



Australian
Competition &
Consumer
Commission

Draft Determination

Applications for authorisation

lodged by

The Central Queensland Local Government Association on behalf of
Rockhampton Regional Council, Gladstone Regional Council, Central
Highlands Regional Council and Isaac Regional Council

in respect of

a joint tender process for the provision of
waste, recyclables and ancillary waste services
in the combined local government areas

Date: 16 July 2008

Authorisation no.: A91087

Public Register no.: C2008/618

Commissioners: Samuel
Sylvan
Court
King
Martin
Schaper
Walker
Willett

Summary

The ACCC proposes to grant authorisation to Rockhampton Regional Council, Gladstone Regional Council, Central Highlands Regional Council and Isaac Regional Council to conduct a joint tender for the provision of waste, recyclables and ancillary waste services in their combined local government areas and offer contracts to the successful tenderers until 31 December 2018.

The authorisation process

The Australian Competition and Consumer Commission (ACCC) can grant immunity from the application of the competition provisions of the *Trade Practices Act 1974* (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

The application for authorisation

On 17 April 2008 the Central Queensland Local Government Association (CQLGA), acting on behalf of Rockhampton Regional Council, Gladstone Regional Council, Central Highlands Regional Council and Isaac Regional Council (the Applicants), lodged an application for authorisation to conduct a joint tender for the provision of waste, recyclables and ancillary waste services in their combined local government areas.

The Applicants advise that the tender will cover five services:

- Waste and Recyclables Collection Services
- Recyclables Processing Services
- Bulk Waste Services
- Landfill Services and
- Liquid Waste Services

The Applicants advise that tenderers may submit for one or more of the services and their corresponding separable portions. The successful tenderer/tenderers will be required to enter into separate contracts with each of the relevant participating councils.

The Applicants have requested authorisation for 10 years from the date of commencement of the relevant contracts. The Applicants anticipate that the tendering for the contracts will conclude in September 2008.

Public detriment

The ACCC considers that the anti-competitive detriment arising from the proposed conduct is likely to be minimal.

Public benefit

The ACCC considers that conducting a joint tender for the provision of waste, recyclables and ancillary waste services in the Applicants' combined local government areas will produce public benefits. In particular, the ACCC considers that the proposed arrangements are likely to produce efficiencies in relation to the collection and processing of waste and recyclables, which will result in cost savings for the municipalities and their ratepayers. Furthermore the proposed arrangements are likely to produce environmental benefits due to the introduction of best practice recycling and processing with a resulting diversion of waste from landfill.

Balance of public benefit and detriment

On balance, the ACCC considers that the public benefits are likely to outweigh the public detriments.

Length of authorisation

The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances.

In this instance, the ACCC is proposing to grant authorisation until 31 December 2018.

Interim authorisation

Interim authorisation was granted to the Applicants on 14 May 2008, allowing them to begin the tendering process for the specifications, while the ACCC considered and evaluated the merits of the application.

The Applicants did not seek interim authorisation to enter into any contracts at the conclusion of the tender process.

This interim authorisation remains in place until the ACCC makes a final determination or otherwise considers it is no longer appropriate and revokes it.

The next steps

The ACCC will now seek further submissions from the Applicants and interested parties in relation to this draft determination prior to making a final decision. The applicant and interested parties may also request that a conference be held to make oral submissions on the draft determination.

Contents

1.	INTRODUCTION.....	1
	AUTHORISATION	1
	THE APPLICATION FOR AUTHORISATION	1
	INTERIM AUTHORISATION.....	2
	CHRONOLOGY	2
2.	BACKGROUND TO THE APPLICATION	3
	THE APPLICANTS.....	3
	THE WASTE INDUSTRY.....	5
	EXISTING AUTHORISATIONS.....	9
3.	THE APPLICATION FOR AUTHORISATION	11
4.	SUBMISSIONS RECEIVED BY THE ACCC.....	13
5.	THE NET PUBLIC BENEFIT TEST	14
6.	ACCC EVALUATION	17
	THE MARKET	17
	THE COUNTERFACTUAL.....	17
	PUBLIC DETRIMENTS	18
	PUBLIC BENEFITS	21
	BALANCE OF PUBLIC BENEFIT AND DETRIMENT.....	24
	LENGTH OF AUTHORISATION	25
7.	DRAFT DETERMINATION.....	26
	THE APPLICATION.....	26
	THE NET PUBLIC BENEFIT TEST	26
	CONDUCT FOR WHICH THE ACCC PROPOSES TO GRANT AUTHORISATION.....	26
	INTERIM AUTHORISATION.....	27
	FURTHER SUBMISSIONS	27
	APPENDIXES	I
	APPENDIX A — LOCAL GOVERNMENT AREAS OF QUEENSLAND.....	I

List of abbreviations

ACCC	Australian Competition and Consumer Commission
CQLGA	Central Queensland Local Government Association
the Act	<i>Trade Practices Act 1974</i>
MRF	Materials Recovery Facilities - specialised plant that receives, separates and prepares recyclable material for marketing to end-user manufacturers.
recyclable material	Material that has properties that enable subsequent reprocessing into other products and/or materials for reuse.
The Applicants	Rockhampton Regional Council, Gladstone Regional Council, Central Highlands Regional Council and Isaac Regional Council.
waste	Materials that are superfluous to or by-products from domestic, commercial, industrial and other activities.

1. Introduction

Authorisation

- 1.1 The Australian Competition and Consumer Commission (the ACCC) is the independent Australian Government 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.
- 1.2 The Act, however, allows the ACCC to grant immunity from legal action in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an ‘authorisation’.
- 1.3 The ACCC may ‘authorise’ businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.
- 1.4 The ACCC conducts a public consultation process when it receives an application for authorisation. The ACCC invites interested parties to lodge submissions outlining whether they support the application or not, and their reasons for this.
- 1.5 After considering submissions, the ACCC issues a draft determination proposing to either grant the application or deny the application.
- 1.6 Once a draft determination is released, the applicant or any interested party may request that the ACCC hold a conference. A conference provides all parties with the opportunity to put oral submissions to the ACCC in response to the draft determination. The ACCC will also invite the applicant and interested parties to lodge written submissions commenting on the draft.
- 1.7 The ACCC then reconsiders the application taking into account the comments made at the conference (if one is requested) and any further submissions received and issues a final determination. Should the public benefit outweigh the public detriment, the ACCC may grant authorisation. If not, authorisation may be denied. However, in some cases it may still be possible to grant authorisation where conditions can be imposed which sufficiently increase the benefit to the public or reduce the public detriment.

