

ACCC - PRE-DECISION CONFERENCE - SUMMARY

Council Solutions & Ors A91520

Adina Apartment Hotel Adelaide Treasury, 2 Flinders Street, Adelaide

21 March 2016, 10am ACDT

Attendees

Australian Competition and Consumer Commission

- Sarah Court, Commissioner
- Baethan Mullen, Acting General Manager, Adjudication Branch
- Darrell Channing, Director, Adjudication Branch
- Elizabeth Batten, Senior Project Officer, Adjudication Branch
- James Somerville, Acting Principal Lawyer, Merger and Authorisation Law Unit

Applicant / Participating councils

- Taryn Alderdice, Contract Management Officer, Council Solutions
- Ian Thompson, Acting Chief Executive Officer, Council Solutions
- Lisa Jarrett, Partner, Minter Ellison (Observing role)
- Darren Birbeck, General Manager Corporate Services, City of Charles Sturt
- Kate Hamer, Environmental Management Officer (Waste and Recycling), City of Charles Sturt
- Ryan McMahon, Chief Financial Officer, City of Tea Tree Gully
- Jon Herd, Environmental Sustainability Officer, City of Tea Tree Gully

Interested Parties

- Adrian Rose, State Manager, Solo Resource Recovery
- Anthony Penney, Executive Director Industry & Government Engagement, Business SA
- Barry Cosier, Tendering Manager, Solo Resource Recovery
- Dave Eames, Director, Waste-Away SA Pty Ltd
- Gary Coombe, General Manager, Peats Soils
- John Chapman, SA Small Business Commissioner
- John Fetter, Secretary, South Australian Waste Industry Network (SAWIN)
- John Fitzpatrick, Public Officer, Waste & Recycling Association of South Australia (WRASA)
- John Hogarth, Commercial Manager, Peats Soils
- Martin Jeffries, Managing Director, Jeffries Group
- Mike O'Reilly, O'Reilly Consulting
- Paul Haysman, Board Chairman, Jeffries Group
- Scott Geer, Contracts and Communications Manager, Solo Resource Recovery
- Scott McGuren, Director, Solo Resource Recovery
- Trevor Hatch, Director, Trevor Hatch Waste & Recycling
- Warren Stone, General Manager, Scout Recycling Centres

Introduction

Commissioner Sarah Court welcomed everyone to the conference and introduced herself and the ACCC staff present.

Commissioner Court summarised the conduct proposed under the application for authorisation as five councils coming together to collectively tender for four streams of waste management services (service streams).

She then summarised a range of issues raised in written submissions from interested parties:

- Purported public benefits arising from transaction cost savings and other efficiencies are overstated or will not eventuate.
- The proposed conduct will have a negative impact on competition:
 - the process has the potential for the contracts for all four service streams to be awarded to one provider.
 - the potential size and complexity of the collective tender will effectively exclude a significant number of smaller players from competing. Further, small businesses will not be able to meet financial criteria such as capital expenditure and bank guarantees, and so will be excluded from competing.
 - the proposed term of authorisation is too long, as too much of the market will be tied up for too long. That is, the large size of the tender (especially when combined with other contracts such as East Waste and NAWMA) will mean that a significant part of the market will be tied up for too long.

Opening statement by Council Solutions

Commissioner Court invited Taryn Alderdice to make an opening statement on behalf of Council Solutions.

Taryn Alderdice (Contract Management Officer, Council Solutions) thanked the ACCC for holding the conference and for the attendance and submissions by interested parties. Ms Alderdice indicated that she would address a number of issues raised by interested parties.

Ms Alderdice said:

- Council Solutions is seeking industry input into Council Solutions' Waste Management Services Project (project).
- the Cities of Onkaparinga and Salisbury have chosen not to participate, and there is no intention to grow the number of councils participating in the project (and accordingly should any further council choose to participate it would be subject to a separate authorisation process)
- the size of the Applicants is 35.25% of the population of Metropolitan Adelaide, and this figure will not grow other than through population growth (noting that tonnage of waste is generally a better reflection of size than population)
- competitive processes are a key component of the proposed conduct, and competitive tender processes will be run by Council Solutions.

