



8 January 2016

Ms Tess Macrae
Adjudications
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email: adjudication@acc.gov.au
Cc: tess.macrae@acc.gov.au

Dear Ms Macrae

Re: Council Solutions & Ors A91520 – interested party consultation

We refer to the ACCC's invitation to interested parties to comment on the application for authorisation received from Council Solutions on behalf of itself and the Corporation of the City of Adelaide and the Cities of Charles Sturt, Marion, Tea Tree Gully and Port Adelaide Enfield (the "**Participating Councils**").

This submission has been prepared on behalf of the South Australian Waste Industry Network ("**SAWIN**"). SAWIN is an industry group representing companies operating in the waste, recovery, recycling, treatment and disposal industry in South Australia, and very much welcomes the opportunity to provide feedback to the ACCC on the issues arising out of Council Solutions' proposal.

SAWIN submits that the ACCC should decline Council Solutions' application for authorisation. This is because allowing the Participating Councils to jointly tender, negotiate and contract for the supply of the Service Streams (as that term is defined in the application), would substantially lessen competition in the relevant market(s) and this would not be outweighed by any public benefit.

SAWIN would be pleased to provide any further comment that assists the ACCC in considering Council Solutions' submission. If further information is sought, please do not hesitate to me on the following email, john.fetter@sawin.com.au or mobile 0412 311371.

Yours faithfully

A handwritten signature in black ink, appearing to read "John Fetter", written over a white background.

John Fetter
Secretary



Council Solutions & Ors A91520 – interested party consultation

SAWIN makes the following points in response to Council Solutions' submission:

General

1. **As to market definition:** SAWIN has not looked to comment upon or define the relevant market(s) which are relevant to Council Solutions' submission but would be pleased to provide further comment to the ACCC if that assists the ACCC in its consideration of Council Solutions' application.
2. **As to the purported cost savings that Council Solutions submits will be achieved by Participating Councils by joint tendering:** SAWIN's recent experience is that these savings have not been realised in the way suggested. Rather, SAWIN observed that individual councils have a history of splitting out from the intended participating group due to the difficulty in each Council's needs being satisfied by one service provider. Geography is one reason for this. For example, the Participating Councils under this Application include Marion, in the South, and Tea Tree in the North. Once a service provider has to factor in transport costs involved in servicing council areas that are relatively remote from its disposal facilities it is difficult to offer the service as competitively as a local service provider could achieve.

This market dynamic counts against Council Solutions submission that:

- (a) the costs of tendering/ negotiating will be saved, since when councils split they have to negotiate solo **and** the negotiation landscape changes for the balance of Participating Councils that are left (for instance, because the volume of tonnes that were predicted for the purposes of calling for tenders may not be able to be realised).
 - (b) scale will necessarily lower costs, because transport is a significant component of the cost of providing services (especially in the waste collection/ disposal sector) and it can be expected that the higher costs of servicing some areas will have to be factored into the prices offered to the group of Participating Councils.
3. **As to the suggestion that letting service streams together for a longer period has any genuine likelihood of incentivising investment in WtE etc:** In SAWIN's view, this argument is misguided. SAWIN group members are accustomed to evaluating the potential viability of WtE in the markets in which they operate, and SAWIN's assessment is that it is very unlikely that Council Solutions' proposal would encourage or incentivise investment in WtE technology in Adelaide, especially within the timeframes under consideration. Accordingly, SAWIN submits that this purported public benefit should be disregarded by the ACCC.



Receival and processing of recyclables

As Council Solutions' submission notes, there are three facilities for the receival and processing of recyclables. However, the NAWMA facility is only currently available to its constituent councils and therefore it does not provide any competition in the market more generally. It is not clear whether that could change. This leaves Visy and SKM only.

If all recyclable volumes for the Participating Councils were to be awarded to SKM (which does not have local receival and processing facilities), there is a risk that Visy would have insufficient volumes to maintain its facility, or at least maintain its current offering.

If Visy was unable to sustain its operations in a meaningful way on remaining volumes, the result would be that there would be only one competitor in the recyclables market, with no investment in infrastructure locally. SAWIN submits that it is unlikely to be in the public benefit to authorize a proposal that could leave the recyclables sector with, effectively, a monopoly supplier.

Receival and processing of organics

On page 20 of Council Solutions' application, the Participating Councils are stated to have 4.6% of the estimated quantity of organics across all metro sectors. The application does not reveal the analysis behind this statistic. However, SAWIN does not accept that this figure presents the right characterisation of the market/sector that is relevant for the purposes of assessing the competitive impact of Council Solutions' proposal. This is because if one looks at metro kerbside green organic tonnes as the segment that is under consideration (being the segment that is proposed to be amalgamated via the Participating Councils), the three main players in this space (Jeffries, Peats Soils and IWS) would service the majority of overall volumes.

The dynamic in this sector is that Jeffries, Peats Soils and IWS currently each compete against each other when organics tenders are released by councils. This leads to strong competition in pricing.

If, however, all organics tonnes across the Participating Councils were to be awarded to one organics services provider for a long term (as is proposed), this would do significant damage to the ability of the other competitors to offer this service and/or to invest in the necessary technology required to provide it. This is especially so given that organics is a high fixed-costs business.

While it is possible that the concentration of tonnes into one facility could incentivise investment in that facility, there is a real question whether this benefit outweighs the risk to competition in this space if there is an award of all tonnes to one competitor.

That is, the combined tonnes offered by the Participating Councils, along with the proposed length of the contracts to be awarded, means that unsuccessful facilities are unlikely to be able to 'ride out' the term of the contracts awarded. Further, the lack of available volumes remaining in the organics market would also be likely to act as a deterrent to investment by other potential entrants.



Collectively this means that, especially in time, less competitive pressure can be expected to be exerted on the one successful facility thereby causing a substantial lessening of competition.

Other

SAWIN submits that elements of the “Counterfactual” in Council Solutions’ application are not in accordance with SAWIN’s experience of the market:

- a. (in response to the second dot point): It is not the case that service providers are not responding to opportunities to tender as they arise due to a perceived “administrative burden” of answering five individual tenders and contracts for each Service Stream. Rather, it is SAWIN’s observation that each tender is being hotly contested and competition in each Service Stream is strong.
- b. (in response to the third dot point): it would be SAWIN’s expectation that the status quo, which leverages the combined forces of competitive pressure and the opportunity to win volumes on a regular basis already incentivises investment/innovation, especially since a commitment to this is an increasingly common criteria for awarding tenders. Conversely, the Council Solutions’ proposal exposes any potential investment to a 3 year period of uncertainty (i.e. for the joint procurement process) with the threat of the investor thereafter being locked out of the sector for a long period of time (i.e. if the participant considering the investment is unsuccessful in its bid). That is, contrary to its submission, it is logical that the Council Solutions’ proposal could carry a real risk of having a freezing effect on commitment to new investment, especially in the short term.
- c. (in response to the fourth dot point): if there is no obligation on Councils to proceed with the same services provider, then there is a genuine question of how ‘economies of scale’ can be relied upon to deliver value to the Participating Councils. See comment at point 1, above.

For the avoidance of doubt, if SAWIN has not made a comment above about a particular effect or counterfactual, it should not be interpreted that SAWIN concurs with the analysis.

SAWIN thanks the ACCC for the opportunity to make this submission.

END OF SUBMISSION