The application for authorisation

- 1.8 On 17 April 2008 the Central Queensland Local Government Association (CQLGA), acting on behalf of Rockhampton Regional Council, Gladstone Regional Council, Central Highlands Regional Council and Isaac Regional Council (the Applicants), lodged application for authorisation A91087. The Applicants seek authorisation to enter into arrangements that may breach section 45 of the Act.

- 1.9 The CQLGA seeks authorisation to conduct a joint tender for the supply of:
- Waste and Recyclables Collection Services
 - Recyclables Processing Services
 - Bulk Waste Services
 - Landfill Services and
 - Liquid Waste Services
- 1.10 The application for authorisation is discussed in greater detail in Chapter 3 of this draft determination.

Interim authorisation

- 1.11 The ACCC granted interim authorisation to the Applicants on 14 May 2008, allowing the CQLGA to:
- a) allow the Councils to prepare tender documentation and invite tenders from interested parties wishing to provide waste and recyclables collection and processing services
 - b) evaluate tender submissions
 - c) prepare tender recommendations to Councils' executives and
 - d) for Councils' executives to endorse the recommendations of the Tender Panel and seek to enter into contractual arrangements pending the final determination of the ACCC.

Chronology

- 1.12 Table 1.1 provides a chronology of significant dates in the consideration of this application.

Table 1.1: Chronology of application for authorisation A91087

DATE	ACTION
17 April 2008	Application for authorisation lodged with the ACCC, including an application for interim authorisation.
1 May 2008	Closing date for submissions from interested parties in relation to the request for interim authorisation.
9 May 2008	Closing date for submissions from interested parties in relation to the substantive application for authorisation.
14 May 2008	The ACCC granted interim authorisation to allow the Applicants to commence the tender process.
30 May 2008	Submission received from the Applicants in response to interested party submissions.
16 July 2008	Draft determination issued.

2. Background to the application

The Applicants

- 2.1 The Applicants are local government areas (councils) for the purposes of the *Local Government Act 1993*. The Applicants came into being on 15 March 2008 as a result of the *Local Government Reform Implementation Act 2007* that enabled council amalgamations in Queensland. The amalgamations resulted in 14 previously separate councils in Central Queensland becoming the four councils that are the subject of this authorisation application.
- 2.2 Table 2.1 provides a list of the 14 former councils that have amalgamated to create the four councils that are the subject of this authorisation.

Table 2.1 Amalgamated Councils¹

New Council	Former Councils
<i>Rockhampton Regional Council</i>	Rockhampton City Council Fitzroy Shire Council Livingstone Shire Council Mount Morgan Shire Council
<i>Gladstone Regional Council</i>	Gladstone City Council Calliope Shire Council Miriam Vale Shire Council
<i>Central Highlands Regional Council</i>	Emerald Shire Council Peak Downs Shire Council Duaringa Shire Council Bauhinia Shire Council
<i>Isaac Regional Council</i>	Broadsound Shire Council Nebo Shire Council Belyando Shire Council

- 2.3 The local government areas administered by the Applicants are located in Central Queensland and have a combined area of 147,500 square kilometres. A map of the Applicants location in Queensland is included at Appendix A.
- 2.4 The combined population of the four Applicants is approximately 211,000. Table 2.2 provides further information on the population and geographic size of each of the four Applicants.

¹ CQLGA application for authorisation A91087, Attachment 2, page 3.

Table 2.2 Geographic and Population Information²

Council	Area (sq kms)	Population	Regional Centre (population)	Population Growth p.a (2007-2011)
Rockhampton	18 361	107 540	Rockhampton (60 499)	-0.15%
Gladstone	9 822	53 974	Gladstone (31 600)	0.67%
Central Highlands	60 759	28 276	Emerald (approx. 10 000)	1.40%
Isaac	58 458	21 178	Moranbah (approx. 8 000)	2.23%

- 2.5 The geographic profile of the region covered by the Applicants is divided between rural settings/small towns and large regional centres. The councils of Rockhampton and Gladstone are the most densely populated of the four councils due to the presence of large regional centres. Whereas the councils of Central Highlands and Isaac are based in rural settings with small town centres.
- 2.6 The economic profile of the region covered by the Applicants is marked by the importance of the resources industry. Rockhampton is a transport and service hub for the surrounding agricultural and resources industries. Gladstone is the third largest port in Queensland, due to coal exports from the Bowen Basin. The Bowen Basin is located in Isaac and is the dominant industry, with 47 active mines in 2005-06.³ Coal mining and the associated service industries also play a key role in the economic profile of the Central Highlands along with the agricultural industry.
- 2.7 The rapid expansion of the coal industry due to high global demand and prices has led to growing average salaries and increased housing costs in the Applicants' region.⁴

² Table compiled by the ACCC from CQLGA application for authorisation A91087, Attachment 2, pages 7 - 9

³ Department of Housing QLD, *Report: Housing in the Bowen Basin*, May 2007, page 2.

⁴ Professor John Rolfe, *Presentation: Growth in the Coal Industry and Economic and Social Consequences*, Regional Social Impacts of Economic Growth Forum, Central Queensland University Mackay, 20 August 2007, slide 4.

The Waste Industry

Market characteristics

- 2.8 Local Government is responsible for the collection, treatment and disposal of municipal waste from household and commercial premises. The larger the size of the local government the more likely its waste collection and disposal services are contracted out to private operators.⁵
- 2.9 Households with higher incomes tend to produce more waste due to higher expenditure on consumables and households in rural areas generally produce more waste than urban households.⁶
- 2.10 The size and location of a local government has a significant bearing on whether local governments provide kerbside recycling services. The smaller and more remote the local government, the less likely kerbside recycling services will be provided.⁷
- 2.11 Government regulation and policy pertaining to the environment is a significant factor in the behaviour of local government in respect of waste disposal, treatment, minimisation and/or recycling. This is discussed in further detail later in this chapter.

Market concentration and barriers to entry

- 2.12 IBIS World estimates that the top four firms in the national waste industry account for 53.6% of total industry revenue. Domestic waste collection services are less concentrated with the largest three players accounting for 30% of all households in Australia due to contracts with local governments.⁸
- 2.13 IBIS World estimates the four largest players in the national waste industry by revenue market share are:⁹

• Transpacific Industries (Cleanaway, Baxter)	18.00%
• Veolia Environmental Services	16.30%
• Pratt Holdings (Visy)	10.10%
• JJ Richards	9.20%

⁵ IBIS World, *Waste Disposal Services in Australia*, 16 April 2008.

