



Our Ref: 50630
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27 February 2013

Mr Harry Gavrilis
Manager Environment and Health
Burwood Council
PO Box 240
Burwood NSW 1805

By email: harry.gavrilis@burwood.nsw.gov.au

Dear Mr Gavrilis

**Burwood Council & Ors application for authorisation - A91352
- Interested party consultation**

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the application for authorisation lodged by Burwood Council & Ors on 31 January 2013. A copy of the ACCC's decision is attached.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the *Competition and Consumer Act 2010* while the ACCC considers and evaluates the merits of the application.

Next steps

For your information, following the close of submissions from interested parties, the next step in the process is for the ACCC to release a draft determination which will take account of any submissions from Burwood Council & Ors and interested parties and will indicate the ACCC's preliminary views on the merits of the application. The ACCC will give both Burwood Council & Ors and interested parties the opportunity to provide a further submission on the draft determination before the ACCC issues its final decision.

As noted in the attached decision, the ACCC may review its decision on interim authorisation at any time. In this regard the ACCC will reconsider this decision at the time of issuing its draft determination. The ACCC'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 ACCC.

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 Michael Drake on (03) 9658 6517.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized initial 'R' followed by a long horizontal line.

Dr Richard Chadwick
General Manager
Adjudication Branch



Burwood Council & Ors authorisation application A91352 Interim authorisation decision 27 February 2013

DECISION

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation with respect to the application for authorisation A91352 lodged by Burwood Council & Ors (collectively the Inner Sydney Waste Management Group, ISWMG) on 31 January 2013.

The ACCC has decided to grant interim authorisation to ISWMG to request and evaluate tenders for the provision of recycling processing services for residential dry recyclables prior to the expiry of the existing processing contract. The interim authorisation commences immediately, and will remain in place until it is revoked or the date the ACCC's final determination comes into effect.

THE APPLICATION

Burwood Council, Ashfield Council, Auburn Council, City of Canada Bay Council, Leichhardt Council and Strathfield Council (the Inner Sydney Waste Management Group) seek authorisation to jointly tender and contract for the services of contractors deemed suitable to provide regional recycling processing services (through a Materials Recovery Facility) for residential dry recyclables.

The Inner Sydney Waste Management Group have applied for authorisation on the basis that the conduct for which authorisation is sought may contravene the cartel provisions of the Act.

The Inner Sydney Waste Management Group is seeking authorisation for a period of 10 years.

At the time of lodging the substantive application for authorisation, the Inner Sydney Waste Management Group also requested interim authorisation to allow tenders to be requested and evaluated prior to the expiry of the existing processing contract.

Further information regarding the application is available on the ACCC's public register at www.accc.gov.au/AuthorisationsRegister.

THE AUTHORISATION PROCESS

The ACCC can grant protection from legal action under the competition provisions of the *Competition and Consumer Act 2010* (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.

INTERIM AUTHORISATION

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

The ACCC will only grant interim authorisation in appropriate circumstances. In many circumstances it is not appropriate to do so because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

CONSULTATION

Upon receipt of the application for authorisation on 31 January 2013, the ACCC undertook interested party consultation in order to consider the request for interim authorisation. The ACCC wrote to 33 interested parties including industry participants, waste management associations, Government agencies, and consumer groups. The ACCC did not receive any submissions.

Further information in relation to the proposed arrangements, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisationregister.

REASONS FOR DECISION

In granting interim authorisation, the ACCC had regard to the following issues:

- Interim authorisation will not alter the status quo. The receipt, processing and marketing of dry recycling material within the Sydney metropolitan area will continue with the current service provider until the expiry of the existing contract on 30 September 2013. Interim authorisation will allow the applicants to commence the tender process prior to the expiry of the existing processing contract.
- There is likely to be minimal impact on competition given that interim authorisation will maintain the status quo in the market.
- Interested parties did not raise any objections with the ACCC.
- If the tender process could not be commenced at this stage there is a risk that the tender process will not be completed in time for a new contract to be implemented by 1 October 2013. If the current contract lapses, the applicants submit that councils and consumers will be vulnerable to possible cost fluctuations and uncertainty in maintenance of services.

RECONSIDERATION OF DECISION

The ACCC may review its decision on interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.