



**Metropolitan Waste and Resource Recovery Group & Ors –
Application for authorisation AA1000448
Interim authorisation decision
29 August 2019**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of application for authorisation AA1000448, lodged by the Metropolitan Waste and Resource Recovery Group (**MWRRG**), on behalf of itself and a group of 16 councils located in the south-east of metropolitan Melbourne, on 23 July 2019.
2. Interim authorisation is granted to enable the Applicants to commence the tender and contract negotiation process for the joint procurement of advanced waste processing services. Advanced waste processing refers to resource-recovery processes which are employed to process municipal waste, other than landfill and recycling.
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:
 - Metropolitan Waste and Resource Recovery Group – a Victorian statutory body corporate responsible for municipal solid waste management and planning in Victoria
 - the Victorian councils of Bayside City, Boroondara City, Cardinia Shire, Casey City, Frankston City, Glen Eira City, Greater Dandenong City, Kingston City, Knox City, Manningham City, Monash City, Maroondah City, Mornington Peninsula Shire, the Shire of Cardia Stonnington City, Whitehorse City and Yarra Ranges Shire (together, the **Participating Councils**).
5. The Applicants seek authorisation for 30 years for:
 - a. MWRRG to conduct a collaborative competitive tender process for waste processing services, to evaluate the responses in collaboration with the Councils, and to negotiate on behalf of the Councils the contractual framework
 - b. a Special Purpose Vehicle (**SPV**) established by the Councils to enter into contract(s) for the services with the successful supplier(s) and
 - c. ongoing administration and management of the resulting contracts related to the suppliers and any advanced waste processing facilities to be undertaken by the SPV

(the **Proposed Conduct**).

The authorisation process

6. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (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

7. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
8. The Applicants made the following submissions in support of its request for interim authorisation.
 - Commencement of the tender process for the procurement of advanced waste processing services is a matter of urgency given the scale and complexity of the procurement:
 - challenges with existing solutions, and continuously growing waste quantities, mean that the contracts for the design, construction, operation and maintenance of an advanced waste processing facility need to be finalised by the second half of 2021
 - to allow enough time for the multi-stage process to be completed by this time, the first stage of the process (the request for expressions of interest) be in the marketplace before the start of September 2019.
 - Granting interim authorisation would result in a public benefit, namely enhancing competition by commencing the tender process amongst potential suppliers for the Project.
 - Granting interim authorisation will not alter the market status quo, as no formal arrangements will be made in respect of the project until the substantive application for authorisation is determined.

Consultation

9. The ACCC invited submissions from a range of potentially interested parties, including waste management companies, industry associations, and government bodies.
10. One public submission was received from Australian Paper which stated that interim authorisation will not change the status quo.
11. 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

12. The ACCC considers it unlikely that interim authorisation will materially alter the competitive dynamics in any relevant markets; interim authorisation is granted only for the commencement of the tender and contract negotiation process, and not the execution of any contracts. If the ACCC ultimately does not grant authorisation there is nothing that would prevent the market from returning to its current state.
13. The ACCC accepts that the Proposed Conduct involves a degree of scale and complexity such that, in order to ensure contracts are in place by 2021, interim authorisation (to allow the joint tender process to commence) is required by September 2019.

Reconsideration of interim authorisation

14. 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.