⁶ IBIS World, *Waste Disposal Services in Australia*, 16 August 2006.

⁷ Environmental Protection Agency QLD, *Discussion Paper: Queensland Waste Strategy*, October 2007, page 14.

⁸ IBIS World, *Waste Disposal Services in Australia*, 16 April 2008.

⁹ IBIS World, *Waste Disposal Services in Australia*, 16 April 2008.

2.14 According to the IBIS World report, barriers to entry into the industry are high for the following reasons:¹⁰

- the cost of equipment for use in collection, transfer and disposal of waste
- the length of existing contracts
- the cost, time and effort involved in compliance with regulations and licensing arrangements
- the capital expense associated with landfills, and the fact that vertically integrated operators can gain a competitive advantage and
- the market share of existing operators, which can hinder new entrants in establishing sufficient demand to justify investment in larger-scale plants.

Regulation

2.15 The Applicants' waste activities are regulated by the Environmental Protection Agency (QLD) (EPA), *Environmental Protection Act 1994*, *Environmental Protection (Waste Management) Regulation 2000* and the Environmental Protection (Waste Management) Policy 2000 (Qld) (the Policy).

2.16 In respect of the Applicants the Policy provides for local governments undertaking strategic waste management planning with a view to encouraging sustainable waste management practices.¹¹

2.17 The EPA's goal is to minimise the environmental harm caused by waste generation and management. This is achieved through:¹²

- minimising both the volume and harmfulness of waste generated
- minimising the amount of waste disposed of to the environment by maximising reuse and recycling and
- ensuring that residential waste is disposed of (via landfills, sewers, and smoke stacks).

2.18 The Applicants submit that in partnership with other councils in the Central Queensland region they have developed the Central Queensland Waste Management Strategy (CQWMS). The strategy's purpose is to develop methods to reduce waste production, promote resource recovery and to realise better management of solid wastes and secondary resources. The strategy ties in with Local Government obligations under the National Packaging Covenant to reduce the quantity of waste to landfill.¹³ The development of regional contracts or joint tenders is seen as a key facet of achieving the aims of the strategy.

2.19 The Applicants submit that the Queensland Government has cited the CQWMS in publications on local government reform as an example of how local governments can cooperate in the future.¹⁴

¹⁰ IBIS World, *Waste Disposal Services in Australia*, 16 April 2008.

¹¹ CQLGA application for authorisation A91087, Attachment 2, page 5.

¹² Ibid.

¹³ Ibid, page 6

¹⁴ Ibid.

Existing waste arrangements in the Applicants' region

2.20 Table 2.3 summarises the current volume of waste and recyclable material collected in the Applicants' region.

Table 2.3 Tonnages of waste and recyclable material collected by the Applicants in 2005¹⁵

Council	Waste (tonnes/year)	Recyclables (tonnes/year)
Rockhampton	26 972	8 836
Gladstone	10 246	1 789
Central Highlands	5 602	0
Isaac	3 428	n/a

- 2.21 As previously mentioned the council amalgamations that came into effect on 15 March 2008 have meant that the newly created councils that are the Applicants to this authorisation do not have uniform or consistent systems for the collection and processing of waste and recyclables.
- 2.22 **Rockhampton** Council was created through the merger of four shire councils. All four councils handle the collection and processing of waste internally. The collection of recyclables is either handled through a weekly collection service or in the case of one former shire council residents have to drop off their recyclables at collection depots.¹⁶
- 2.23 **Gladstone** Council was created through the merger of three shire councils. Two of the three councils have contracts with JJ Richards for the collection and disposal of waste and recycling. These two councils operate a two bin system with recyclables collected fortnightly. The remaining council handles collection and disposal of waste internally with recycling offered through drop off at collection depots.¹⁷
- 2.24 The **Central Highlands** Council was created through the merger of four shire councils. Three of the councils currently have contracts with JJ Richards for the collection and disposal of waste, with the remaining council providing the service internally. A number of these contracts have expired and are being extended on a month by month basis. Recyclables are not collected in the four former shire councils that make up the Central Highlands.¹⁸
- 2.25 **Isaac** Council was created through the merger of three shire councils. All three councils have contracts with JJ Richards for the collection and disposal of waste. A number of these contracts have expired and are being extended on a month by month basis. The councils that now form Isaac had a recycling service that involved a split bin arrangement. The Applicants advise that this recycling system is seen as inefficient as the recyclables become contaminated as a result of the close proximity of general domestic waste.¹⁹

¹⁵ Table compiled by the ACCC from CQLGA application for authorisation A91087, Attachment 2, page 11.

¹⁶ Ibid, page 7.

¹⁷ CQLGA application for authorisation A91087, Attachment 2, page 7.

¹⁸ CQLGA application for authorisation A91087, Attachment 2, page 8.

¹⁹ Ibid.

- 2.26 The Applicants advise that in recent years JJ Richards has been the only waste company prepared to service inland communities with small population bases. The Applicants consider that this service has come at a cost with under-utilised infrastructure resulting in higher charges when compared to other councils in Central Queensland that have similar market concentration.²⁰
- 2.27 The Applicants advise that the increase in income and population in the region primarily due to the growth of the coal industry have increased the necessity of recycling services. Residents have expectations that kerbside recycling will be provided as they have experienced these services elsewhere in Australia.²¹

Materials Recovery Facility

- 2.28 In 2007, two of the Applicants, Gladstone Council and Rockhampton Council, conducted an Expression of Interest (EOI) process to build, own and operate a Material Recovery Facility (MRF) for the processing of recyclables from the two councils. The Applicants advise that five responses were received and that the consistent message was that 8,000 tonnes p.a. of recyclable supply was a minimum requirement to operate a viable MRF. The Applicants further advise that the EOI process indicated that the more tonnes processed over the minimum requirement, the cheaper the rate for the councils.²²
- 2.29 The Applicants advise that currently Gladstone Council is transporting its recyclables to Brisbane for processing. Rockhampton Council is in the process of decommissioning their current MRF and as a consequence will begin transporting their recyclables uncompacted seven hours by road to Brisbane for processing. The facility is being decommissioned because it is too costly for the council to adapt from the current separate two bag system to a two bin system.²³
- 2.30 JJ Richards operate an MRF at Clermont in Isaac Council. This facility is primarily used for processing of industrial recyclable material from the Bowen Basin coal mines.²⁴

²⁰ CQLGA application for authorisation A91087, Attachment 3, pages 2-3.

