

Your Reference: A91520



**Small Business
Commissioner**
SOUTH AUSTRALIA

Ms Elizabeth Batten
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Sent via email to: adjudication@accc.gov.au
and to: elizabeth.batten@accc.gov.au

Dear Ms Batten

Re: A91520 - Council Solutions' Application for Authorisation of a Combined Waste Tender Process – Extension of Timeframe

I refer to your email of 29 April 2016, which inter alia reads as follows:

*"This follows a request by Council Solutions for an extension of time to provide a written submission to the ACCC until **30 May 2016**. Council Solutions has indicated that it will also use the extended timeframe to consult further with industry participants about the proposed arrangements."*

I am concerned that the ACCC has decided to extend the statutory timeframe for the release of a final determination in this matter until 23 December 2016 for the following reasons:

1. I am strongly concerned that the release of a final determination on 23 December 2016 - for most the final business day of the year - is not appropriate in matters of this type. In my experience, the release of significant decisions such as this one, on the very eve of Christmas, seldom heralds a positive reception by the affected parties, many of whom will already have commenced their Christmas leave;
2. To the contrary, the forecasting of decisions at this time can lead parties to imply that the decision may be adverse, and therefore to query the motives behind a decision being handed down at a time when most businesses are trying to "clear the decks" before the Christmas break. I emphasise that this is a perception issue and does not imply any issue with the ACCC's consideration of the relevant issues; and
3. Accordingly, I wonder why the ACCC proposes, almost 8 months prior to this time, to defer its Final Determination until 23 December - instead of say Friday, 9 December 2016 - a time when the determination can be properly considered and digested by the parties.

I also refer to your statement: "... that although the statutory timeframe has been extended until December, the ACCC will continue to progress its assessment of the application for authorisation in a timely manner."



4. It seems to me that the process being pursued by the ACCC in this matter is an incremental process which may not allow proper and fulsome scrutiny by the concerned parties, and therefore not allow appropriate time for any of them to respond to extra information.
5. I ask that the ACCC provide me with further details on the process that will be put in place, particularly any opportunity for those objecting to the Application to properly assess and respond to additional information that is submitted.
6. To that end, I am seeking a draft schedule of the events that the ACCC anticipates will occur from now until the handing down of the Final Determination which, as I have suggested above, should be earlier than the week commencing 19 December 2016.

It remains my strong contention that the granting of the Authorisation will **not** outweigh the (much more likely) detriment to the public that would flow from the lessening of competition that would result, or be likely to result, if the Authorisation is granted.

I look forward to your response to the concerns that I have outlined above, and to receiving a draft schedule of events as the ACCC foresees them.

Should you have any further queries in relation to these submissions, please do not hesitate to contact me on (08) 8303 0927 or by email to John.Chapman@sa.gov.au

Yours faithfully



John Chapman
SMALL BUSINESS COMMISSIONER (SA)

4th May 2016