



Ms Lyn Camilleri  
Adjudications  
Australian Competition and Consumer  
Commission  
GPO Box 3131  
Canberra ACT 2601  
By email: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)  
cc: [lyn.camilleri@accc.gov.au](mailto:lyn.camilleri@accc.gov.au)

11 March 2016

Dear Ms Camilleri

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

I make this submission in my capacity as Secretary of the South Australian Waste Industry Network (**SAWIN**), an industry body that represents participants in the waste disposal, recycling and collection industry. I refer to the ACCC's draft determination dated 11 February 2016 (**Draft Determination**) and further to the application submitted to the ACCC by Council Solutions and my previous submission.

SAWIN has been advised by you, that the ACCC is currently undertaking a public consultation process with respect to this Draft Determination. Set out below are our concerns in relation to the Draft Determination.

**1. Market Definition**

I have reviewed the Draft Determination and am surprised by both the analysis undertaken and the conclusion that was reached by the ACCC. Any consideration of an authorisation by the ACCC must start with a detailed analysis of "*what constitutes the market*" that is being considered. It would appear from the Draft Determination that no such detailed analysis was undertaken by either the Council Solutions Group in its application or the ACCC in reaching its conclusions under the Draft Determination.

The Draft Determination assumes that the market being considered is the waste disposal market in the Adelaide Metropolitan Area. The lack of analysis of what constitutes the market, including the current tendering behaviours of various councils within that market, is a very real concern to my members and has led, SAWIN believes, to an erroneous Draft Determination.

*Current Market composition*

Council Solutions has applied for an Interim Authorisation that enables it to jointly tender, negotiate and contract for the supply of:

- waste collection services;
- receiving and processing of recyclables;

- receiving and processing of organics; and
- waste disposal services (together **Waste Collection Services**).

The total estimated population of the Adelaide Metropolitan Market for Waste Collection Services is 1,261,033 which comprises approximately 585,473 properties. A detailed breakdown of the market and sources for all of the figures used throughout this submission is contained in the attached schedule.

In deciding what is the relevant market, SAWIN believes that the population and properties that comprise the East Waste Council Group (**EWCG**) should be removed from the market. EWCG is a body formed by a number of councils. EWCG undertakes the Waste Collection Services on behalf of its member councils.

a. *East Waste Council Group*

The East Waste Council Group (**EWCG**) consists of the following councils:

- Adelaide Hills Council
- City of Burnside
- Cambelltown City Council
- City of Mitcham
- City of Norwood, Payneham and St Peters
- Town of Walkerville.

As the EWCG undertakes its own waste collection that section of the Adelaide Metropolitan Market is not available for tender to third party service providers. In addition to this, there is a 2-year notice period that any council wishing to exit EWCG must give. we understand In addition and council exiting EWCG must pay an exit fee. Therefore when considering the market there is a very strong argument that the population and properties serviced by EWCG should be removed as none of their waste collection services are currently available for tender to third party providers. The councils that make up the EWCG comprise approximately 246,207 people or 116,758 properties.

b. *Metropolitan Market Open to Tender*

When the EWCG is removed from the Adelaide Metropolitan Market for Waste Collection Services so that the market under consideration is the Adelaide Metropolitan Market for Waste Collection Services which is open for tender, the size of the market reduces to 1,014,826 comprising approximately 468,715 properties.

The metropolitan market open to tender (the **Market**) already includes a council group that jointly tenders for Waste Collection Services.

That existing group is known as the NAWMA Council Group which comprises:

- City of Salisbury;
- City of Playford; and
- City of Gawler.

The NAWMA Council Group services a population of 238,109 (approximately 23.5% of the population in the Market) comprising 106,914 properties (approximately 22.8% of the properties within the Market).

The Draft Determination, if it became final, would allow the Council Solutions Group to jointly tender its Waste Collection Services in the Market.

The Council Solutions Group currently consists of:

- City of Adelaide;
- City of Charles Sturt;
- City of Marion;
- City of Tea Tree Gully; and
- City of Port Adelaide Enfield.

