



Australian Competition & Consumer Commission

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12 March 2004

Mr Tony Khoury
Executive Officer
Waste Contractors and Recyclers Association of NSW
Level 4
162 Goulburn St
Darlinghurst NSW 2010

Dear Mr Khoury

Trade Practices Act 1974
Application for Authorisation A30231

Lodged by Hornsby Shire Council, Hunters Hill Municipal Council, Lane Cove Council, North Sydney Council, the City of Ryde, Willoughby City Council, Mosman Municipal Council and Warringah Council (the Northern Sydney Region of Councils)

Request for interim authorisation

On 11 December 2003, the Australian Competition and Consumer Commission (the Commission) received an application for authorisation (A30231) from the Northern Sydney Region of Councils.

By way of background, the Commission is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, recognises that competition may not always be in the public interest. It therefore allows the Commission to grant immunity from the Act for anti-competitive conduct in certain circumstances.

One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the Commission. Broadly, the Commission may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any anti-competitive detriment. The Commission conducts a comprehensive public consultation process before making a decision to grant or deny authorisation.

Application for authorisation

Broadly, in their application the Northern Sydney Region of Councils seek authorisation to advertise a tender for and subsequently jointly tender for the services of qualified contractors to provide waste transfer, processing and disposal services to their respective Local Government areas.

A copy of the application for authorisation and supporting submission is available on the Commission's website – www.accc.gov.au or by contacting Tania Mayrhofer on (02) 6243 1070 or via email – Tania.Mayrhofer@accc.gov.au.



Request for interim authorisation

On 11 February 2004, the Northern Sydney Region of Councils requested interim authorisation to commence the process of advertising the tender for waste transfer, processing and disposal services.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the Act while the Commission considers and evaluates the merits of the application.

The Commission has considered the request for interim authorisation, and has decided to grant interim authorisation to the Northern Sydney Region of Councils to proceed with advertising the tender while the Commission considers the substantive application. Interim authorisation has not been granted to allow the Northern Sydney Region of Councils to enter into contracts with tenders.

In assessing the request for interim authorisation, the Commission gave consideration to the following:

- granting interim authorisation would not permanently alter the state of the market or inhibit it from returning to its pre interim authorisation state if final authorisation is later denied; and
- granting interim authorisation is unlikely to harm any party.

Interim authorisation has been granted until the date the Commission issues a draft determination in relation to the Northern Sydney Region of Councils' application for authorisation, at which time the Commission will review the need for interim authorisation.

Please be advised that the Commission's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted by the Commission.

Please also note that under subsection 91(2AB) of the Act, the Commission may revoke an interim authorisation at any time.

The Commission is currently considering the substantive application for authorisation. The next step in this process is for the Commission to issue a draft determination indicating whether or not it proposes to authorise the arrangements. Once a draft determination is released interested parties, such as yourself, will be sent a copy of the draft determination and the invited to make written submissions regarding the likely public benefits and effects on competition of the arrangements for which authorisation is sought.

If you have any questions please contact Tania Mayrhofer on (02) 6243 1070.

Yours sincerely



Tim Grimwade
General Manager
Adjudication Branch