one of "perceived" underpayment only. In Statewide's experience, [C-I-C]. Statewide submits that the claims of "perceived underpayment", or claims that the Application could improve these circumstances, have no weight. Statewide is not aware of any instances where a depot may have reached the level of enforcing any rights under the contract, as it has been more than willing to voluntarily engage in a process to ensure depots are appropriately paid.
- [C-I-C].

¹² Application, paras 7(r) and 14(b).

4.3 Will not improve depot participation in the market

The Application is premised on improving the bargaining power of depots against super collectors to continue to incentivise participation by depots in the CDS, absent such authorisation it states over time there is likely to be the exit of collection depots from the market.¹³ In this respect, the Application has oversimplified the economic incentives and the current factual without authorisation.

Statewide has observed that in the last 40 years since the introduction of the CDS in South Australia, there has been significant entry and expansion of collection depots in the State. The persisting factual is one where there is vibrant and vigorous competition. It is not apparent to Statewide how the proposed conduct will materially (if at all) improve or change this factual. In Statewide's experience, there have been two to three new entrants in South Australia in the last 3-4 years.

Statewide has dealt with each depot on commercial terms based on their operations and requirements. It is required by legislation to accept containers from all collection depots at the proscribed fees, and negotiated handling fees. In this regard, it does not have, and is not able to take advantage of, any substantial bargaining power over depots.

Accordingly, as the claimed benefit currently exists, there is insufficient evidence to support the proposition that the proposed conduct will result in this benefit.¹⁴

4.4 Proposed conduct will not address or result in any increase in externalities

The Application submits that the proposed conduct is necessary to incentivise participation in the CDS, and therefore address environmental externalities.

There is no basis for this submission. As discussed above, the South Australian CDS has had long standing operation and has shown increased efficiencies and an ability to achieve environmental externalities *without* the authorisation of such conduct. Market forces have been able to efficiently reward and incentivise entry and competition between collection depots.

The legislation has been put in place through ongoing and careful consultation between the SA Government and industry. To the extent the incentives for participating in the CDS are in question, this is more a matter for the legislature to consider after detailed analysis and consideration.

Accordingly, as the claimed benefit currently exists, there is insufficient evidence to support the proposition that the proposed conduct will result in this benefit.¹⁵

5 Public Detriments

5.1 Overview

Statewide submits that there is a real and significant possibility that the Application will result in significant public detriments as the proposed conduct:

¹³ Application at para 14.

¹⁴ See ACCC, *Guidelines for Authorisation of Conduct (Non-Merger)*, consultation draft, November 2017 (**ACCC Guidelines**) at para 6.12.

¹⁵ ACCC Guidelines at para 6.12.

- gives rise to a real risk of collusion and coordinated conduct. Authorisation is sought to engage in conduct to which the *per se* breaches of the CCA apply, as well as coordinated conduct. Such conduct should be presumed to have the likely effect of substantially lessening competition;¹⁶
- will have the effect of differentially enhancing the private benefits of Participating Members (and in particular the Conflicted Participating Members) to the likely detriment of other industry stakeholders;
- would reduce competition between collection depots, and prevent or hinder individual depot innovation in services and competition for cost efficiencies;
- could potentially increase transaction costs;
- is likely to result in increased cost to consumers; and
- has the potential to compromise the integrity of audits;

The public detriments above are not likely to be mitigated by the terms of the authorisation sought.

5.2 Proposed conduct likely to result in a real risk of collusion and coordinated conduct

The collection depots are in direct competition with each other for the collection of container deposits, for the services provided to Statewide (and other super collectors), as well as for cost efficiencies.

Statewide submits that the proposed conduct will likely result in a significant risk of cartel conduct and coordinated conduct, and therefore a significant public detriment.

The collective negotiation and obtaining of joint advice is likely to result in collection depots discussing with each other their requirements and commercial objectives in terms of prices, operational requirements and other aspects of their business that may be confidential and commercially sensitive in order to facilitate the collective bargaining. The proposed conduct also necessarily requires there to be a sharing of information, and for members to arrive at a common understanding and approach for interactions with Statewide.

The effect of this is a real risk that collection depots may coordinate their conduct more broadly (in terms of the services offered or business operations) above and beyond their interactions with super collectors. Furthermore, the collective negotiation may result in a reluctance for Participating Members to “break away” or negotiate individually to obtain better or more suitable terms for them.

Furthermore, while the per unit price for a container is set by legislation, the Application proposes to make common, or to coordinate, the audit process and mechanisms for counting/weighing containers and determining a therefore determining a critical component of the overall price paid for containers. Such conduct is likely to fix, control or maintain the overall price paid by Statewide and other super collectors for containers as it may result in the adoption of processes that are ‘standardised’ and do not take into

¹⁶ ACCC Guidelines at paras 6.1-6.2.

account different operational procedures and processes between collection depots. For example, [C-I-C].

