



22 February 2016

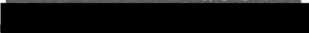
Tess McCrae
Adjudications
Australian Competition and Consumer
Commission
GPO Box 3131
Canberra ACT 2601
By email: adjudication@accc.gov.au
cc: tess.mccrae@accc.gov.au

Dear Tess,



Re: A91520 Council Solutions & Ors – Submission following ACCC Draft Determination (Interim Authorisation)

We refer to the ACCC's draft determination of 11 February 2016 (Determination) and to the submissions and applications submitted to the ACCC by both Council Solutions and other South Australian waste industry participants.

We understand that the ACCC is currently undertaking a public consultation process with respect to this determination. As such, we, as a company involved in the waste and recyclable industry,  wish to submit our view and concerns for consideration prior to the ACCC finalising its determination for authorisation.

We refer to the following points:

Our family owned and operated business focus is on providing collection and organic recycling services. We are pleased with our contribution to the shared Adelaide waste reduction policy and are of the opinion this authorisation by the ACCC will limit our ability to contribute effectively with recycling services within this metropolitan area. Our services are quite specific and include bulk bin collection. The majority of our services are centred on the main metropolitan districts highlighted in the determination.

Your draft decision highlights that permitting Council Solutions to jointly negotiate and tender for successful bidders will not provide a great risk to the market. We strongly disagree.

- Our first concern relates to the impact that this Authorisation will have on us, as a smaller South Australian business compared to our national and multi-national competitors. As a smaller participant in this waste and recycling services market our business is fundamentally reliant on market access. We have invested capital into staff training, equipment and facilities (among other aspects of our business) to ensure we maintain efficient and level participation against our rivals for the long term. Your Determination and proposed authorisation will have the consequence of removing up to 37 per cent of the market as a result of awarding a tender to the successful bidder. We understand that Council Solutions will have the discretion to arrange for a contract of up to 14 years. As a smaller company we are concerned that this will have a financially detrimental effect on the long term success of our business. In our experience inhibiting certain companies that can compete with smaller overheads will harm our ability to continue our commercial relationship with our customers and potentially increase our long term operating costs (as we will naturally have to substitute our Council contractors for other smaller customers). We wonder how we are to recoup the costs of our capital if we are only able to access a reduced proportion of the market.

This Authorisation will effectively remove a large section of the market reducing our ability to continue to operate and compete.

- The current market in our view is currently competitive. This highly competitive market is sustained due to its diversity and multiple suppliers being able to access the market and customers. The market allows our company to lose certain tenders but still compete for tenders with others of Councils in the metropolitan area. The Determination and proposed authorisation will have the impact of limiting our ability to successfully tender for work within this Metropolitan area. Given that the new tender put out by Council Solutions will relate to more than one council area, we will be unable to compete with our larger rivals. The impact of this is that we will be forced into being sub-contractors to the larger businesses. Rather than reducing costs this will in the medium and longer term, increase the cost to Council because of the second layer of management required to manage the sub-contract by the Contractor.
- Smaller waste companies cannot compete for tenders that involve more than one Council, as the total contract price will naturally increase, thereby increasing the level of bank or capital guarantee required by the service provider. Smaller operations simply cannot afford the cost of the larger bank guarantee or will not be granted a guarantee of that size by their bank. Effectively excluding smaller companies to bid for primary contract and potentially even sub-contractor roles. In time we suspect that this authorisation will erode the profits of various companies and thus competition.
- The joint tendering process is proposed to improve competition within the market. Our experience is most national and several multinational waste companies already actively participate in the waste and recycling market in South Australia.
- Finally, your determination highlights that the Authorisation will improve economic efficiency. We strongly disagree. However tenders and costing (of services for certain Council's) can only be successfully achieved on a site by site basis, following a standard tendering process. Varying this process and involving other wider Council areas is quite onerous and significantly increases the requirements for unique service variations and potential impairments, especially given the change in the bargaining power. We strongly disagree with the view outlined in the authorisation.

We appreciate your time in considering our response and would welcome the opportunity to participate in further consultation on this matter.

Yours faithfully,

