

Note on paragraph 243 of the final determination

The Small Business Commissioner of South Australia has advised that paragraph 243 of the ACCC's determination in relation to application for authorisation AA1000419 misinterprets a submission made by him about the application for authorisation.

Paragraph 243 of the determination reads:

The Small Business Commissioner of South Australia submits that given the significance of the ACCC's decision in relation to each of Council Solutions' three applications for authorisation and the impact they will have on small business, should authorisation be granted it should be granted for five years to allow for an earlier review of whether the Proposed Conduct has resulted in a net public benefit.

The relevant paragraph of the Commissioner's submission of 1 November 2018 cited by the ACCC at paragraph 243 of the determination reads:

Given the significance of the ACCC's decision in relation to each of the Council Solutions applications for its waste management services and the impact it will have on small business, should the ACCC be minded to grant these two applications (noting that the first application has already been approved), then I ask that the ACCC reviews any such decision in five years' time to determine whether the behaviour has delivered the public benefits promised and that competition in the market has not been lessened.

The Commissioner has provided a letter, dated 29 November 2018, clarifying his position. A copy of the Commissioner's letter is attached.

At this stage the ACCC does not propose to conduct a review in five years' time. However, the ACCC is able to conduct a review of the authorisation at any time if there has been a material change in circumstances since the authorisation was granted that has a significant impact upon the public benefits or detriment of the authorised conduct. If a request for a review was received the ACCC would consider the request and any information to support the request before deciding whether to conduct a review.

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**Small Business
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SOUTH AUSTRALIA

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Dear Commissioner

Council Solutions applications for authorisation AA1000419 (processing) and AA1000420 (ancillary)

I refer to the two Determinations of the Australian Competition & Consumer Commission (ACCC) dated 23 November 2018 in relation to the applications for authorisation (AA1000419 and AA1000420) lodged by Council Solutions.

It is with great disappointment I note that the ACCC has granted authorisation to Council Solutions and the four Adelaide metropolitan councils to jointly procure certain waste management services.

Having read both Determinations, I would like to bring the following points to the attention of the ACCC:

1. At paragraph 243 of the Determination relating to Application AA1000419 and at paragraph 232 of the Determination relating to Application AA1000420, the ACCC states that I submitted that authorisation should be granted for five years to allow for an earlier review of whether the Proposed Conduct has resulted in a net public benefit.

This is a misinterpretation of my submission.

I am asking the ACCC to conduct a review of both Applications in five years' time to determine whether the behaviour has delivered the benefits that have been promised and whether competition in the market has lessened. In doing so, the ACCC will have the benefit of hindsight and will be able to determine whether the granting of these two Applications has had an adverse effect on small business.

2. There is a typographical error in the Determination relating to Application AA1000419. At page iv the ACCC says that:

"The ACCC has decided to grant authorisation until 30 June 2013".



I request that both Determinations be amended to address the two points I have raised.

Ms Tessa Cramond of your office has advised that you would be happy to meet to discuss the matter in further detail. I would welcome the opportunity to meet with you. Please contact me on 08 8303 0927 or john.chapman@sa.gov.au to arrange a suitable time.

I look forward to hearing from you.

Yours sincerely



John Chapman
Small Business Commissioner

29th

November 2018

Cc: Mr David Jones, General manager
Ms Tessa Cramond, Senior Analyst