



Our ref: AA1000503
Contact officer: Tanya Hobbs
Contact phone: (02) 6243 1029

23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1368
adjudication@acc.gov.au

www.acc.gov.au

20 November 2020

Alistair Newton
Partner, Corrs Chambers Westgarth

Dear Mr Newton

Metropolitan Waste and Resource Recovery Group application for authorisation AA1000503 - market inquiries

I refer to the above mentioned application for authorisation lodged with the Australian Competition and Consumer Commission (**the ACCC**) by Metropolitan Waste and Resource Recovery Group (**MWRRG**) on 21 April 2020.

The ACCC has conducted market inquiries with a range of interested parties in addition to the public submissions available on the ACCC's website. **Attachment A** sets out a summary of the issues raised during market inquiries.

Please provide a response in relation to the information contained in Attachment A by 30 November 2020.

If you have any queries relating to this letter, or would like to provide a response over the phone, please contact Tanya Hobbs on (02) 6243 1029.

Yours sincerely

Darrell Channing
Director
Competition Exemptions

Attachment A

Public benefits

Transaction cost savings and improved contract management

1. MWRRG's application states that:

The joint procurement and management of the South Eastern Organics Group has achieved transaction cost savings relative to each relevant council acting alone. Under the initial authorisations, participating councils have been able to share legal and administration costs, reducing their respective outlays when compared to procuring these services alone. Under the substituted authorisation, the additional councils will be able to share in those transaction cost savings.

2. We also note the information confidentially provided by MWRRG submitting a selection of cost savings arising from its joint administration of the SEOG.¹
3. However, we have received market feedback that due to overlaps in oversight roles between councils and MWRRG and delays in decision making, in practice, joint contract management and administration by MWRRG is not an improvement or cost saving compared to a situation without involvement by MWRRG.
4. Please provide evidence to support MWRRG's claim of transaction cost savings and improved contract management. This need not be limited to the current SEOG organics processing contracts – it may extend to alternative waste streams and other joint tendering groups in order to show a pattern of savings and improvement.

Economic efficiencies

5. MWRRG claims that further efficiencies and economies of scale will be achieved with the inclusion of the Additional Councils in the SEOG post-authorisation.
6. Market feedback suggests that any further gain of scale within SEOG and any resulting benefits to the processors which service SEOG will be counterbalanced by the loss of scale by the Additional Councils' existing organics processor.
7. Further, there is the potential for ongoing efficiency losses since the aggregation of the Additional Councils within SEOG until 2032 will preclude any open tenders by the Additional Councils either individually or within a fourth council joint tendering group. Market inquiries indicate this will significantly raise barriers to entry for smaller and more localised potential waste processors.
8. We seek MWRRG's response to these views on the claimed economic efficiencies.

Public detriments

9. Market feedback suggests that the factors identified in previous authorisations of the SEOG as mitigating public detriments do not apply in the current matter. Specifically:
 - a. A tender process would ensure competition 'for the market' (e.g. competition to win

¹ Metropolitan Waste and Resource Recovery Group (7 August 2020) *Submission by Applicant – provision of further information* pg 3.

the contract). There will be no further tender process here.

- b. *A significant volume of organic waste collected by Melbourne councils not subject to the proposed conduct would remain available to alternative suppliers who were not successful tenderers for the contract.* Although around 48% of municipal organic waste will remain in metropolitan Melbourne outside the SEOG it appears that the vast majority of this volume is subject to long term contracts within one of the other two council joint tendering groups run by MWRRG (currently approximately 85% of municipal organic waste collected, increasing to 95% with the Additional Councils).
 - c. *Any joint decisions by MWMG (MWRRG's predecessor entity) and the member councils of SEOG would be limited to allocating particular volumes of organic waste to particular waste processing service suppliers who were already contracted to the councils and who would have their commercial positions protected by contractual minimum volume obligations.* Market inquiries indicate that MWRRG has a tendency to maintain a strong consistency of approach across all contracts within a tendering group and across all three of the council joint tendering groups under its aegis.
 - d. *The SEOG member councils were free (after the joint tender was run) to elect not to enter into the contractual framework and, instead, to independently select, negotiate and contract with any supplier of organic waste processing services.* Market inquiries suggest there are significant constraints on member councils leaving the contracts they have entered into as part of the SEOG once those contracts have been entered.
10. We note that the addition of Mornington Peninsula Shire Council to the SEOG, the location of that particular council area in relation to the remainder of metropolitan Melbourne and the available modern metropolitan Melbourne processing facilities raised special circumstances that do not appear to apply in the case of the Additional Councils.
11. In light of the market feedback, we seek MWRRG's views on whether the proposed conduct is likely to result in the following public detriments:
- a. reduced competitive tension on the three processors which won the SEOG joint tender in their dealings with the Additional Councils. In this respect market inquiries cite:
 - i. various capacity constraints and bottle necks as meaning that there is likely to be little competition between the three processors to service the Additional Councils
 - ii. the lengthy maximum contract period, and
 - iii. effective constraints on a council's ability to seek an alternative processor once the council has joined SEOG contracts
 - b. reducing competition to acquire and supply organics processing services across Metropolitan Melbourne. In this respect market inquiries cite:
 - i. the already exceedingly high volume of organic waste subject to contracts controlled by MWRRG (around 85%, which will increase to around 95% with the Conduct)
 - ii. MWRRG's approach to contract management
 - iii. the importance of the remaining volumes (which are also tendered on a more frequent basis) to allow for potential entry by small processors, new innovators and to allow existing processors to maintain a presence in the Melbourne market if they have lost access to the three large council tendering groups.
 - iv. the importance of municipal organics contracts, in particular as opposed to

commercial or industrial sources of organic waste, in order to guarantee organics processors a steady and substantial volume of higher value inputs.

- v. potential for reduced number of processors (compared to the situation without the Conduct) in the long term given the loss of organics waste volumes represented by the Additional Councils, and
- vi. potential for increased barriers to entry.