²¹ Ibid, Form B, page 2.

²² Ibid, Attachment 3, page 3.

²³ Ibid, page 2.

²⁴ Ibid.

Existing Authorisations

- 2.31 The ACCC has previously considered applications for authorisation from certain local councils in Sydney that deal with similar conduct to that proposed by the Applicants. These are summarised below.

Authorisation A91019

- 2.32 On 21 March 2007 authorisation A91019 was granted to the Hurstville City Council (NSW), Kogarah Municipal Council (NSW) and Rockdale City Council (NSW) to tender jointly and to enter into contracts for the provision of all waste and resource recovery collection services within the local government areas of the three councils. Authorisation was granted until 30 June 2018.
- 2.33 In granting the authorisation, the ACCC considered that the anti-competitive detriment arising from the collective arrangements was likely to be minimal. The ACCC considered that the collective arrangements were likely to generate several public benefits, including collection efficiencies and cost savings, improved service delivery and better education programs for residents in the relevant councils.

Authorisation A90926

- 2.34 On 13 April 2005 authorisation A90926 was granted to the Southern Sydney Regional Organisation of Councils (SSROC), which comprises 11 councils in metropolitan Sydney, for a joint contract in relation to the transfer, processing and disposal of general waste. Authorisation was granted for a contract term of up to seven years.
- 2.35 In granting the authorisation, the ACCC considered that the anti-competitive detriment arising from the conduct was likely to be minimal. The public benefits generated by the conduct included improved service efficiencies resulting in lower fees for ratepayers and increased competition for the market, achieved by providing incentives in terms of critical mass for new providers to compete to supply these services to SSROC.

Authorisation A30231

- 2.36 On 16 December 2004 authorisation A30231 was granted to the North Sydney Region of Councils (NSROC), which comprises eight councils in metropolitan Sydney, to jointly tender for contractors to provide waste transfer, processing and disposal services to their respective Local Government areas. Authorisation was granted for a contract term up to 15 years.
- 2.37 In granting the authorisation, the ACCC considered that the anti-competitive detriment arising from the conduct was likely to be minimal. The ACCC considered that the proposed conduct may increase competition by providing the critical mass of waste necessary to justify investment in the levels of infrastructure necessary for new providers to enter the market and thereby reduce fees for ratepayers.

Authorisation A90886

- 2.38 On 16 December 2004 authorisation A90886 was granted to the Macarthur Region of Councils (MACROC), which comprises four councils in metropolitan Sydney, to jointly tender for contractors to provide waste transfer, processing and disposal services to their respective Local Government areas. Authorisation was granted for a contract term up to 15 years.
- 2.39 In granting the authorisation, the ACCC considered that the anti-competitive detriment arising from the conduct was likely to be minimal. The ACCC considered that the proposed conduct may increase competition by providing the critical mass of waste necessary to justify investment in the levels of infrastructure necessary for new providers to enter the market and thereby reduce fees for ratepayers. The ACCC also considered that environmental benefits may result from the proposed conduct by assisting in the development of alternative waste technologies.

Authorisations A30204 and A90861

- 2.40 On 6 June 2002 authorisation A30204 was granted to SSROC to engage in collective negotiations with operators of material recycling facilities, to appoint one facility to sort, receive, store, process and dispose of dry recyclable material for 10 years. On 12 February 2003, this authorisation was revoked and substituted by A90861, which was in almost the same terms, apart from an extended period of time to allow for the additional period taken by the councils to complete the tender process.
- 2.41 In granting the authorisation, the ACCC considered that the possibility of anti-competitive detriment arising from an increase in the prices of products created from dry recyclable material was minimal, due to the existence of down-stream processor which appeared to have significant market power to resist significant price increase. Public benefits resulting from the arrangement included improved business efficiency and environmental benefits resulting from an increase in recycling facilities.

3. The application for authorisation

- 3.1 The Applicants seek authorisation to conduct a joint tender for the provision of waste, recyclables and ancillary waste services in their combined local government areas.
- 3.2 The proposed conduct potentially raises concerns under the anti-competitive conduct provisions of the Act. Consequently, the Applicants have lodged an application for authorisation with the ACCC.
- 3.3 The Applicants advise that the tender and consequent contracts will have a standard set of conditions for each of the five services. For each service there will be a separable portion associated with the respective participating councils. Tenderers may submit for one or more of the separable portions and the successful tenderer/tenderers will be required to enter into separate contracts with each of the relevant councils.
- 3.4 Table 3.1 provides the five services of the tender and the separable council portions.

Table 3.1 Tender services²⁵

	Service	Separable Council(s) Portion
A	Waste and Recyclables Collection Services	Central Highlands
		Isaac
		Central Highlands & Isaac
B	Recyclables Processing Services	Rockhampton & Gladstone
		Central Highlands & Isaac
		Rockhampton, Gladstone, Central Highlands & Isaac
C	Bulk Waste Haulage Services	Isaac
D	Landfill Services	Central Highlands
E	Liquid Waste Services	Central Highlands
		Isaac
		Central Highlands & Isaac

- 3.5 The Applicants advise that Service A (Waste and Recyclable Collections Services) involves the contractor collecting waste and recyclables from residential premises within the major townships of Central Highlands Council and Isaac Council and transporting the waste to existing landfill sites. The collection service will use a two bin system, a 240L waste bin and a 240L recycling bin, as opposed to a split bin container system. The containers will be supplied by the Applicants however any lost, stolen or damaged containers will be replaced by the contractor.²⁶

²⁵ CQLGA application for authorisation A91087, form B, page 3.

²⁶ Ibid, page 4.

- 3.6 The Applicants advise that Service B (Recyclable Processing Services) will involve the contractor bearing responsibility for the sorting, processing, storage and sale of material from the recyclables collected. The contractor will either process the material at four nominated facilities in the four councils or transport them to a Materials Recovery Facility.²⁷
- 3.7 The Applicants advise that Service C (Bulk Waste Haulage Services) involves the contractor collecting waste stored at the Applicants' Waste Transfer Facilities and transporting it to the Applicants' existing landfill sites.²⁸
- 3.8 The Applicants advise that Service D (Landfill Services) involves the contractor managing the Blackwater landfill site in the Central Highlands Council where the contractor will be responsible for managing waste received at the landfill and the environmental impacts of the facility. The contractor will be responsible for charging and collecting gate fees for the disposal of waste at the facility. These fees will be passed to the council.²⁹
- 3.9 The Applicants advise that Service E (Liquid Waste Services) involves the contractor collecting, transporting and disposing of liquid waste from commercial and domestic properties within the Central Highlands Council and Isaac Council. The contractor will be responsible for transporting the liquid waste to the councils' nominated disposal locations.³⁰

Length of Authorisation

- 3.10 The Applicants have requested authorisation for 10 years from the date of commencement of the relevant contracts. The Applicants anticipate that the tender evaluation will be completed by the end of August 2008. The Applicants expect to be in a position to announce the successful tenderer(s) by the end of September 2008.
- 3.11 In support of the application for 10 years the Applicants note that this is the accepted timeframe for contract length in the waste industry to allow the contractor to amortise plant and infrastructure needed to provide the requires services. The Applicants also advise that 10 years will allow the Applicants to effectively engage with their communities to develop waste management strategies that will deliver ecologically sustainable outcomes over a longer period.³¹

²⁷ CQLGA application for authorisation A91087, form B, page 4.