5.3 Proposed conduct will differentially enhance private benefits

Recyclers SA submits that the Application is for the purposes of enabling Participating Members to improve the benefit they obtain from super collectors and therefore increase incentives for each to participate in the South Australian CDS.

Authorisation of the proposed conduct would potentially create a monopoly counterparty to negotiations, without any real or demonstrable public benefit. This party will have significant ability to obtain outcomes that are not necessarily achievable in a competitive market – including terms that are supra competitive (such as calculations of overall price and potentially payments for other ancillary services not connected to the unit price of containers or handling fee). This collective will have the ability to exercise significant countervailing power against each of the three current authorised super collectors – who are currently required under legislation to accept the services of collection depots for used containers.

Additionally, there is a real potential that the proposed conduct will differentially enhance the private benefit of the Conflicted Participating Members of Recyclers SA:

- As noted in section 2.2, the Conflicted Participating Members are significant collection depots in South Australia and are also likely the controlling vote and the significant decision makers in Recyclers SA. They each have interests across the industry – including as a super collector itself (through Flag Can), as a supplier and marketer of a new counting machine to collection depots and super collectors, and as large and significant collection depots themselves.
- The Conflicted Participating Members have interests in conflict with other collection depots who are Participating Members. As they have an interest to require the use of their new product, which may be contrary to the interests of collection depots and super collectors. This is because collection depots vary significantly in their size and scope of operations such that the use of such equipment (or the investment in such equipment) may be inefficient or increase costs. Statewide and Marine Stores, being the other super collectors other than Flag Can, have different operations due to the types of containers they process and recycle. Accordingly, they do not necessarily have an interest to invest and support the Conflicted Participating Members' Container Deposit System.
- The Conflicted Participating Members may seek to give themselves an undue advantage over other super collectors in their contracts with depots.
- The Application provides for the real possibility to coordinate outcomes by the Conflicted Participating Members to drive the implementation of their Container Deposit Systems. In particular, it notes that to successfully market the new Container Deposit System counting equipment, it would require industry wide changes to collection points – and collective uptake from both depots and super collectors. This Application may be used to achieve that aim, as it would enable them to coordinate outcomes across collection depots (under the collective bargaining authorisation) against super collectors; and to drive outcomes as one of the three super collectors itself, to the detriment of other industry stakeholders.

5.4 Potential to compromise the integrity of audits

The Application has stated that the authorisation would allow Participating Members to negotiate more “streamlined and transparent” processes, in particular audit processes.¹⁷

It is relevant to note that in a number of circumstances, the agreements with Statewide [C-I-C].

Accordingly, to ensure that there is not misuse of the system, over-declaration of container units, and to protect the integrity of the system the agreements [C-I-C]. Statewide has an interest in ensuring the declared amounts accurately reflect the number containers within a bale, bin or block. To provide significant bargaining power to collection depots to affect the audit process has a real potential to result in a loss of confidence and integrity in the audit process. For example, [C-I-C].

5.5 Increased cost to consumers

The Application claims that the collective negotiation of non-price terms such as the mechanisms for weight calculation or the conducting of audits is for the purpose of improving the commercial incentives for collection depots to participate, and is therefore likely to result in an increased price charged by collection depots to Statewide (eg, it may potentially overstate the overall price for containers, or result in increased costs for Statewide).

As discussed above, the South Australian CDS effectively operates as an indirect tax on beverage consumers on the presumption that the cost of recycling is incorporated into the product price. Consumers are incentivised therefore to recycle their cans so as to not bear those costs.

Accordingly any increased costs resulting from payments to collection depots or increased costs in the operation of Statewide is likely to affect not only super collectors,¹⁸ but downstream consumers of beverages. By way of example, a 2018 study by IPART into the price impact of the introduction of the NSW Container Deposit Scheme found that the direct costs of the scheme to suppliers were passed onto beverage consumers.¹⁹

5.6 Reduction of competition between depots

As above, the services offered by the depots varies and needs to be individually negotiated as and when required. Each of the 126 depots are individual businesses with material points of differentiation and compete:

- To attract container redemptions through customer service. Customer service is a significant point of differentiation between the depots and will see the public switch between depots.
- To improve the operational costs for collecting, counting, and delivering such containers to super collectors (including through the investment in lower cost equipment, or the variation to operating size, etc).

¹⁷ Application at para 7(p).

¹⁸ As stated by the Application at para 198(e)(iii).

