



Australian
Competition &
Consumer
Commission

Draft Determination

Application for authorisation

lodged by

Cities of Wanneroo, Joondalup and Swan

in respect of

jointly procuring, negotiating and contracting services
for the processing of dry commingled recyclables

Date: 3 July 2014

Authorisation number: A91431

Commissioners: Sims
Rickard
Schaper
Cifuentes
Featherston
Walker

Summary

The ACCC proposes to grant authorisation for six years to the Cities of Wanneroo, Joondalup and Swan (together, the Applicants) to jointly procure, negotiate and contract services for the processing of dry commingled recyclables collected by them through their yellow lid recycling bin domestic kerbside collection service.

The ACCC has also decided to grant interim authorisation for the Applicants to jointly evaluate tenders and to negotiate terms of the standard agreement that each will enter into with the successful tenderer, but not to enter into contracts. Interim authorisation will remain in place until either the date the ACCC's final determination comes into effect, or until the ACCC decides to revoke interim authorisation.

Next steps

The ACCC will seek submissions in relation to this draft determination before making its final decision. The applicants and interested parties may also request the ACCC to hold a pre-decision conference to allow oral submissions on the draft determination.

The application for authorisation

1. On 22 May 2014, the Cities of Wanneroo, Joondalup and Swan (together, the Applicants) lodged application A91431 with the ACCC under subsection 88(1A) and 88(1) of the *Competition and Consumer Act 2010* (the CCA). The Applicants also requested interim authorisation to engage in the proposed conduct while the ACCC is considering the substantive application.
2. Each of the Applicants is a local government established under the provisions of the *Local Government Act 1995 (WA)* and are located in the northern and eastern suburbs of the Perth metropolitan area in Western Australia.
3. The Applicants are seeking authorisation to:
 - jointly tender for services to process dry commingled recyclables collected by each council through their yellow lid recycling bin domestic kerbside collection service (the Services); and
 - enter into individual contracts with successful tenderer/s for those Services.(the Conduct)
4. The Applicants seek authorisation for six years, comprising five years, which is the maximum proposed duration of any agreement, and one year for the period of assessment and negotiation.
5. The City of Wanneroo owns and operates the Wangara Recycling Centre (WRC) where the dry commingled recyclables collected by the Applicants are currently processed on a cost-sharing basis. The Applicants submit that the proposal to jointly procure the Services is an interim measure prompted by:

- the need for short term replacement of items at the WRC and longer term maintenance, repair and upgrade to all of the buildings, plant and equipment at the WRC; and
 - the recognition that the capacity of the WRC will be inadequate to meet the forecast growth in recyclables collected by the councils in the coming years.
6. During the term of the contracts, the Applicants intend to investigate and plan for longer term options for sorting and processing the anticipated larger volumes of recyclables.
 7. The Applicants have sought expressions of interest from interested parties for the provision of dry commingled recyclables processing services and have shortlisted six respondents.

ACCC evaluation

8. The ACCC's evaluation of the Conduct is in accordance with the relevant net public benefits tests¹ contained in the CCA.
9. In its evaluation of A91431, the ACCC has taken into account:
 - a. the application and submissions by the Applicants;²
 - b. information available to the ACCC from its consideration of previous matters;³
 - c. the likely future without the Conduct for which authorisation is sought.⁴ In particular, the ACCC considers that absent the Conduct each council is likely to either:
 - i. continue under its current arrangements by utilising and possibly upgrading the WRC; or
 - ii. tender separately for the Services, as they have done previously, which may or may not involve the utilisation of the WRC.
 - d. the relevant areas of competition likely to be affected by the Conduct, particularly competition for the supply and acquisition of services for the processing of dry commingled recyclables in the Perth metropolitan area; and
 - e. the six year authorisation period sought.

¹ Subsections 90(5A), 90(5B), 90(6) and 90(7) of the CCA.

² Please see the ACCC's Public Register for more details.

³ Please see Bankstown City Council A91409, Clarence City Council and others A91408, Northern Sydney Regional Organisation of Councils A91401, Bathurst Regional Council & Ors A91387.

⁴ For more discussion see paragraphs 5.20-5.23 of the ACCC's Authorisation Guidelines.

Public benefit

10. The ACCC considers that the Conduct is likely to result in some public benefits including:

- a. **Transaction cost savings:** The combined tendering and contracting process is likely to lead to some efficiency savings for the councils, relative to the scenario where each council conducts its own individual tender process for the provision of the Services.
- b. **Potential for improved economies of scale for suppliers:** The aggregated volume of the Applicants is likely to enable the service provider to achieve improved economies of scale through greater utilisation of the existing processing facilities (including WRC) or by encouraging the development of a new facility (particularly given the anticipated rise in each council's population and therefore tonnage of recyclables collected). These efficiencies could be achieved if the processing costs per tonne of dry commingled recyclables decrease as the volume processed increases.

Increased volumes may facilitate investment in more efficient processing technologies at WRC that will avoid unnecessary duplication of processing facilities.

- c. **Environmental benefits:** The Conduct may assist the upgrade of plant and equipment at the WRC or another facility which will utilise newer and more efficient technology, thereby reducing the amount of resources used to process the dry commingled recyclables collected, or result in increased capacity for the volume of dry commingled recyclables processed.

Public detriment

11. The ACCC considers that the Conduct is likely to result in little if any public detriment for the following reasons.

- a. Although the Services for the Applicants will not be contestable for the duration of the contract period, the tender process will ensure that there will be competition to win the contract; and
- b. The Conduct involves only three of the 30 local government councils in the Perth metropolitan area. As such, a significant volume of dry commingled recyclables collected by other local governments is not subject to the Conduct and may remain available to alternative suppliers of the Services who are not successful tenderers for the contract.

Balance of public benefit and detriment

12. For the reasons outlined in this draft determination the ACCC is satisfied that the likely benefit to the public resulting from the Conduct would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result from the Conduct.

13. Accordingly, the ACCC is satisfied that the relevant net public benefit test is met.

Draft determination

14. Application A91431 was made using a Form B. The Applicants are seeking authorisation under subsections 88(1A) and 88(1) of the Act.

15. Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

16. For the reasons outlined in this draft determination, the ACCC is satisfied that the tests in subsections 90(5A), 90(5B), 90(6) and 90(7) of the CCA are met.

17. Accordingly, the ACCC proposes to grant authorisation A91431, for six years, to the Councils of Wanneroo, Joondalup and Swan to:

- jointly procure, negotiate and contract services for the processing of dry commingled recyclables collected by each Council through their yellow lid recycling bin domestic kerbside collection service; and
- enter into individual contracts with successful tenderer/s for those Services.

Interim authorisation

18. At the time of lodging the application, the Applicants requested interim authorisation in order to:

- a. jointly assess the tenders received;
- b. award the tender to the successful tenderer; and
- c. negotiate the terms of the final agreement with the successful tenderer.

19. The Applicants submit that interim authorisation is necessary to avoid the scenario where they invest funds to maintain, repair and replace plant and equipment at the WRC only for the successful tenderer to not use the WRC but instead develop a new facility.

20. The ACCC considers that it is appropriate to grant interim authorisation at this time as interim authorisation is limited to concluding the tender process and negotiating contracts and agreements. The Applicants will not enter into contracts until after the ACCC issues a final determination.

21. Therefore, the ACCC **grants** interim authorisation under subsection 91(2) of the CCA to enable the Applicants to:

- a. conclude the tender process; and
 - b. negotiate agreements with the successful tenderer.
22. Interim authorisation will commence on 3 July 2014 and remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

Next steps

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