- there has been an assumption in many submissions that suppliers will have to tender for all services streams and that only one supplier or operator will be selected for each service stream, or all service streams. It is Council Solutions' intention to conduct a Request for Proposal. That is, Council Solutions intends to offer the work available to the market and allow them to propose the best model to service the requirements. To be clear, Council Solutions has not predetermined the tender process and allocation or service model.
- while it is a possibility that one company may be allocated a service stream, this is not what Council Solutions would expect to occur. However, if that is the case, it would not differ significantly from the current situation.
- Council Solutions notes the concern by many interested parties that small businesses may be excluded from larger tenders, however it is expected that the current situation would continue. As far as any interested party (including small business) currently tenders and wins work they will continue to have the opportunity to do so, and where that currently occurs through sub-contracting arrangements, this would continue.
- by collaborating, there will be cost efficiencies. For example, collaborating councils and tenderers will participate in one tender process which will reduce administrative burdens.
- a number of interested parties assume that price is the primary consideration for Council Solutions, and that there will be one price across all councils. However, Council Solutions' criteria are still under development, and will be broader than price alone. The criteria will provide for consideration of other factors such as technological innovation.
- the 17 year authorisation term sought includes a robust three year procurement period and contract terms of up to 14 years. If the market indicates that a shorter operating term is appropriate then the process can accommodate that.
- Council Solutions considers that tendering for waste services and contract management are resource intensive activities. By removing duplication, there will be transactions costs savings and the resources freed up can then be used for other waste minimisation initiatives.
- in relation to financial criteria such as bank guarantees, Council Solutions has not yet developed the evaluation criteria. However, where a company is tendering for less than the full tender, it is not expected that there will be a significant change to the current situation. That is, the financial requirements are not expected to operate to prevent or hinder smaller operators from tendering.

Commissioner Court invited representatives of participating councils to make an opening statement.

Ryan McMahon (Chief Financial Officer, City of Tea Tree Gully) said that the City of Tea Tree Gully is interested in hearing industry feedback, and emphasised that 'local jobs for local people' is a key focus for the council. He expressed an interest in current market operators to continue to take part in the process and for the process to foster innovation in the industry.

Statements by interested parties

Commissioner Court invited representatives of the industry associations present to make a comment.

John Fetter (Secretary, South Australian Waste Industry Network, SAWIN) provided an overview of SAWIN and its membership. Mr Fetter also noted its submissions to the ACCC prior to and following the draft determination. Mr Fetter said:

- SAWIN supports the principle of competition. However, amalgamation of the councils is anti-competitive and may create a monopoly. If the councils wish to amalgamate, this should be done legislatively, rather than via the authorisation process.
- the proposed term of authorisation is inappropriately long and does not take into account issues such as asset depreciation rates.
- small businesses will be locked out of tendering for contracts and the market more generally, especially given that if the City of Onkaparinga joins the project, only 14% of metropolitan Adelaide will be available in 2021.
- South Australia is already very competitive with margins lower than the Australian average, and questioned whether the purported savings would eventuate in light of this.
- a potential outcome is that one service provider provides a low price in the tender process for an anti-competitive purpose (i.e. to drive competitors out of the industry).
- SAWIN members prefer that tenders be conducted every five to seven years. By having large tenders for long periods, this increases the risks for smaller players.

Commissioner Court asked whether there is one player now who does all streams, and if so, is that a problem? **Mr Fetter** said that bigger companies such as Solo would still prefer to do five tenders rather than one large tender.

Commissioner Court asked whether it would address SAWIN's concerns if Council Solutions split the tenders into four separate service streams? Mr Fetter indicated that he and his members would need to give consideration to this.

Commissioner Court suggested that there are likely to be efficiencies for Council Solutions and tenderers arising from the proposed conduct. Mr Fetter closed by reiterating his concerns about the size and complexity of the proposed conduct.

John Fitzpatrick (Public Officer, Waste and Recycling Association of South Australia, WRASA) noted that WRASA was established in response to the application for authorisation. Mr Fitzpatrick provided attendees with a copy of a handout which will be made available on the ACCC's public register. Mr Fitzpatrick said:

- WRASA has concerns about the lack of detail and economic analysis in the application.
- WRASA members are open to engaging with Council Solutions as part of any future consultation.

- WRASA is concerned about the potential harm to the industry, given that South Australia is a world leader in the management of green waste. In particular, companies such as Peats Soils and Jeffries Group require feed stock.
- There may be unforeseen consequences (such as the interstate transfer of soft drink cans for processing rather than being processed within South Australia by operators such as Scout Recycling Centres).
- WRASA represents members across the four service streams. It has concerns that one provider may be allocated 35% of the market, and that its members will be locked out of the tender process and will not be able to compete fairly.

Anthony Penney (Executive Director Industry & Government Engagement, Business SA) said that:

- Business SA encourages Council Solutions to adopt the SA Industry Participation Policy, which is attached to its submission which is available on the ACCC public register.
- As stated in its submission, Business SA does not oppose councils driving efficiency and environmental solutions; however the effect on local employers and overall economy should be taken into account. In this respect, Business SA is reassured by the comments of Ryan McMahon of the City of Tea Tree Gully, who stated that local jobs are a priority for the councils.