We understand that it is the intention of the City of Onkaparinga to join the Council Solutions Group in 2021 when its current Waste Collections Services contract expires. This means that by 2021 the Council Solutions Group would represent a population of 612,135 (approximately 60.3% of the Market) comprising 296,293 properties or 63.2% of properties in the Market. To approve an authorisation that effectively puts over 60% of the Market into a joint tender can only have the affect of lessening competition.

As we will explain below in more detail an authorisation of the Council Solutions Group joint tendering for Waste Collection Services will effectively cut small and medium Waste Collection Services operators out of a large part of the Market. By our analysis by 2021 only 16.2% of the population or 14% of properties in the Market will be available to small and medium businesses that currently operate Waste Collection Services in the Market.

## ***2. Impact of the Authorisation***

Our members have made and are continuing to make a valuable contribution to the shared Adelaide waste reduction policy and are of the opinion this authorisation, if granted, will limit their ability to assist with waste reduction within the Market and will effectively lessen competition by excluding them from the tender process for Waste Collection Services.

The services our members provide comprise the Waste Collection Services under consideration in the Draft Determination. The majority of these services are centred on the main metropolitan districts highlighted in the Draft 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 for the following reasons.

### ***a. Financial Detriment to Smaller Industry Participants***

Our first concern relates to the impact that this Authorisation will have on small to medium sized industry participants. The smaller participants in this Market are fundamentally reliant on market access.

Many of the businesses we represent have invested capital into staff training, equipment and facilities (among other aspects of our business) to ensure they maintain an efficient and level participation against their rivals for the long term. Your Draft Determination and proposed authorisation will have the affect of removing up to 63% of the Market as a result of awarding a tender to one successful bidder. We understand that Council Solutions will have the discretion to arrange for a contract of up to 14 years. This will have a financially detrimental affect on the long term success of all companies operating in this Market.

Blocking small to medium sized companies that can't compete with the larger operators in the area controlled by Council Solutions will harm the participants ability to continue commercial relationships with their current customers. Having a smaller market share will potentially increase long term operating costs as the same overheads will be spread over a smaller number of customers. Participants will not be able to recoup the costs of capital if they are only able to access a reduced proportion of the Market.

This Authorisation will effectively remove a large section of the Market reducing the ability of current participants to continue to operate and compete.

*b. Increase in unemployment*

The joint tendering process may increase the unemployment rate in Adelaide, especially when our members are unable to recoup or maintain operating costs for the long term. This is especially given the geography of Adelaide. Much of the profit is dependant on two factors. Cost of transport and the cost of collection. The longer the transport the higher the cost. This makes sustaining profits difficult when most of the expenses are associated with attending to other areas that are outside metropolitan Adelaide.

In order to continue to operate, industry participants will be forced to seek work outside of the Market thus increasing their travel costs. SAWIN understands that currently its members travel (on average) 21 kms from Council to Council with 29 kms being the furthest distance between 2 councils. Granting this Authorisation will result in our members having to travel up to 42 kms, which is on average a further 21 kms. This will result in higher costs associated with client servicing, maintaining vehicles, equipment and an increase instaffing costs. Higher overhead expenses associated with covering longer distances travelled will result in a lower staff retention rate over the proposed authorised duration of 17 years. Granting this Authorisation will remove our members from accessing even the outer fringes of metropolitan Adelaide as part of minimising these additional expenses.

Another factor to consider, which is ancillary to the cost of additional transportation, is the impact increased travel will have on the environment. Council Solutions indicated in its submission that the Authorisation will encourage environmental benefits in response to the South Australian Government implemented strategies.<sup>1</sup> SAWIN strongly disagrees with this claim. The affect of further travel will mean companies, which are not normally located or contracting for outer metropolitan areas will be forced to stay on the roads for longer distances. Further travelling times means industry participants will be subject to further traffic congestion that has in the past been minimised by tendering for areas which are of closer operational range.

