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Mr David Jones  
General Manager, Adjudication  
Merger and Authorisation Review Division  
Australian Competition and Consumer Commission  
24 August 2018

**RE: Draft Determination and Interim Authorisation AA1000414**

Dear Mr Jones

I write in response to the above Draft Determination for Council Solutions and Ors for Joint Procurement, negotiation and contracting for kerbside waste collection services, 20 July 2018.

MRA wishes to raise concerns with the scope and nature of the application and to point out the deleterious consequences of the proposed consent.

**Scale**

The ACCC Draft Determination argues that a combined tender of 180,000 rateable properties will not limit competition nor exclude small suppliers.

MRA disagrees. The capital cost alone for new bins for such a contract would be \$24.3m (@\$45/bin for 3 colour bins per household for 180,000 households).

The cost of vehicles could be as high as \$23.7m (72 trucks are required to provide the 18.72m annual services required by 180,000 households @1000 lifts per day/truck for 260 days. An average side load vehicle with appropriate scales, tag recognition and safety features is \$330,000). The cost of a depot of sufficient scale to house 72 vehicles is estimated at \$10m.

This analysis does not include the bank guarantees required by Council Solutions and individual Councils.

It is extremely difficult for any small to medium service provider to raise the combined \$58 m (\$24.3m bins plus \$23.7m trucks plus \$10m depot, not including bank guarantee) in capital in the Australian financial market at this time, even with a guaranteed service payment contract.

This will certainly limit mid and small players from even obtaining the tender documents never mind trying to secure finance over a short tender period. If they did tender they would need to include the significant risk premium that would be demanded by the lending agencies.

Larger companies have the capability to self finance and will not need to bear a financial risk premium, giving them competitive advantage.

Further, the simple cost of finding and securing such finances taken with the inherent risk associated with a single tender for such a large contract means that the "winner risk" is very high. The risk of making an error in the tender price alone will deter many mid sized proponents.

## **Risk premium**

The risk of “winners curse” increases with every variation or additional council added to the tender scope. Tenderers typically need to have on-ground experience of the truck runs, geography and topography to accurately predict run times and therefore lift costs. The absolute cost of a collection run is a function of the density of houses (how closely the bins are placed together on the kerbside), the number of cars blocking access, the topography and whether the truck is on a slope, the number of dead-end streets and the presence of obstacles such as trees. These are not easily modelled and therefore costed. Experience makes a significant difference.

