



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

In respect of a notification lodged by

Byron Shire Council (in its own right and on behalf of
Ballina Shire Council and Richmond Valley Council)

in respect of

collective bargaining with the Lismore Materials
Recycling Facility

Date: 23 May 2018

Notification number: CB10000451

Commissioners: Sims
Rickard
Schaper
Court
Featherston

Summary

The ACCC has decided not to object to the notification lodged by Byron Shire Council to enable Byron Shire Council, Ballina Shire Council and Richmond Valley Council to collectively negotiate and give effect to individual contracts for the processing of recyclables (including organics) and refund sharing arrangements relating to eligible containers with the Lismore Materials Recovery Facility.

The ACCC has also decided to allow the notification to remain in force for a period of ten years. The notification will expire on 2 April 2028, unless it is withdrawn or revoked.

The ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from the notified conduct will not outweigh the likely detriment to the public from the conduct.

The notification

1. On 3 April 2018 Byron Shire Council, in its own right and on behalf of Ballina Shire Council and Richmond Valley Council (collectively, **the Councils**), lodged a collective bargaining notification¹ to:
 - collectively negotiate separate contracts with the Lismore Materials Recovery Facility (Lismore MRF) for the receipt and processing of recyclables (including organic material) from each of the Councils' respective collection areas
 - collectively negotiate individual refund sharing agreements with the Lismore MRF to be able to share refunds from eligible containers from kerbside collections under the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 (NSW), and
 - collectively administer the individual contracts detailed in points 1 and 2, above, during the term of those contracts(the **Notified Conduct**).
2. The Councils have requested that their notification operate for up to 10 years² on the basis that such a period:
 - will provide the Councils and the Lismore MRF with greater business certainty
 - will enable the Lismore MRF the opportunity to make significant investment in recycling services, benefitting the region, and

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (CCA)* for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) commences 14 days after the collective bargaining notification is lodged.

² The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

- is in line with the periods over which past waste collective bargaining arrangements have been granted immunity (via the ACCC's authorisation process).

Consultation

3. The ACCC invited submissions from a wide range of interested parties. Copies of all public submissions are available on the [ACCC's public register](#).
4. A submission opposing the Notified Conduct was provided by the Waste Contractors & Recyclers Association of NSW (**WCRA**) stating that, rather than seeking consent from the ACCC to collectively bargain with the Lismore MRF, the Councils should instead publicly seek expressions of interest for the receipt of recyclables and refund sharing of eligible containers as a means of testing the market for alternate service providers.
5. In response, the Councils submit that:
 - other recycling service providers in the broader region would not accommodate the full range of materials which the Councils are seeking to have processed
 - the Lismore MRF is the closest of the MRFs noted by WCRA and using a facility other than the Lismore MRF would require transportation of their waste over a far greater distance, and
 - the Notified Conduct supports the viability of the Lismore MRF, which has incurred heightened operating costs as a result of China's National Sword Policy.³
6. The Councils submit that, together, these factors enable a range of economic, social and environmental benefits which would not otherwise be realised.
7. Lismore City Council (which owns and operates the Lismore MRF) advises that it is supportive of the Notified Conduct and a ten year notification period will allow a level of capital to be invested in the Lismore MRF which would not be possible with a three year notification period. It also notes that the facility is already processing waste from the Councils under separate annual contracts and would have capacity to take on additional waste from other clients with or without the Notified Conduct taking place.

ACCC's Assessment

8. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010 (Cth)* (**CCA**).
9. In doing so, the ACCC has taken into account:
 - The notification and submissions received from the Councils.
 - Submissions received from interested parties.

³ 'National Sword' is a policy whereby China, which was a major receiver of recyclables, has banned or restricted the importation of certain types of solid waste including various plastics and unsorted mixed papers.

- Information independently obtained by the ACCC during the course of its review of this notification and information available to the ACCC from prior similar matters.
- The likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct, each of the Councils is likely to continue to individually negotiate and contract with the Lismore MRF to process their recyclables (including organics) and provide refunds for eligible containers under the Container Deposit Scheme. Each Council would also continue to separately administer their contracts with the Lismore MRF, including by individually transporting their own recyclables.
- The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary area of competition is the provision of waste processing services (including for recyclables, organics and soft plastics) in the Northern Rivers region of NSW.
- The proposed duration of the Notified Conduct.
- That no collective boycott activity is proposed and participation in the bargaining group is voluntary.
- That the Lismore MRF supports the Notified Conduct.

Public Benefit

10. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:
- Improved efficiency through:
 - sharing transaction costs (such as negotiation and contracting costs) between the Councils
 - coordinating the waste and recycling disposal operations of the Councils and
 - economies of scale achieved through aggregation of larger volumes of recyclables (including organics).
 - Improved environmental outcomes through:
 - supporting the viability of recycling waste which might otherwise have gone to landfill, and
 - reducing emissions from the transportation of waste as a result of coordination between the Councils.

Public Detriment

11. The ACCC considers that the Notified Conduct is likely to result in minimal, if any public detriment from any reduction in competition between the Councils to acquire waste services or from alternate waste service providers to bid for the Councils' business because:
- It does not remove a significant number of opportunities for the Lismore MRF to supply its services. The ACCC understands that the Lismore MRF provides waste processing services to each of the Councils, Lismore City Council, Tenterfield Council and commercial clients and has the capacity to

take on further waste from additional customers. Since the Councils already process their waste with the Lismore MRF, the Notified Conduct is unlikely to impact the Lismore MRF's capacity to take waste from other parties.

- Other waste processors remain free to compete for the business of these and other councils in the region.
- Participation in the Notified Conduct is voluntary for the Councils.

Period for which the Notification will be in force

12. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate, or the notification is withdrawn or revoked.
13. In this case, the Councils request the notification to continue for 10 years.
14. The ACCC considers that it is appropriate for the notification to operate for 10 years until 2 April 2028 for the following reasons:
 - The extended notification period is likely to improve business certainty for the Lismore MRF and the Councils, which may support further investment in the MRF.
 - The extended notification period is unlikely to increase the minimal public detriment which is likely to result from the Notified Conduct.

Decision

15. Having considered the matters referred to in paragraph 9 above, the ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
16. Accordingly, the ACCC does not intend to take action to revoke the notification at this time. As with any notification, in accordance with s 93 AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from the Notified Conduct will not outweigh the likely detriment to the public from the conduct.
17. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 14 above, in accordance with s 93AD(5), of the notification, the ACCC is satisfied that:
 - a three year notification period is not appropriate in all the circumstances, and
 - another period is appropriate in all the circumstances, being a 10 year period beginning on the day the notification was lodged.⁴
18. Accordingly, the protection provided by notification CB1000451 commenced on 17 April 2018 and, will continue until 2 April 2028, unless the notification is withdrawn or revoked.
19. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

⁴ As required by s 93AC(5)(b), this period will end no later than 10 years after the day that the notification was lodged.