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Ref: F 2904

General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Attention: M/s Stephanie Chenoweth  
Acting Director Adjudication Branch

**AUTHORISATION APPLICATION NO. A90886**  
**CAMDEN, CAMPBELLTOWN, LIVERPOOL, WOLLONDILLY and WINGECARRIBEE**  
**COUNCILS, Your ref. C2003/1363**

Dear M/s Chenoweth,

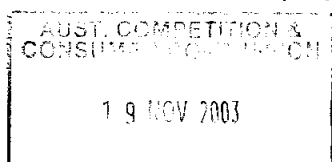
I refer to your correspondence dated 21 October 2003 advising that the above application has been lodged with the Commission, inviting written submission from Waste Service NSW as a potentially interested party. I take this opportunity to advise that Waste Service NSW is the current service provider for the waste disposal needs of each of the Councils party to the application and we thank the Commission for affording an opportunity to participate in your assessment process. The issues in which comment are being sought are as follows:

Waste Service NSW is a statutory State Owned Corporation established under the Waste Recycling and Processing Corporation Act 2001. The principal shareholders are the NSW Treasurer Hon. Michael Egan, MLC and Special Minister of State and Assistant Treasurer Hon. John Della Bosca, MLC. A dividend is paid to Government annually and reports are submitted in accordance with the State Owned Corporations Act 1989.

The legislation under which Waste Service NSW operates requires amongst other things that the Corporation be a successful business, exhibit a sense of social responsibility by having regard to the interests of the local community in which it operates, and to conduct operations in accordance with the principles of ecologically sustainable development, – please refer to clause 5 Principal objectives of Corporation of the Waste Recycling and Processing Corporation Act 2001.

*Do you agree with the public benefits that the Councils have claimed will flow from the collective tendering arrangements?*

- The benefits cited in the application are stated as increased competition, efficient service delivery, appropriate infrastructure, and resource recovery/environmental benefits.
- While much of the detail submitted in the application could be contested, Waste Service NSW generally concurs that there could be a benefit to the public that would flow from increased competition (p.29 of application) in the waste receiptal/processing/disposal industry by virtue of the proposed arrangements.
- Waste Service NSW does not believe that there would be any impact on or changes to service efficiencies (pp.29-30 of application) as a result of the proposed arrangements. The Councils operate collection arrangements to suit



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Waste Service NSW is the trading name of the Waste Recycling and Processing Corporation.

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local conditions and community preferences mostly with differing contract expiry periods. It is difficult to understand from the application how that situation would be improved or altered by a regional arrangement.

- It is agreed that there would be a likely public benefit associated with construction of enhanced resource recovery infrastructure (pp.30-31) in the region. As a result of a residential development proposed within 500 metres of the current landfill site (Jacks Gully Waste Management Centre) Waste Service NSW plans to construct an alternate waste technology (AWT) processing facility to replace putrescible landfilling operations by 2007. It should be noted that the current landfill site has at least 15 years operating life and Waste Service NSW intends to continue its operation.
- There are several areas of concern in relation to assumptions and the manner in which Waste Service NSW operations have been described. In particular (refer p.27) Waste Service NSW is the dominant player in the market however, holds approx. 25% share in the DRM market and <50% of the garden organics market.
- Waste Service NSW concurs that the proposed arrangement may lead to improved environmental outcomes subject to an AWT outcome. It should be noted that Waste Service NSW operates its facilities to the highest possible environmental standards as required through approvals and licensing requirements.

In summary, Waste Service NSW agrees that there is likely to be a net public benefit resulting from the proposed arrangement although, many of the arguments and assumptions used in the application do not provide a totally accurate representation of the operation of the industry.

*Do you agree with the comments the Councils have made about the likely public detriment flowing from the collective tendering arrangement?*

The application appears not to have addressed the issue of likely public detriment. However, in this regard Waste Service NSW makes the following comments:

- Pricing for AWT is likely to be higher than landfill;
- Visy currently holds 48% of the DRM market. Should Visy be successful with this regional tender in the DRM component their market share will increase to 53%. We understand Visy enjoys near monopoly status in other cities;
- Garden organics outcomes may be constrained by the need to move into enclosed composting processing to effectively manage odour issues;
- Long term contracts move obsolescence risk of facilities from the contractor to the council;
- A contractor with a long term contract will have much more market power in the region than the application seems to ascribe to Waste Service NSW incumbency.

*Do you consider that there might be any other detriment to the public caused by the arrangements?*

In all of the applications of this type that have been made to the Commission, there is an automatic assumption that long term contracts will deliver superior value to councils. This assumption needs to be carefully examined on a case-by-case basis.

True competition would exist if councils were able to decide on day-to-day basis where to take their waste if there were a number of players in the market. This needs to be balanced against whether market players are prepared to take infrastructure development risk as well as logistics and approvals issues.

Collex (Woodlawn), Waste Services NSW (Eastern Creek AWT and elsewhere) and Earthpower (Camellia) have shown that some in the industry are prepared to take a commercial risk and develop infrastructure without the security of long term contracts.

Long term contracts are always good for the contractor and may provide benefits to the councils under some circumstances. A contractor with a long term contract with a region of councils (be that Waste Service NSW or another player) will have significant market power, therefore the benefits need to be carefully addressed on a case-by-case basis, depending on waste catchments rather than simply assumed.

Waste Service NSW believes that, on balance, there would be benefits to the councils in the Macarthur region, however, this does not hold true uniformly across Sydney.

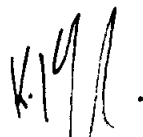
In some cases the cost of establishing infrastructure argument is a convenient mantra for industry players not prepared to take commercial risk.

*Do you have any other comments on the proposed collective tendering arrangements?*

Waste Service NSW believes at least three months should be allowed for proponents to respond to what will be a complex tender.

Waste Service NSW would welcome an opportunity to participate further in the assessment process and if any further information is required please contact the Sales and Customer Service Manager Mr Peter Rimmer on 9934 7081 or 0419 753 981.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Kanofski', with a small dot at the end.

Ken Kanofski  
**Chief Executive Officer**