

Our Ref: A90988
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Letter sent to
attached list KL7.

Wednesday, 12 October 2005

«Title» «FirstName» «LastName»
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«GreetingLine»

Re: Proposed amendments to Councils of Camden, Cambelltown City, Wollondilly Shire and Wingecarribee Shire Authorisation A90886 - interested party consultation

Introduction

The Australian Competition and Consumer Commission (the ACCC) is currently conducting an interested party consultation process in relation to an application to vary an authorisation previously granted to the Councils of Camden, Cambelltown City, Wollondilly Shire and Wingecarribee Shire (the Councils). As a party who may be interested in this matter you are invited to comment on the issues outlined in this letter.

Authorisation A90886 was originally granted by the ACCC on 16 December 2004.

Background

The ACCC is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

The Act, however, allows the ACCC to grant immunity from legal action 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 ACCC. Broadly, the ACCC may 'authorise'

businesses to engage in anti-competitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment.

The ACCC may also grant an application for minor variation of an already-granted authorisation. To allow a minor variation, the ACCC must be satisfied that the variation would not result, or be likely not to result, in a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public flowing from the authorisation.

When an application for a minor variation is received, the ACCC must inform interested parties of the nature of the variation applied for and invite submissions on the application. The ACCC may then issue a determination either varying the original authorisation or dismissing the application.

Original authorisation A90886

On 16 December 2004 the ACCC granted authorisation in relation to an agreement between the Councils to advertise for and subsequently jointly tender for the provision of services of contractors able to process, market or otherwise dispose of three streams of kerbside collected waste materials, namely dry recyclable material, organic waste and residual waste.

Authorisation was granted for the following periods:-

- for the period of the collective tender process up to a maximum of 12 months from the date the final determination came into effect; and
- for the term of the contracts entered into under the tender process up to a maximum of 15 years.

Proposed minor variation to A90886

On 29 September 2005, the ACCC received an application for minor variation of authorisation A90886. The minor variation sought by the Councils involves amending the period the collective tender process is to take place. The proposed revised date by which this process is to be completed is 6 July 2006.

The Councils have sought the variation to allow for any possible delays in the tendering process. In particular, concern has been raised that the current period under the existing authorisation may not be sufficient to fully evaluate any tenders that fail to conform to the tender documentation.

For further information on the Councils application for minor variation, please see the attached submission.

Request for submissions

To assist the ACCC in its consideration of the application for minor variation it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed changes.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though it is not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, please address your submission to:

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

Submissions can also be lodged by email to adjudication@acc.gov.au or by facsimile on 02 6243 1211.

If you intend to provide a submission in relation to the Councils' application for minor variation, please do so by **28 October 2005**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Kerry Leigh Taylor on (02) 6243 1175.

Yours sincerely

Scott Gregson
General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the Commission deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.

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