



**Metropolitan Waste and Resource Recovery Group & Ors –
applications for authorisation A91489 & A91490
Interim authorisation decision
11 May 2015**

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the application for authorisation lodged by the Metropolitan Waste and Resource Recovery Group (**MWRRG**) and a group of local councils comprising Brimbank, Melbourne, Port Phillip, and Wyndham (the **Group**) (together, the **Applicants**), on 8 April 2015.

Interim authorisation is granted to enable MWRRG to progress a joint tendering and negotiation process on behalf of the Group for services relating to the receiving, sorting, compacting, and processing of kerbside collected recyclable material (**receiving and processing 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 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

The Applicants seek authorisation for a number of procurement activities in relation to receiving and processing services. These include:

- the completion of a tender and interim supply arrangements
- the negotiation, with a supplier or suppliers, of a contractual framework for the supply of recyclables receiving and processing services to the Group
- decisions regarding variations to the contract for the supply of recyclables receiving and processing services, and (if necessary) the allocation of recyclables volumes amongst suppliers.

MWRRG and the Group have sought authorisation for a total period of 12 years, which comprises a 12-month period for the completion of the tender and interim supply arrangements, and a maximum 11-year operating term.

The Applicants intend to execute contracts with the successful tenderer(s) by the end of February 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 15 April 2015, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation. The ACCC did not receive any submissions from this process.

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

The ACCC notes that:

- interim authorisation is limited to the progression of the tendering and negotiation process, so will likely maintain the status quo. The Applicants will not enter into contracts until the ACCC issues its final determination
- interim authorisation allows the Applicants to work towards finalising contracts within their intended timeframe (by the end of February 2016). The ACCC notes the Applicants' submission that the recommended supplier(s) will need adequate lead time prior to commencing operations
- interested parties did not raise any objections with the ACCC.

In granting interim authorisation, the ACCC considers that the benefits likely to arise from the proposed conduct for which interim authorisation is sought include:

- transaction cost savings compared with each Group member engaging separately with potential suppliers
- improved purchasing power and investment feasibility through the aggregation of the Groups' receiving and processing requirements.

The ACCC considers that any potential anticompetitive effects likely to arise from the proposed conduct for which interim authorisation is sought are limited by the following:

- the Group represents a relatively small proportion of acquirers of recyclables receiving and processing services within metropolitan Melbourne
- Group members' participation in the joint procurement and tender process will be voluntary
- the selected supplier(s) will be able to offer recyclables receiving and processing services to customers other than the Group.

This interim authorisation does not provide the Applicants with authorisation to enter into contracts with the successful supplier(s).

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.