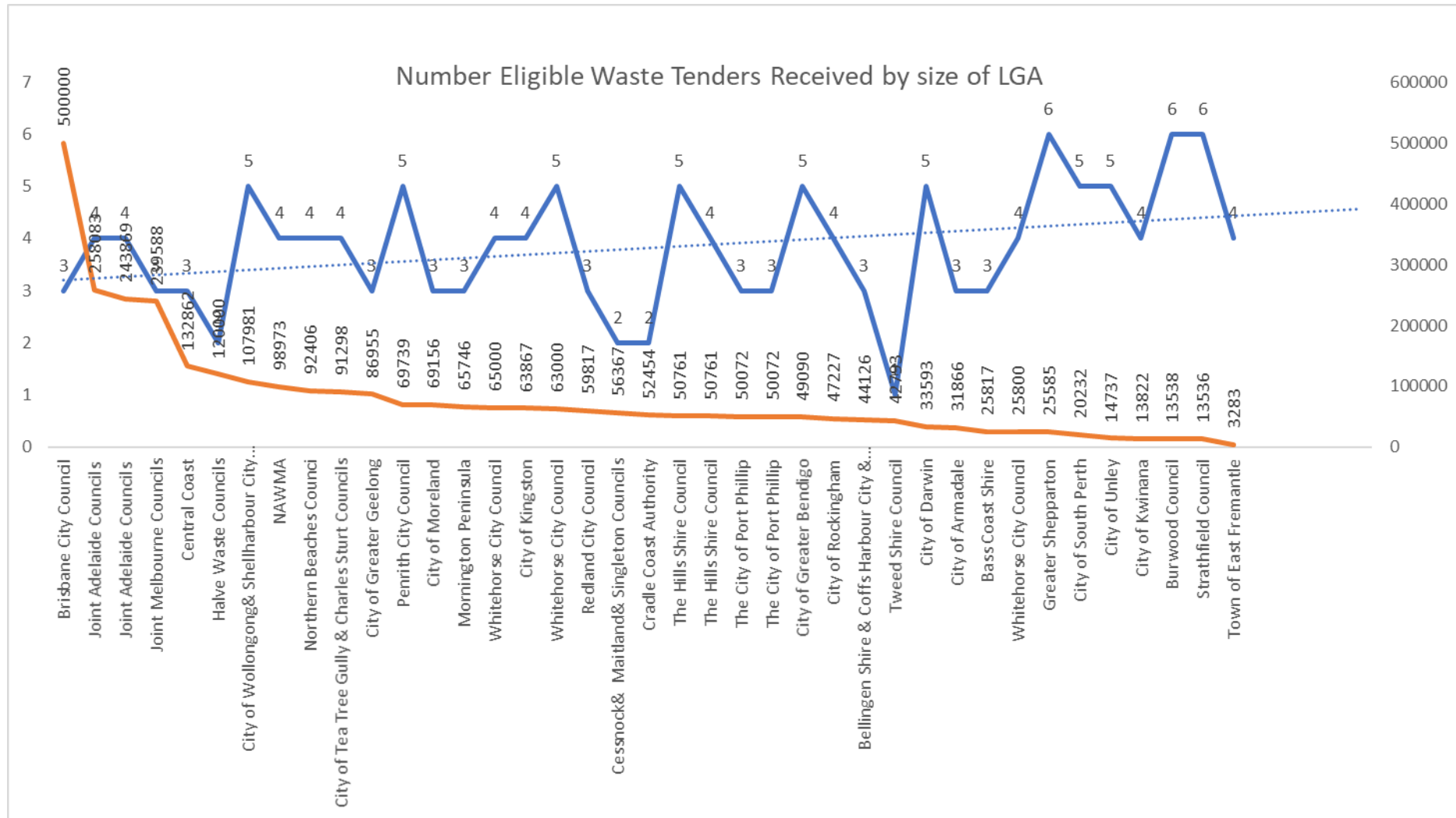
As the number of Councils increases the degree of “experience” decreases for most operators. Consequently their degree of uncertainty increases. Asking any business to tender across multiple Councils increases the bid uncertainty and therefore the risk costs.

## **Tenderers and Scale**

MRA undertook a major review of publicly available Council reports across Australia to test the relationship between contract size and the number of tenderers. MRA took all available published reports and reviewed the number of complying tenderers for the collection service. In total 38 Council reports were available in the last 5 years.

Figure 1 clearly demonstrates that the CS argument that large tenders attracts more tenderers, is false. In fact the reverse is true. When tenders get above about 110,000 tenements the number of tenderers falls away. It is true that there is a degree of noise in the data (a function of regional v metro, and the tender specification content), but the trend is clear. The largest number of tenderers consistently correlates with the smaller contract offerings.

Figure 1. The relationship between contract size and the number of conforming tenders submitted (Source: MRA research; Council public documents)



### Cost advantages

The ACCC argues that there will be competitive cost reductions due to higher levels of competition for the larger contract. This case is not founded in facts.

Figure 2 below indicates the relative costs of waste services in the Adelaide region based on the rate charges per tenement. (Source SA Grants Commission 2016/17).

(MRA accepts that the cost per tenement may reflect other charges as well as costs of collection and disposal, but it is nonetheless instructive that the proposition that collective procurement saves money, is not necessarily supported by facts.)