²⁸ Ibid, page 5.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

4. Submissions received by the ACCC

- 4.1 The Applicants provided a supporting submission with their application for authorisation.
- 4.2 The ACCC sought submissions regarding the proposed conduct from a range of interested parties and received public submissions from:
- Amcor Packaging (Australia) Pty Ltd (Amcor)
 - Environmental Protection Agency (QLD) (EPA)
 - Local Government Association of Queensland Inc (LGAQ) and
 - Waste Management Association of Australia (WMAA)
- 4.3 Amcor supports the application for authorisation. Amcor submits that the economics of recyclable collections and processing will be enhanced through the aggregation of services of a group of councils.³²
- 4.4 The EPA supports the application for authorisation. The EPA submits that service delivery in respect of kerbside waste and recycling collection is adversely affected in sparsely populated areas due to the small quantities of material available for collection and the large transport distances involved. The EPA considers the joint tendering process proposed by the Applicants will provide greater economies of scale and will ensure a sustainable waste management system for the Central Queensland region.³³
- 4.5 The LGAQ supports the application for authorisation. The LGAQ submits that the joint tender will generate interest from national waste service providers and will therefore promote competition. It further adds that the proposed arrangement is consistent with key principles of the Queensland Government's reform of local governments, in particular better service delivery and lower costs for councils.³⁴
- 4.6 The WMAA supports the application for authorisation. The WMAA submits that a regional approach will allow more cost effective service provision and result in improved infrastructure and facilities. It also submits that joint tenders provide environmental benefits, particularly in the area of recycling and waste minimisation.³⁵
- 4.7 The views of the Applicants and interested parties are outlined where relevant in Chapter 6 of this draft determination. Copies of public submissions received by the ACCC are available from the ACCC website (www.accc.gov.au) by following the 'Public Registers' link.

³² Submission by Amcor, 8 May 2008.

³³ Submission by Environmental Protection Agency (QLD), 15 May 2008.

³⁴ Submission by Local Government Association of Queensland, 13 May 2008.

³⁵ Submission by Waste Management Association of Australia, 14 May 2008

5. The net public benefit test

- 5.1 The ACCC may only grant authorisation where the relevant test in section 90 of the Act is satisfied.
- 5.2 The Applicants lodged their application for authorisation A91087 under section 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act. The relevant tests for this application are found in sections 90(6) and 90(7) of the Act.
- 5.3 In respect of the making of and giving effect to the arrangements, sections 90(6) and 90(7) of the Act state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:
- the provision of the proposed contract, arrangement or understanding would result, or be likely to result, in a benefit to the public and
 - this benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision concerned was given effect to.

Application of the tests

- 5.4 The Australian Competition Tribunal (the Tribunal) has stated that the test under section 90(6) is limited to a consideration of those detriments arising from a lessening of competition.³⁶
- 5.5 However, the Tribunal has previously stated that regarding the test under section 90(6):
- [the] fact that the only public detriment to be taken into account is lessening of competition does not mean that other detriments are not to be weighed in the balance when a judgment is being made. Something relied upon as a benefit may have a beneficial, and also a detrimental, effect on society. Such detrimental effect as it has must be considered in order to determine the extent of its beneficial effect.³⁷
- 5.6 Consequently, given the similarity of wording between section 90(6) and (90(7), when applying these tests the ACCC can take most, if not all, detriments likely to result from the relevant conduct into account either by looking at the detriment side of the equation or when assessing the extent of the benefits.

³⁶ *Australian Association of Pathology Practices Incorporated* [2004] ACompT 4; 7 April 2004. This view was supported in *VFF Chicken Meat Growers' Boycott Authorisation* [2006] ACompT9 at paragraph 67.

³⁷ *Re Association of Consulting Engineers, Australia* (1981) ATPR 40-2-2 at 42788. See also: *Media Council case* (1978) ATPR 40-058 at 17606; and *Application of Southern Cross Beverages Pty. Ltd., Cadbury Schweppes Pty Ltd and Amatil Ltd for review* (1981) ATPR 40-200 at 42,763, 42766.

Definition of public benefit and public detriment

5.7 Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.³⁸

5.8 Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.³⁹

Future with-and-without test

5.9 The ACCC applies the ‘future with-and-without test’ established by the Tribunal to identify and weigh the public benefit and public detriment generated by arrangements for which authorisation has been sought.⁴⁰

5.10 Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those generated if the authorisation is not granted. This requires the ACCC to predict how the relevant markets will react if authorisation is not granted. This prediction is referred to as the ‘counterfactual’.

Length of authorisation

5.11 The ACCC can grant authorisation for a limited period of time.⁴¹

Conditions

5.12 The Act also allows the ACCC to grant authorisation subject to conditions.⁴²

³⁸ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677. See also Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242.

³⁹ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

⁴⁰ Australian Performing Rights Association (1999) ATPR 41-701 at 42,936. See also for example: Australian Association of Pathology Practices Incorporated (2004) ATPR 41-985 at 48,556; Re Media Council of Australia (No.2) (1987) ATPR 40-774 at 48,419.

⁴¹ Section 91(1).

⁴² Section 91(3).

Future and other parties

5.13 Applications to make or give effect to contracts, arrangements or understandings that might substantially lessen competition or constitute exclusionary provisions may be expressed to extend to:

- persons who become party to the contract, arrangement or understanding at some time in the future⁴³
- persons named in the authorisation as being a party or a proposed party to the contract, arrangement or understanding.⁴⁴

⁴³ Section 88(10).

⁴⁴ Section 88(6).

