

4 August 2015

Our Ref: BL:gs  
File No: **WM Planning BCC Regional Investigation**  
Contact: Paula Kemplay 3829 8597

Australian Competition and Consumer Competition  
23 Marcus Clarke Street  
Canberra ACT 2601

Dear Sir/Madam

**REQUEST FOR AUTHORISATION: A91500 - WASTE MANAGEMENT: POTENTIAL REGIONAL COLLABORATION OPPORTUNITY BETWEEN BRISBANE CITY COUNCIL (BCC) AND REDLAND CITY COUNCIL (RCC)**

Redland City Council (RCC) and Brisbane City Council (BCC) have been invited to respond to the submissions from interested parties regarding their application for authorisation to jointly tender for collection services.

This response briefly addresses the comments made in a submission from the Waste Recycling Industry Association (Qld) Inc. (WRIQ) dated 26 June 2015. A detailed response could not be presented due to the time constraints associated with the application, however it is considered that this response addresses the main concerns expressed by WRIQ.

## **(2) What is the Market**

- a) WRIQ submits that the market definition proposed by the Applicants is too narrow and does not take account of Local Governments and service providers throughout the whole of Queensland. It is the Applicants' response that in previous determinations by the ACCC it was not considered necessary to precisely identify the relevant areas of competition in assessing the likely public benefits and detriments<sup>1</sup>.
- b) WRIQ submitted that the combined population of the Applicants is equal to 50% of the population of Queensland. However, 2014 data released by the Australian Bureau of Statistics indicates the estimated population of Queensland to be 4,722,447<sup>2</sup>.

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<sup>1</sup>ACCC Determination for authorisation lodged by Bankstown City Council, Fairfield City Council, Parramatta City Council and Liverpool City Council in respect of collective tendering for processing services for household clean up waste 29 May 2015.

<sup>2</sup>The ABS catalogue 3218.0 Regional Population growth dated 31 March 2015 Table 3. Estimated Resident Population, Local Government Areas.

The estimated population of the Brisbane City area is 1,146,787<sup>3</sup>; and the estimated population of the Redland City area is 148,641<sup>4</sup>. This data clearly indicates that the combined population of the Applicants' respective areas is approximately 27% of the Queensland population.

It is considered that a proposal for an additional capture of RCC in any combined tender (representing an extra 3% of the Queensland population) would be insignificant from a market perspective.

- c) WRIQ highlights the importance of competition for the progression of the waste industry into innovation and efficiencies. However, the Applicants submit that research and development in vehicle and equipment design is shaped by the whole of Australia and even global factors. To the applicants' knowledge, there is no specific BCC or RCC designed vehicle or equipment, therefore it is not likely that a combined tender will have a significant impact on innovation in the waste collection industry.

## Threshold

- a) WRIQ have submitted that the Applicants are competitors for the services of waste and recycling industry suppliers, however the submission does not present any evidence to substantiate this claim. This statement appears to conflict with the statement made in 2(a) and (d) of their submission in that waste services are required to be provided under legislative frameworks.
- b) A signed MoU and confidentiality agreement between the Councils would ensure the sharing of information is restricted to the required extent of the relevant tendering process.
- c) BCC and RCC specify and procure services for their respective geographical areas and that is an inherent result of their jurisdictional responsibility. Given the shared boundary between the two LGA's, it is likely that there could be synergies in the combined geographical area.
- d) WRIQ submitted that the proposed contract of 16 years is excessively long and will restrict the market. The Applicants' intend to give full consideration to various contract options including a maximum term contract option for an 8 year period with a possible extension of another 8 years, totalling 16 years. This option may prove beneficial as it could provide alignment with the typical lifespan of side-lifting trucks as well as potential to 'smooth out' step ups in cost due to the residual life of a proportion of trucks within the fleet. New technology and innovation could also be progressively introduced during a longer timeframe. In addition, it is possible that the longer contract term may assist with barriers facing new entrants to the waste collection market as there will be greater certainty to justify capital investment in new or expanded facilities. All decisions regarding contract terms and options will be made based on value for money principles and market conditions.