The graph indicates that those households in NAWMA and East Waste procurement areas pay more than 30% more for residential waste services, than those where Council procured the service independently.

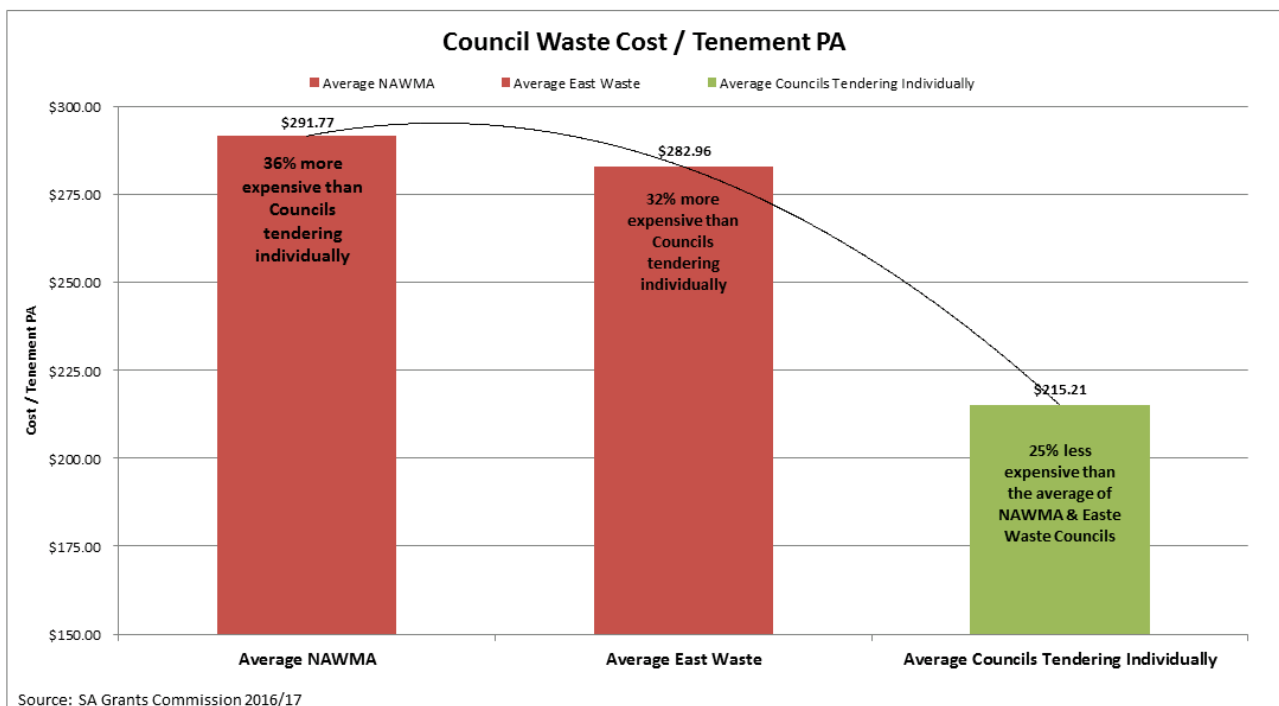
MRA makes the case that the experience an operator has with the Council area, drives down the risks and the risk premium that is built into tender prices (per lift costs). It allows accurate estimation of lift time, labour and trucks. It therefore drives costs down.

Estimating lift time drives labour costs which also drives fuel and vehicle costs. All associated costs are consequent on the lift time factor.

The simpler the tender, the fewer options and complexities, the cheaper the price. In other words scale economies are NOT necessarily the key driver of waste collection costs. Certainty is.

Put simply CS should provide actual data to make the case that large procurement schemes deliver real cost savings, before the ACCC should accept its validity.

**Figure 2. Council waste costs per tenement via collective procurement or separate tender.**



MRA further contends that scale across four different and disparate Councils will not drive scale economies at all. In fact the argument that a truck could service multiple Councils on the same “run” is not supported.