6. ACCC evaluation

- 6.1 The ACCC's evaluation of the proposed joint tender for the provision of waste, recyclables and ancillary waste services is in accordance with the net public benefit test outlined in Chapter 5 of this draft determination. As required by the test, it is necessary for the ACCC to assess the likely public benefits and detriments flowing from the arrangement.

The market

- 6.2 The first step in assessing the effect of the conduct for which authorisation is sought is to consider the relevant market(s) affected by that conduct.

Applicant's Submission

- 6.3 The Applicants have submitted that the relevant market is the provision of waste and recycling services (collection and processing) in Central Queensland.⁴⁵
- 6.4 The Applicants advise that in recent years JJ Richards has been the only waste company prepared to service inland Central Queensland communities with small population bases.⁴⁶
- 6.5 The Applicants advise that five nationally based waste service providers responded to an Expressions of Interest process to build, own and operate a Materials Recovery Facility (MRF) that would process recyclables from at least two of the Applicants areas of collection.⁴⁷
- 6.6 None of the Interested Parties submitted a view on market definition.

The ACCC's view

- 6.7 For the purposes of assessing this application, the ACCC considers that the relevant field of competition is the market for waste and recycling services (collection, processing and landfill) in Central Queensland.
- 6.8 The ACCC does not consider that its assessment will be strongly influenced by possible variations in precise market definition.

The counterfactual

- 6.9 As noted in Chapter 5 of this draft determination, in order to identify and measure the public benefit and public detriment generated by conduct, the ACCC applies the 'future with-and-without test'.

⁴⁵ CQLGA application for authorisation A91087, Attachment 3, page 2.

⁴⁶ Ibid.

⁴⁷ Ibid, page 3.

Applicant's Submission

- 6.10 The Applicants submit that if the authorisation was not granted the councils would develop waste collection and processing contracts specific to their new regional boundaries.

Interested Party Submissions

- 6.11 The LGAQ submitted that if the authorisation was not granted that:

.....each Council will call a separate tender. This may result in a number of different contractors operating within the region or the retention of the status quo with one contractor separately servicing each council area. This will ultimately be at a greater financial and environmental cost to the Councils and communities involved as no economies of scale will be achieved.⁴⁸

- 6.12 The EPA submitted that if the authorisation was not granted that:

.....there will be no, or minimal, improvement in waste management practices in Central Queensland.⁴⁹

- 6.13 The WMAA submitted that if the authorisation was not granted then it would result in a higher level of costs incurred by the Councils and the loss of potential economies of scale.⁵⁰

The ACCC's view

- 6.14 The ACCC considers that the Applicants would, in the absence of authorisation, run individual tender processes and enter into individual contracts at the completion of those processes. It is likely that this would be at higher cost to the Councils than a joint tender.

Public detriments

The Applicants' Submission

- 6.15 The Applicants submit that the proposed arrangements will promote rather than lessen competition in the market as the tender process will allow the maximum number of service providers to compete for the contracts. In particular the aggregation of tonnages across the four councils provides the critical mass to attract service providers to deliver services required and in a cost effective manner for all parties.⁵¹
- 6.16 The Applicants submit that any potential public detriment through a lessening of competition is mitigated by the nature of the tender process. There are five services with separable portions relevant to each council. Tenderers may submit tenders for one or more of the separable portions and enter into separate contracts with each council.⁵²

⁴⁸ Submission by Local Government Association of Queensland, 13 May 2008.

⁴⁹ Submission by Environmental Protection Agency (QLD), 15 May 2008.

⁵⁰ Submission by Waste Management Association of Australia, 14 May 2008.

⁵¹ CQLGA application for authorisation A91087, form B, page 7.

⁵² Ibid.

- 6.17 The Applicants submit that a key factor influencing the development of the joint tender and contract arrangements revolves around ‘competition for the market.’ The Applicants consider that the most effective way to promote competition for the market is to develop a regional contract that provides a larger, more viable, contract catchment area and a greater number of combined collection and processing services to attract a larger number of service providers.⁵³
- 6.18 Furthermore the Applicants consider that the length of the proposed contracts (10 years) will not foreclose competition as the contracts will go to tender again in 10 years which will allow competitors in the market to present further competitive bids. The Applicants submit that 7-10 year length contracts are the accepted timeframe within the industry for successful tenderers to amortise the plant and equipment required to undertake the contract.⁵⁴

Interested Party Submissions

- 6.19 Amcor submitted that it did not believe that the proposed arrangements would adversely impact competition in the area.⁵⁵
- 6.20 The WMAA submitted that there will be:
.....no impact on competition as any contractor can tender for any part of the contract and these parts are based on individual councils.⁵⁶
- 6.21 The LGAQ submitted that:
The CQLGA proposal will no doubt generate increased interest from other national operators and hence promote competition.⁵⁷

The ACCC’s view

- 6.22 The ACCC notes that, at present, the Applicants have difficulty in attracting service providers to tender for the provision of waste services in their individual areas. While the proposed arrangements may result in either one tenderer or a number of tenderers servicing the Applicants for the term of the contracts (10 years) the ACCC accepts that it may be at more competitive terms to the Applicants than is currently the case.
- 6.23 The ACCC notes that the Expressions of Interest conducted in late 2006 by the CQLGA process for the proposed regional Materials Recovery Facility garnered five responses from nationally based waste service companies. The ACCC considers that this may indicate that there will be a greater level of interest in tendering for some of the services than previously experienced by the Applicants.

⁵³ Ibid, Attachment 3, page 2.

⁵⁴ CQLGA application for authorisation A91087, form B, page 7.

⁵⁵ Submission by Amcor, 8 May 2008.

⁵⁶ Submission by Waste Management Association of Australia, 14 May 2008.

⁵⁷ Submission by Local Government Association of Queensland, 13 May 2008.