Forcing our industry participants to travel further will have the effect of increasing harmful air emissions that the South Australian Government and Environment Protection Authority have focused on addressing.<sup>2</sup> The Australian Bureau of Statistics further indicates that road transportation in all States including South Australia accounted for the highest percentage of tonne kilometres travelled for most

---

<sup>1</sup> Refer to Government of South Australia, Zero Waste SA 'South Australia's Waste Strategy 2011-2015', 2 [Accessed 29 February 2016] <http://www.zerowaste.sa.gov.au/upload/resource-centre/publications/waste-strategy/4821/ZWSA%20WASTE%20STRATEGY%202011.12.11.pdf>

<sup>2</sup> Ibid.

commodities.<sup>3</sup> Consequently granting this Authorisation will not only increase the operational costs associated with travelling further to service outer metropolitan Adelaide Councils but also result in the inefficient transportation of these services. This is contrary to the objectives behind the waste reduction strategies implemented and currently addressed by non-multinational corporations.

*c. Lessening of competition*

The current market is extremely competitive. The market allows small to medium size operators as well as the subsidiaries of multi-nationals to lose certain tenders but still compete for tenders with other Councils that remain within the Market. The Draft Determination and proposed authorisation will have the affect of limiting the current industry participants' ability to successfully tender for work within this Metropolitan area. Given that the tender process to be run by the Council Solutions Group will relate to a much larger area, smaller industry players will be unable to compete with their current larger rivals.

There are 2 barriers to entry that will increase dramatically, namely the increased cost of the bank guarantee required at the commencement of the contract and the larger number of trucks required to service the joint council areas being tendered.

The size of the bank guarantees that are required to be provided at the commencement of these contracts will be beyond the reach of a number of current market participants. The reality is that smaller waste companies cannot compete for these tenders that involve more than one Council, as the contract price will naturally increase, increasing the level of the bank guarantee required. In addition it is often a condition of these contracts that the successful contractor purchase waste disposal vehicles that are co-branded with the council and contractors name. SAWIN understands that the cost of these vehicles is upwards of \$400,000 and the larger the area being tendered the larger the fleet required.

In addition to the cost of the fleet, the capital required to cover the collection and maintenance of such vehicles itself is beyond the capacity of many businesses in this Market, in many cases amounting to tens of millions of dollars. Multinational corporations are in a position to absorb the running of a larger fleet of vehicles in this way and sustain the operation of larger fleets for the timeframe proposed in this Draft Determination. This additional requirement acts as a barrier to entry in two ways:

- forcing companies to sustain the costs associated with operating additional vehicles; and
- continuing to compete against Multinational businesses that have the capital to sustain such detrimental expenses to daily operations over a longer term subsequently impacting the capital that these non-multinational businesses can sustain.

This will effectively force smaller companies out of the bidding process or force them to bid for sub-contractor roles to the extent the larger players wish to subcontract any of the services. It is very rare that any of the large industry participants will subcontract the Waste Collection Services once they have successfully tendered for them. There is no commercial imperative for the large operators to subcontract any

---

<sup>3</sup> See also Australian Bureau of Statistics 'Survey of Motor Vehicle Use, Australia, 12 Months Ended 31 October 2000' [accessed 8 March 2016] <http://www.abs.gov.au/ausstats/abs@.nsf/mf/9220.0>

of these services and in fact to do so would only add a layer of extra administration and cost to these larger operators.

If any of these services were to be sub-contracted it would have the affect of increasing the cost of these services to the end user. There would be a doubling of administrative costs at the sub-contractor level that would be passed onto the successful tenderer and ultimately to the relevant council. In time we suspect that this Authorisation will decrease the number of players in the Market thus significantly lessening competition.

*d. No new players will be introduced into the market*

The Council Solutions Group submission states that the joint tendering process will increase the competition within the Market because it will attract the larger players who currently operate Waste Collection Services in other parts of Australia. This argument is spurious because all of the large national waste companies already participate in the Market. As set out in more detail in paragraph (c) above SAWIN is of the opinion that the Authorisation will in fact cause the small to medium sized companies to exit the Market. The net affect will be a lessening of competition because there will be less businesses operating within the Market.

*e. Exclusion of Specialist Providers*

The Authorisation will have the affect of excluding specialist providers. In our experience, many of the larger participants in the Market provide all of the Waste Collection Services themselves and do not sub-contract to specialist providers in the way that the small to medium sized participants do. Over time many of the smaller sized operators have specialised in specific waste streams that they undertake pursuant to sub-contracts. Due to their size the larger participants do not generally use specialist providers but rather undertake the collection of all waste streams themselves. This will mean that these specialist collection providers will be pushed out of the Market or will only be able to compete for the much reduced market share which will not be able to support and sustain all of the participants currently providing these services to the Market.

