



**Metropolitan Waste and Resource Recovery Group & Ors –
Application for authorisation AA1000451
Interim authorisation decision
25 September 2019**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of application for authorisation AA1000451, lodged by the Melbourne Waste and Resource Recovery Group (**MWRRG**), on behalf of itself and a group of 30 councils located in metropolitan Melbourne (the **Applicants**), on 22 August 2019.
2. Interim authorisation is granted to enable the Applicants to commence a tender process for the collective procurement of sorting services for commingled, kerbside recyclable material (**Recycling Sorting Services**).
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 responsible for the strategic planning of waste management and resource recovery across metropolitan Melbourne.
 - The Victorian councils of: Banyule City, Bayside City, Boroondara City, Brimbank City, Cardinia Shire, Casey City, Darebin City, Frankston City, Glen Eira City, Greater Dandenong City, Hobsons Bay City, Hume City, Kingston City, Knox City, Manningham City, Maribyrnong City, Maroondah City, Melbourne City, Melton Shire, Monash City, Moonee Valley City, Moreland City, Mornington Peninsula Shire, Nillumbik Shire, Port Phillip City, Stonnington City, Whitehorse City, Whittlesea City, Yarra City, Yarra Ranges Shire (together, the **Participating Councils**).
5. The Applicants seek authorisation for 20 years to enable them to jointly procure sorting services for commingled recyclable material that is collected from residents' kerbsides. In particular, they seek authorisation for:
 - MWRRG, on behalf of the councils, to conduct a collaborative tender process for the procurement of the Recycling Sorting Services, evaluate responses in collaboration with the councils and negotiate the contractual framework on behalf of the councils,

- the possible establishment of a Special Purpose Vehicle¹ (**SPV**) by the councils to enter into contract(s) for Recycling Sorting Services with the successful supplier(s), and
- the ongoing administration and management of the resulting contracts.

(the **Proposed Conduct**).

6. The Applicants note that more than one service provider will be able to be appointed in the final contract, and service providers will not be obligated to supply all 30 Participating Councils.

The authorisation process

7. 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

8. 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.
9. The Applicants requested interim authorisation on the basis that:
 - several of the Participating Councils' existing contracts for Recycling Sorting Services are due to expire in the next eight to 24 months;
 - the extensive time required to progress the overall procurement process necessitates the commencement of the tender process as soon as possible; and
 - no supplier will be selected, and no contract will be entered into, until a final determination is provided on the substantive application.

Consultation

10. The ACCC invited submissions from a range of potentially interested parties including waste management companies, industry associations and government bodies.²
11. The ACCC did not receive any submissions regarding the Applicants' request for interim authorisation.
12. 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.

¹ The Councils are considering potentially procuring this project utilising a new SPV. If such a structure is utilised, the SPV would enter into final contracts with the selected supplier(s).

² A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

Reasons for decision

13. In granting interim authorisation, the ACCC considers it unlikely that interim authorisation will materially alter the competitive dynamics in any market. In this regard, the ACCC notes that interim authorisation is granted only for the commencement of the tender process, and not the execution of any contracts, so that if the ACCC ultimately does not grant authorisation the market is able to return to its current state.
14. The ACCC accepts that, due to the expiration of existing recycling sorting contracts and the time required to conduct the procurement process, along with the operational challenges and uncertainty currently experienced by the recycling sorting industry, there is some urgency regarding the request for interim authorisation.

Reconsideration of interim authorisation

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