



Campbelltown City Council and Ors – Application for authorisation AA1000428

Interim authorisation decision

12 September 2018

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation lodged by Campbelltown City Council and Ors (the **Applicants**) on 7 August 2018.
2. Interim authorisation is granted to enable the Applicants to begin preparations for a collective tender process for waste processing services, including preparing the tender documents, conducting industry consultation and advertising the tender. Interim authorisation does not extend to any contracts being entered into.
3. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

4. The Applicants are:
 - Camden Council
 - Campbelltown City Council
 - Liverpool City Council
 - Wingecarribee Shire Council and
 - Wollondilly Shire Council.
5. The Applicants seek authorisation to engage in a contract or arrangement, or arrive at an understanding, for the collaborative tendering and subsequently the collaborative contracting, for the provision of services by one or more qualified contractors to receive, process, market and dispose of (by sale or otherwise) all four streams of the Applicants' kerbside collected waste material (the **Proposed Conduct**). The four waste streams are household waste, dry recyclable material, garden organics and clean-up waste.

6. The Applicants' collective tender proposal does not involve kerbside waste collection services.
7. The Applicants (minus Liverpool City Council) received ACCC authorisation in 2004¹ to collaboratively tender and contract for kerbside waste processing services. The participating councils subsequently entered into a processing contract with SUEZ Recycling and Recovery Holdings Pty Limited.
8. Under the current application, the Applicants seek authorisation for:
 - the period of the collective tendering process for a period of 18 months from the date of authorisation and
 - the term of the contracts entered into under the tendering process for a period of up to 1 July 2044 (including 5 years to commence operations, 15 years of operations and an option to extend for a further 5 years).

The authorisation process

9. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

10. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation to allow the parties to engage in proposed conduct while the ACCC is considering the substantive application for authorisation.
11. The Applicants requested interim authorisation in order to commence preparation of tender documentation as soon as possible, in anticipation of formally calling for tenders at the end of 2018.
12. The Applicants request interim authorisation on the basis that it is necessary to begin tender preparation now to ensure a long lead time is provided for potential service providers (including possible new entrants) to secure appropriate waste processing infrastructure. Contracted service providers must be ready to commence waste processing services in June 2024, to coincide with the end of the Applicants' existing processing contracts.
13. The Applicants submit it is necessary to commence preparation of the tender process now to provide prospective tenderers with as much time as possible, with regard to the long term of the proposed contract(s), the significant capital required to meet the Applicants' needs, and for appropriate land, equipment, infrastructure and technologies to be acquired.

¹ ACCC Determination in relation to application for authorisation A90886 lodged by Council of Camden and Ors, 16 December 2004.

14. At the time of lodging the application, the Applicants provided an indicative timetable for the following activities to be completed by the Applicants by the end of 2018:²

- prepare tender documents (June – August 2018)
- commence industry consultation (September – November 2018) and
- advertise tender (November 2018).

15. The ACCC notes the above mentioned timeframes are likely to be adjusted slightly to reflect that the application for authorisation was ultimately lodged in August 2018.

Consultation

16. The ACCC invited submissions from fifteen potentially interested parties, including a number of waste and recovery service businesses and industry associations. To date, the ACCC has received three submissions, two in support and one in conditional support of the application.

17. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

18. In granting interim authorisation, the ACCC considers that:

- interim authorisation will enable the Applicants to commence preparations for the tendering process they propose to undertake. This preparation will include preparing the proposed form of contract to be included in the tender, consultation with the industry and advertising the tender
- preparation conducted during the interim authorisation would not prevent the market from returning to its initial position should authorisation ultimately be denied because no contracts or arrangements for service will be entered into during the interim period and
- interim authorisation will avoid delay in commencing preparation for the proposed tender. Delay may also disadvantage prospective tenderers, particularly new entrants to the market, who would benefit from a long lead time to prepare their tender.

Reconsideration of interim authorisation

19. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

² The Applicants' application for authorisation AA10000428, 7 August 2018, p 35.