



**Maitland City Council & Ors –
application for authorisation A91483
Interim authorisation decision
9 April 2015**

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the application for authorisation lodged by Maitland City Council on behalf of itself, Cessnock City Council, and Singleton Council (together, the **Councils**) on 13 March 2015. These councils are located in close proximity to each other in the Hunter region of north-west NSW.

Interim authorisation is granted to enable Maitland City Council to continue a joint tendering process on behalf of the Councils for organics collection services, organic processing services, and at the option of each Council for the provision of on-call bulky waste collection and delivery services.

The ACCC grants interim authorisation on the basis that no contracts will be entered into for the provision of the above services until the ACCC's final determination is made. Interim authorisation does not cover the making or entering into of any contracts for the services.

Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

Maitland City Council on behalf of the Councils seeks authorisation for:

- the continuation of a joint tender process started in January 2015 but ceased in March 2015 on behalf of the Councils involving the joint procurement of a supplier for organic waste services, and potentially services relating to bulky waste
- each of the Councils to enter into a contract on the same general terms and conditions regarding these services
- the Councils to consult with each other and make joint decisions about service-related, operational, and administrative matters including decisions on contract implementation, contamination management and community education.

The Councils have sought authorisation for a period of 15 and a half years, and intend to enter into contracts of either 10 or 14 years in length that commence on 4 July 2016.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. 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

On 23 March 2015, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation. The ACCC received one public submission from the Waste Contractors and Recyclers Association (NSW) conditionally supporting the proposed conduct.

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

Reasons for decision

In granting interim authorisation, the ACCC considers that:

- interim authorisation is unlikely to alter the status quo, as it is limited to Maitland City Council continuing the tender process and the Councils will not enter into contracts unless the ACCC issues a final determination granting authorisation to enable contracts to be made.
- granting interim authorisation is unlikely to result in harm to interested parties. The ACCC notes that interested parties did not raise any objections about the request.
- there may be some public benefits arising from interim authorisation being granted through the Applicants being able to meet their intended tender closing date of 10 April, 2015.

Reconsideration of interim authorisation

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