The ACCC has previously determined that a 15 year contract term is not likely to result in significant public detriment as the initial tender will be a competitive

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<sup>3</sup> *ibid.*

<sup>4</sup> ACCC Determination lodged by Northern Sydney Regional Organisation of Councils for Collective Tendering for Waste Transfer, Processing and Disposal Services 9 April 2014, at para 31(a).*ibid.*

process and the Applicants have the option to engage individual service providers for their respective local government areas<sup>5</sup>. It is considered that that the proposed 16 year term will not have any greater market impact than this previously approved 15 year term.

- e) The Applicants believe that tendering the three separable portions (RCC only, BCC only and combined) will attract interest from the whole of the market ranging from those who are interested in one, two or three or a combination thereof. The last time RCC tendered for these collection services in 2004/5 there were two tenders received. RCC is hoping to attract increased competition through this joint tendering process. The ACCC has previously recognised the market benefit in inviting tenders for individual Councils in addition to the combined services as it allows each applicant Council to seek the arrangement that is most favourable to them<sup>6</sup>.

## **(6) Application of Public benefit Test**

- a) WRIQ contests the claim that the joint tender will result in the following public benefits:
  - i. transaction cost savings;
  - ii. improved purchasing power; and
  - iii. increased efficiencies and economy of scale.
- b) It is the Applicants' submission that there are a number of clear precedents wherein the ACCC has acknowledged these benefits as likely outcomes of joint tendering for waste collection; similar public benefits are expected to result from the subject application. Examples of previous determinations are extracted below.

### **Transaction cost savings**

The ACCC Determination in the application lodged by Burwood Council and Ors stated

*The process for tendering for waste management services in NSW is not trivial. A range of governmental and legal documents and assessments must be prepared for the tender. Government supervision, via the NSW Environmental Protection Agency and an independent Probity Auditor, is ongoing throughout the tender. After the tender is concluded, negotiating and contracting with the winning tenderer is also likely to be an administratively complex task. Therefore the transaction costs are lower where a single process is employed, relative to a situation where each council conducts its own individual process<sup>7</sup>.*

The Applicants submit that the process for tendering for waste collection in Queensland does not differ greatly from that of New South Wales, therefore similar transactional cost savings are likely to be experienced as a result of the current application.

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<sup>5</sup> ACCC Determination lodged by Northern Sydney Regional Organisation of Councils for Collective Tendering for Waste Transfer, Processing and Disposal Services 9 April 2014, at para 31(a).

<sup>6</sup> ACCC Determination lodged by Wollongong City Council and Shellharbour City Council for Collective Tendering for Waste Collection and Recyclables Processing Services 31 July 2013, at para 31.

<sup>7</sup> ACCC Determination lodged by Burwood Council and Ors in Respect of Collective Tendering for Waste Processing Services 19 June 2013, at para 31(a).

**Improved purchasing power**

The Determination in the application lodged by Bathurst Regional Council & Ors stated:

*A single negotiation between a group of councils and the winning tenderer(s) represents a stronger bargaining position for the Councils compared to each negotiating individually. In addition, a single tender as opposed to several tenders with individual councils is likely to be more attractive to tenderers and may induce more favourable tenders. These factors may facilitate the Councils receiving a lower cost and/or higher level of service than they would otherwise have been able to obtain on their own<sup>8</sup>.*

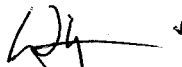
**Increased efficiency and economy of scale**

The ACCC Determination in the application lodged by Wollongong City Council and Shellharbour City Council stated:

*A greater number of residents from which to collect waste and recyclable material (that is, from two local government areas) is likely to improve economies of scale and reduce operational risk—and therefore costs—of the service provider(s). These cost savings should be reflected in the prices offered to the Councils in the tenders<sup>9</sup>.*

It is considered that these public benefits will outweigh any market detriments that may result from the proposed joint tender.

Yours sincerely



Bill Lyon  
**Chief Executive Officer**  
**Redland City Council**

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<sup>8</sup> ACCC Determination lodged by Bathurst Regional Council & Ors in Respect of Collective Tendering for Waste Collection, Recyclables and Organic Waste Processing Services 12 February 2014, at para 28(b).

<sup>9</sup> Ibid at para 27.