¹⁹ 'NSW Container Deposit Scheme', IPART, April 2018 [<https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-section-12-publications-container-deposit-scheme/progress-report-nsw-container-deposit-scheme-april-2018.pdf>]

- To provide services to super collectors, including delivery services and bundling services.

The above competitive dynamics are potentially muted by the proposed conduct. The risk of collusion and coordination between members may result in a tacit or express understanding to not compete as vigorously, or reduce the incentives to innovate and improve their processes.

Furthermore, standardising the processes between depots may reduce the scope for competitive differentiation or advantage. For example, if the collection and delivery mechanisms are standardised between depots, this may result in a loss of incentives for depots to obtain better returns through more efficient internal processes.

5.7 Increased transaction costs

Due to the differentiation between depots, and the varied services they offer, there is a real potential for the proposed conduct to result in increased transaction costs as:

- The negotiation process will not be as cost effective as individual negotiations, as it would need to accommodate for the different commercial requirements and aims of each depot (which are likely to vary significantly). It may also result in smaller depot operators having to contribute to the legal costs and negotiation costs of larger depots with more complex commercial requirements.
- In addition to participating in a collective negotiation process (which does not easily accommodate the differences between depots), depots will still need to individually negotiate material terms, addendums and agreements that are unique to their operations.
- While the participation in the association is theoretically “voluntary”, it is likely that there will be pressure on depots to participate in the collective negotiation from the larger Participating Members in Recyclers SA.
- Failing any attempt at collective negotiations, the depots may then need to individually negotiate their contract, therefore participating in a duplicative negotiation process and increasing transaction costs.

5.8 Not mitigated by terms of authorisation

Statewide submits that the above public detriments are not mitigated by the absence of the right to collectively boycott, or the voluntary nature of the process:

- While the proposed conduct does not include collective boycotts, this does not mitigate the fact that there is a real potential through the collective negotiation process for increased transaction costs, reduction of competition between depots, and collusion and coordinated conduct. Furthermore, the proposed conduct has the potential to result in protracted negotiation process with Recyclers SA, before reaching the point of requiring individual negotiations. This will create undue pressure on Statewide as a super collector as it has obligations to continue to accept collections from depots. Such protracted negotiations may impede its ability to effectively comply with these obligations.
- The collective negotiation process is not truly voluntary as there is an ability and incentive for Recyclers SA to apply undue pressure on smaller depots to participate. Smaller depots are unlikely to be able to take a position independent of larger depots within Recyclers SA, and are also unlikely to be able to better inform itself of its position as against the larger Participating Members (ie, they will

rely on the representations of larger Participating Members, whether such representations are complete or accurate). [C-I-C].

6 Conclusion

For the reasons set out above, the proposed conduct is likely to result in real and significant public detriment (including through potential contravention of the *per se* prohibitions of the CCA) with no real or demonstrable public benefit. The benefits set out in the Application go towards differentially enhancing the private positions of collection depots (in particular, large collection depots) without any evidence to suggest that it would improve the public benefits above the current factual (in which those benefits presently exist). The public benefits outlined in the Application are theoretical. In these circumstances, Statewide submits that Recyclers SA has not met the requisite test for the grant of authorisation under the CCA.

Annexure A – Examples of depot services

Depot operator	Facilities
Daws Road Bottle Co.	<ul style="list-style-type: none"> • 4 collection depots (including one part-owned by Philip Martins). • Processing/baling services. • Services industry and the general public. • Scrap metal services (collection, removal, hiring of scrap metal bins, supply of scrap metal, industrial scrap metal removal services). • Open 7 days a week (excluding public holidays).
P&T Recycling	<ul style="list-style-type: none"> • 2 collection depots (including one part-owned by Neville Rawlings). • Processing/ baling services. • Collects: CDS containers, aluminium, brass, batteries, cars, copper, wires, motors, gas bottles, radiators, scrap metal, white goods • Services: car removals, industrial factory clean outs, bin services. • Facilities: compactors, weighbridge • Open 7 days a week (excluding public holidays)
Scouts Recycling	<ul style="list-style-type: none"> • 9 collection depots. • Processing/ baling services. • Collects: CDS containers, scrap metal, cardboard, aluminium, plastic, gas cylinders, e-waste. • Provides commercial clean out services to schools, sporting events, clubs, factories, retailers and industries. • Open 6 days a week (excluding public holidays).
Pooraka Recycling	<ul style="list-style-type: none"> • 1 collection depot. • Collects: CDS containers, scrap metal, aluminium, copper, car batteries, white goods, carton, gas bottles. • Services: gas bottle swap services, supplies charcoal, supplies firewood, supplies eco-logs. • Open 7 days a week (excluding public holidays).