There would be no plausible method to allocate the landfill (or processing) cost to the respective Council. How would Council Solutions propose to charge back the disposal costs to the respective Councils from a truck servicing two Council areas? This has clearly not been thought through.

Therefore it is almost certain that each Council will be serviced separately by a truck(s) independent of the other Councils. As such the claims made by Council Solutions that cross-boundary economies of scale will be achieved, is not supported.

To point out the obvious the Councils share few common boundaries so even if it were possible, the likelihood of economies of scale is low.

### **Council resources**

Council Solutions argues that there will be efficiencies in the delivery of solutions to Councils and in decision-making around waste contracts. This is not MRA’s practical experience with waste tenders. In fact our experience indicates that the more players involved in the decision, the time, costs and permutations increase exponentially.

In a review of governance arrangements for Councils in Tasmania, MRA found that with 7 Councils and a regional body (coordinating) the decisions were much slower (or non-existent) and were delayed by centralised processes. In fact individual Councils made more rapid and more frequent decisions than the collective process.

In other words it is not a simple case that collective decisions speed up, or simplify the process. Council Solutions should demonstrate how its decision making process with either speed up decisions or reduce Council labour costs to do so.

### **Order of Tenders**

The order of the proposed conduct imbeds higher costs of service due to uncertainty.

The Council Solutions proposal should seek processing outcomes before calling for collection, so that proponents can accurately price long haul transport. Tenderers will imbed a risk premium to account for not knowing the destination of the collected materials. CS application for tenders for processing/disposal should be called first so that collection tenderers can tender

CS will inevitably set a tender price for a notional delivery point (typically a centroid point in the grouped council areas or within a km range), and seek a contract variation price for long haul transport. Tenderers usually have to provide a price/tonne/km and the successful tenderer’s prices are adjusted accordingly, post tender. However the rate/tonne/km carries risk (e.g. traffic, proposed depot locations may not be suitably located, additional capital for vehicles may be required) and consequently the price adjustment may result in a windfall gain or ongoing loss to the successful tenderer.

The bigger the contract the bigger these risks.

Only the successful tenderer has the chance to negotiate post tender these variations. There is no guarantee that the price/tonne/km premium will be strictly applied and if it is what the commercial consequences will be.

One alternative is that CS call for collection prices based on all possible recycling and organics processing and landfill locations but that would be impractical

The preferred method is clearly to tender the processing options prior to the collection tender.

### **Losing processors will suffer**

While the processing contract tender is proposed to come after the collection tender and is not part of this ACCC decision, this decision will nonetheless impact on future processing options.

The scale of this collection tender will mean that if waste is directed to a single processor by Council Solutions, then the loser will lose badly. That situation is unlikely to arise if the four Councils tender collection and processing separately.

The relatively small market for waste stream processing in Adelaide means that there will generally be a winner and a loser (singular) for each waste stream. There are only 2 organics composters in Adelaide (Peats Soils and Jefferies). There are three MRF operators (NAWMA, VISY and SKM). For each there will be a major winner and a major loser unless CS splits the processing contracts by regions (which is not intended).

The same dynamic applies to landfill. There are only two major landfills (discounting Pedlar Creek landfill in the south owned by Marion) available to the CS tender - IWS and Cleanaway, 61 and 83kms respectively north of Adelaide).

The loss of such a significant proportion of the market will significantly disadvantage the loser. Further, the extended period of the proposed conduct (to 2031) means that the loss could have a crippling effect on the loser.

### **Conclusion**

These issues have in MRA's opinion not been adequately addressed in the Draft Determination. The Final Report of the ACCC should either reject the application or significantly condition the proposed activities (fewer Councils) to mitigate these effects.

Kind regards,

A handwritten signature in black ink, appearing to read 'Mike Ritchie'.

Mike Ritchie

Managing Director

MRA Consulting Group