- 6.24 The nature of the proposed arrangements, with five services and separable council portions, may encourage competition by enabling companies with specialties or niches to tender for particular services. It may also prevent the aggregation of all the contracts with one company. The ACCC considers that re-tendering for the five services prior to the end of the proposed 10 year term allows other potential service providers the opportunity to compete in the market.
- 6.25 The ACCC has taken into consideration the view of the Productivity Commission as expressed in the 2006 report, *Waste Management*. The Productivity Commission noted that ‘competition for the market’ in respect of municipal waste collection and processing is more effective than ‘competition within the market.’⁵⁸ The report noted that competition within such a market is rare (that is, allowing households to contract individually for the collection of waste) and that it may not produce the most efficient outcomes.⁵⁹
- 6.26 The ACCC notes that, by potentially allowing a single company to provide waste management services to the Applicants for the next ten years, the proposed arrangements may create a barrier to entry in that new entrants would be unable to secure the necessary contracts. However, the ACCC considers that the proposed arrangements will not restrict competition in the long term.
- 6.27 The proposed arrangements conform to industry practice, in which contracts may operate for 7 to 10 years.⁶⁰ The ACCC understands this gives successful tenderers sufficient time to amortise the considerable equipment expenses required to perform their contracts. A shorter contract period might not improve competition in the market, particularly if it had the effect of diminishing the commercial value of the contract and discouraging potential tenderers from submitting bids.
- 6.28 The ACCC also notes that any public detriment resulting from any loss of competition during the contract term, for example increased prices or lower quality services, would ultimately be borne by the Applicants and their ratepayers. As such it is unlikely that the Applicants would seek to engage in conduct which would diminish the welfare of their ratepayers.
- 6.29 For the reasons outlined above, the ACCC considers that the anti-competitive detriment generated by the proposed arrangements is likely to be minimal.

⁵⁸ Productivity Commission, *Waste Management*, Report No. 38, 2006, Canberra, pages 115 – 116.

⁵⁹ *Ibid*, page 115.

⁶⁰ IBIS World, *Waste Disposal Services in Australia*, 16 April 2008.

Public benefits

The Applicants' Submission

- 6.30 The Applicants submit that the proposed arrangements for waste and recyclables services contracts are structured to deliver significant efficiency and environmental benefits to the region.
- 6.31 In particular, the Applicants believe there are a number of collection, processing and education cost savings which will flow from the proposed arrangements:
- Cost savings for the Applicants due to the economies of scale afforded by the joint tenders and joint procurement of capital such as bins. Further costs savings are anticipated through diversion away from landfill due to higher recycling rates. The Applicants argue that cost savings will be passed on to ratepayers.⁶¹
 - Collection efficiencies through the streamlining of collection systems by synchronising the contract starting times and collection routes. There will also be efficiency benefits in optimising the number of collection vehicles and the ability to introduce new services through the collective resources of the councils.⁶²
 - Processing efficiencies as a result of a greater amount of recyclable material being processed across a larger catchment area in the proposed regional MRF.⁶³
 - Reduced costs through resource sharing and a regional roll out of a comprehensive educational program and marketing.⁶⁴
- 6.32 The Applicants also submit that the proposed arrangements will result in improved services to ratepayers through a streamlined and consistent waste and recyclables collection service in Central Queensland.⁶⁵
- 6.33 Further, the Applicants submit that a number of environmental public benefits will flow from the proposed arrangement, namely:⁶⁶
- diverting a significant amount of waste from landfills due to the provision of best practice kerbside recycling and the implementation of the objectives of the Central Queensland Waste Management Strategy and
 - conforming with the Queensland Government's Waste Management policy and applicable regulations and legislation.

⁶¹ CQLGA application for authorisation A91087, Attachment 2, page 20.

⁶² Ibid.

⁶³ CQLGA application for authorisation A91087, Attachment 2, page 14.

⁶⁴ Ibid.

⁶⁵ Ibid, page 15.

⁶⁶ Ibid, page 17.

Interested Party Submissions

6.34 The EPA submitted that:

The joint tendering process between the four regional councils will provide greater economies of scale than could be achieved through individual council tendering processes. The project in its entirety will ensure the establishment of a sustainable waste management system for the Central Queensland region.⁶⁷

6.35 Amcor submitted that:

the economies of recyclable collections and processing will be enhanced through the aggregation of services to the group of councils and improve the economic outcomes to these councils and, therefore, the local communities they serve.⁶⁸

6.36 The WMAA submitted that:

The option of joint tenders can lead to solutions which will provide economical, social and environmental benefits, particularly in the area of recycling and waste minimisation.⁶⁹

6.37 The LGAQ submitted that:

There is definite potential for the proposed arrangement to result in cost savings to the councils involved in the provision of waste services.⁷⁰

The ACCC's view

6.38 The ACCC considers that the Applicants can anticipate cost savings by combining the waste, recyclables and ancillary waste services operations in their regions.

6.39 The ACCC accepts that the councils situated in remote/rural areas may benefit from cost savings by amalgamating the provision of waste services with councils situated in urban areas. The ACCC notes the Productivity Commission's conclusion that recycling materials collected from rural and remote areas impose additional financial costs compared to urban areas as well as external costs (such as higher carbon emissions from transport).⁷¹ Furthermore in assessing the trend for regional councils to group the provision of waste services the Productivity Commission concluded that there is:

potential for waste services to be delivered at lower cost, due to scale efficiencies in contract management.⁷²

6.40 The ACCC is of the view that streamlining collection patterns across the Applicants' boundaries may provide some opportunities to improve the utilisation of high capital costs such as vehicle fleets. Streamlined collection patterns are also likely to aid in the logistics of waste and recycling collection which may also result in cost savings.

⁶⁷ Submission by Environmental Protection Agency (QLD), 15 May 2008.

⁶⁸ Submission by Amcor, 8 May 2008.

⁶⁹ Submission by Waste Management Association of Australia, 14 May 2008.

⁷⁰ Submission by Local Government Association of Queensland, 13 May 2008.

⁷¹ Productivity Commission, *Waste Management*, Report No. 38, 2006, Canberra, page 149.

⁷² *Ibid.*

- 6.41 The ACCC also accepts that processing efficiencies may result from the proposed arrangements, particularly if a MRF for recyclables is developed. The Applicants note that the more tonnes over the minimum benchmark requirement (8,000 tonnes) the greater the financial benefit to the councils, that is, the price of accessing the MRF would be on a sliding scale.
- 6.42 In this regard, the ACCC notes that the Townsville and Thuringowa City Councils implemented a joint recycling collection and processing system in late 2002. The construction of an MRF servicing both councils and the introduction of best practice kerbside recycling has resulted in significant improvement in collection rates.⁷³ It is reported that the economic benefits to the councils and ratepayers have been substantial with Townsville alone saving \$600,000 per year.⁷⁴
- 6.43 Given the statutory obligations imposed on Queensland Local Government areas and the electoral accountability to which the Applicants are subject, it is reasonable to expect the benefits of any cost savings arising from the proposed arrangements will be passed on to ratepayers and constitute a public benefit.
- 6.44 The ACCC also notes that the proposed arrangements are consistent with the Queensland Government's approach to council financial sustainability, as reflected in the council amalgamations that came into force in March 2008. The Local Government Reform Commission (QLD) concluded that one of the benefits of amalgamations would be "achieving economies of scale and cost savings."⁷⁵
- 6.45 The ACCC considers that the Applicants could achieve some public benefit through adopting a whole of region approach to education on waste and recycling issues. In particular the councils could achieve some cost reductions by sharing educational resources and by using common and consistent material throughout the four councils. The ACCC notes the importance of successful marketing and education in encouraging responsible waste disposal, particularly recycling.⁷⁶
- 6.46 The ACCC accepts that there are community expectations in respect of recycling services, as 90% of the Queensland population has access to weekly kerbside recycling collection services.⁷⁷ The ACCC considers there is a potential public benefit from improving current recycling collection services to the community, particularly where it has previously been uneconomical to provide kerbside services to individual councils.
- 6.47 The ACCC considers that the proposed arrangements may result in some environmental benefits by diverting the amount of waste sent to landfill and increasing the recovery of recyclable materials. The ACCC notes that landfill usage can have negative environmental impacts, as well as an economic and social burden on local communities.⁷⁸