John Hogarth (Commercial Manager, Peats Soils) said that:

- he is concerned about the potential proportion of the market that may be captured by the collective tender process.
- the three large contracts (East Waste, NAWMA and Council Solutions) would each cause large shifts in employment, and that criteria such as the bank guarantee will impact on his business.
- feed stock is very important to Peats Soils as a processor of organic waste, and feed stock supplies may drop due to the proposed conduct.
- he queries the purported efficiency gains, as the specific requirements of the five councils are likely to be different. In these circumstances, even if a single tenderer is awarded the contract for a service stream, they would need to check that they are meeting each of the council's individual sets of requirements. In effect, the supplier would be required to do six tenders rather than five (that is, to Council Solutions as well as the five individual councils).

Warren Stone (General Manager, Scout Recycling Centres) said that:

- service levels may drop, and noted the example of SKM transporting recyclables from South Australia to Victoria.
- currently, fees are less than those across the Eastern seaboard of Australia.
- Scout Recycling Centres employ over 100 people who may find difficulty in gaining employment elsewhere.

Scott Geer (Contracts and Communications Manager, Solo Resource Recovery) referred to the handout provided by Mr Fitzpatrick of WRASA. Mr Geer said:

- their research indicates that there will be a net public detriment (and in particular, the 1% commission to Council Solutions would increase transactions costs by around \$5m over the course of contract).
- the Council Solutions proposal covers four service streams, whereas previous arrangements authorised by the ACCC have only covered one to two streams.
- If the councils are spread out, there are no economies of scale especially in relation to Alternative Waste Technology which requires a cluster of councils. In this case, participating councils share 6.65% of boundaries in common, while most of the previous arrangements authorised by the ACCC have involved councils which share 40% of boundaries in common.
- Solo considers that Council Solutions' proposal is the most complex waste contract to date in Australia.
- Brisbane is the largest council in Australia, with the highest potential for economies of scale, however prices are 15% higher than in Adelaide and service standards are lower.
- South Australia currently leads the country in waste diversion rates, however, long term contracts such as in Brisbane impedes innovative companies bringing in new technology.
- As per the economic report from Barry Burgen, there is no evidence that there will be economies of scale.

Commissioner Court asked whether, assuming Solo is correct and it is more cost effective for Solo to service 20-50,000 households, why couldn't Solo tender for that – how is solo restricted? **Mr Geer** noted that Solo is not prevented from doing so. The issue is not so much that councils are getting together, rather it is causing inefficiencies due to where they are located, for example by preventing operators from servicing neighbouring councils, which reduces the incentive to develop infrastructure for those neighbouring councils.

Mr Geer noted that purported transactions costs savings are unlikely to occur for a number of reasons including:

- by adding another administrative layer, this will impede the flow of communication from the resident to council to contractor, which may impact on service levels.
- it will be prohibitively complex for tenderers to calculate and provide prices for various service stream combinations.
- the price for recyclable materials fluctuates and the current price is low, which means that it is a bad time for parties to be locked into long term contracts.

In closing, **Mr Geer** requested that the application for authorisation be rejected as it will reduce competition, and lead to fewer jobs, poorer waste diversion levels and higher administrative costs.

Dave Eames (Director, Waste-Away SA Pty Ltd) said that:

- Waste-Away SA is a company which supplies bins to depots.
- Should Waste-Away no longer have the ability to tender small tenders for pickups, this would negatively impact his business.

John Chapman (SA Small Business Commissioner) noted his written submission. He stated that he considers that the authorisation would substantially lessen competition in the Adelaide market for up to 17 years, and should be rejected by the ACCC. He also said that Council Solutions should:

- provide greater detail about the proposed conduct, including the size of the market and economic rationale for the conduct.
- consult more widely, including consultation with businesses, consumers and ratepayers.
- give consideration to the impact on jobs and employment and small businesses.
- reflect on the submission by Solo Recycling, and take into account the wide industry opposition to the authorisation.
- adopt the SA Industry Participation Policy.

Conclusion

Commissioner Court brought the forum to an end. She thanked everyone for attending and advised that:

- the ACCC will prepare a high level summary of the issues raised, a copy of which will be provided to all participants and placed on the ACCC's public register.
- the ACCC will consider the issues raised today, as well as the written submissions provided, in making the final determination.
- any further written submissions should be provided to the ACCC by 4 April 2016.
- views raised during the conference will be conveyed to the other ACCC Commissioners.

The forum concluded at approximately 12.30pm ACDT.