*f. No increase in economic efficiency*

The Draft Determination highlights that the Authorisation will improve economic efficiency. The experience of our members is that, tenders and costing (of services for certain Council's) can only be done on a site-by-site basis, following a standard tendering process. Changing this tender process to involve other wider Council areas is quite onerous, particularly given the change in bargaining power. We strongly disagree with this view and for the reasons set out previously do not believe there will be any improvement in economic efficiency but rather quite the opposite.

### **3. Conclusion**

The Draft Determination reaches a conclusion that SAWIN is of the opinion cannot be supported when an analysis of "*what constitutes the market*" in which the Council Solutions Group will run the tender process is undertaken. SAWIN believes that the relevant market is the market for Waste Collection Services in metropolitan Adelaide that is open for tender to third parties. On our analysis, by 2021, when you remove those groups that run tenders on

behalf of a number of councils, including the Council Solutions group, small to medium sized businesses will only be in a position to respond to tenders for 16% of that Market.

In addition SAWIN does not agree with Council Solutions that the authorisation will increase competition. In fact we believe that any such authorisation will lessen competition by increasing the barriers to entry thus squeezing out all but the successful tenderer and giving that tenderer market dominance for a period of up to 17 years. On this basis SAWIN is of the opinion that the ACCC must reject the proposed Authorisation.

I appreciate your time in considering SAWIN's submission and look forward to meeting with you at the pre-decision conference on Monday, 21 March 2016 at 10am at the Adina Apartment Hotel Adelaide Treasury, 2 Flinders Street, Adelaide, South Australia, 5000. In addition we seek a confidential meeting with you to discuss this submission.

In the meantime if you wish to discuss any aspect of this submission please feel free to contact me on 0412 311371 or via email at [john.fetter@sawin.com.au](mailto:john.fetter@sawin.com.au)

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Fetter', with a long horizontal stroke extending to the right.

**John Fetter**  
**Secretary**

## SCHEDULE

### Adelaide Metropolitan Kerbside Municipal Market

	Est. Population	Est. Properties	% Total	% Remaining
<b>Total Metropolitan Councils</b>	<b>1,261,033</b>	<b>585,473</b>	<b>100%</b>	
Less				
<u>East Waste Council Group</u>				
Adelaide Hills Council	39,873	18,909		
City of Burnside	44,734	21,214		
Campbelltown City Council	51,344	24,349		
City of Mitcham	66,182	31,385		
City of Norwood, Payneham & St Peters	37,074	17,581		
Town of Walkerville	7,000	3,320		
<b>Total East Waste</b>	<b>246,207</b>	<b>116,758</b>	<b>19.9%</b>	
<b>Total Market Open to Tender</b>	<b>1,014,826</b>	<b>468,715</b>	<b>80.1%</b>	<b>100.0%</b>
<u>Council Solutions Group</u>				
City of Adelaide	22,690	22,735		
City of Charles Sturt	112,714	54,067		
City of Marion	88,292	41,011		
City of Tea Tree Gully	98,575	39,393		
City of Port Adelaide Enfield	122,205	59,579		
<b>Total Council Solutions 2016</b>	<b>444,476</b>	<b>216,785</b>		
+ Future Planned Councils				
City of Onkaparinga	167,659	79,508		
<b>Total Council Solutions 2021</b>	<b>612,135</b>	<b>296,293</b>	<b>50.6%</b>	<b>63.2%</b>
<u>NAWMA Council Group</u>				
City of Salisbury	134,042	58,888		
City of Playford	83,067	37,496		
City of Gawler	21,000	10,530		
<b>Total NAWMA</b>	<b>238,109</b>	<b>106,914</b>	<b>18.3%</b>	<b>22.8%</b>
<b>Remaining Market for Tenders</b>	<b>164,582</b>	<b>65,508</b>	<b>11.2%</b>	<b>14.0%</b>

**Source:**

Council Solutions: Council Solution ACCC Submission

NAWMA: NAWMA 2015 Tender Specifications

East Waste: Profile.id

Total Metropolitan Councils: Council Solutions ACCC Submission