⁷³ Environmental Protection Agency (QLD), *Discussion Paper: Let's not Waste our Future: Queensland Waste Strategy*, October 2007, page 23.

⁷⁴ Ibid.

⁷⁵ Local Government Reform Commission, *Report of the Local Government Reform Commission Volume 1*, July 2007, page 51.

⁷⁶ Ibid, page 18.

⁷⁷ Environmental Protection Agency (QLD), *The State of Waste and Recycling in Queensland*, 2006, page 14.

⁷⁸ Environmental Protection Agency (QLD), *Discussion Paper: Let's not Waste our Future: Queensland Waste Strategy*, October 2007, page 16.

- 6.48 The ACCC notes that the introduction of best practice kerbside recycling by the Mackay City Council, as proposed by the Applicants, saw the amount of recyclable material collected double, from 27kg per capita in 2003-04 to 54kg in 2004-05.⁷⁹
- 6.49 For the reasons set out above, the ACCC considers the arrangements are likely to result in significant public benefits.

Balance of public benefit and detriment

- 6.50 The ACCC may only grant authorisation if it is satisfied that, in all the circumstances that the joint tender and resulting contracts is likely to result in a public benefit that will outweigh any public detriment.
- 6.51 In the context of applying the net public benefit test at section 90(8)⁸⁰ of the Act, the Tribunal commented that:
- ... something more than a negligible benefit is required before the power to grant authorisation can be exercised.⁸¹
- 6.52 The ACCC considers that the public detriments generated by the proposed conduct are likely to be minimal.
- 6.53 The ACCC is satisfied that the proposed arrangements will produce the following public benefits
- increased efficiency and cost reductions;
 - environmental benefits; and
 - more effective and efficient educational programs, which will add to efficiency and environmental benefits.
- 6.54 On balance, the ACCC considers the public benefits are likely to outweigh the public detriments.

⁷⁹ Environmental Protection Agency (QLD), *Discussion Paper: Let's not Waste our Future: Queensland Waste Strategy*, October 2007, page 23..

⁸⁰ The test at 90(8) of the Act is in essence that conduct is likely to result in such a benefit to the public that it should be allowed to take place.

⁸¹ Re Application by Michael Jools, President of the NSW Taxi Drivers Association [2006] ACompT 5 at paragraph 22.

Length of authorisation

- 6.55 The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances.
- 6.56 In this instance, the Applicants have requested that authorisation be granted for 10 years. The Applicants submit that a 10 year period of authorisation is not likely to restrict competition as 7-10 years is the accepted timeframe within the waste industry for a successful tenderer to amortise the plant equipment infrastructure to carry out the contract.⁸²
- 6.57 The ACCC considers that given the significant capital outlays required to perform a contract for local government waste and recycling services, a 10 year contract is likely to encourage competition by making the tender attractive to a larger pool of industry participants than if the authorisation were granted for a shorter period of time. The ACCC also regards that the length of the contract may enable efficiency gains and the development of effective educational and environmental programs.
- 6.58 The ACCC considers that a term longer than 10 years would decrease the potential public benefits and increase the anti-competitive detriments by locking other service providers out of the Central Queensland region for too long.
- 6.59 As such, the ACCC proposes to grant authorisation to the Applicants to conduct a joint tender for the provision of waste and recycling services and to offer contracts to the winning tenderers in the Applicants region until 31 December 2018.

⁸² CQLGA application for authorisation A91087, form B, page 7.

7. Draft determination

The application

- 7.1 On 17 April 2008 the Central Queensland Local Government Association (CQLGA), acting on behalf of Rockhampton Regional Council, Gladstone Regional Council, Central Highlands Regional Council and Isaac Regional Council (the Applicants), lodged an application for authorisation A91087 with the Australian Competition and Consumer Commission (ACCC).
- 7.2 Application for authorisation A91087 was made using Form B in Schedule 1 of the Trade Practices Regulations 1974. The application was made under subsection 88(1) of the Act to:
- make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.
- 7.3 In particular, the Applicants seek authorisation to conduct a joint tender for the provision of waste, recyclables and ancillary waste services in their combined local government areas. The tender will comprise five specifications. With each specification there will be separable portions associated with the respective participating councils.

The net public benefit test

- 7.4 For the reasons outlined in Chapter 6 of this draft determination, the ACCC considers that in all the circumstances the arrangements for which authorisation is sought are likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the arrangements.

Conduct for which the ACCC proposes to grant authorisation

- 7.5 The ACCC proposes to authorise the Applicants to conduct a joint tender for the provision of waste, recyclables and ancillary waste services in their combined local government areas and offer contracts to the successful tenderers in the Applicants region until 31 December 2018.
- 7.6 This draft determination is made on 16 July 2008.

Interim authorisation

- 7.7 At the time of lodging the application, the Applicants requested interim authorisation to commence the joint tendering process for the region. The ACCC granted interim authorisation to the Applicants on 14 May 2008, allowing the CQLGA to:
- a) allow the Councils to prepare tender documentation and invite tenders from interested parties wishing to provide waste and recyclables collection and processing services
 - b) evaluate tender submissions
 - c) prepare tender recommendations to Councils' executives and
 - d) for Councils' executives to endorse the recommendations of the Tender Panel and seek to enter into contractual arrangements pending the final determination of the ACCC.
- 7.8 This interim authorisation remains in place until the ACCC makes a final determination or otherwise considers it is not longer appropriate and revokes it.

Further submissions

- 7.9 The ACCC will now seek further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.

Appendixes

Appendix A — Local Government Areas of Queensland

