



**Cairns Regional Council –
application for authorisation A91544
Interim authorisation decision
26 July 2016**

Decision

The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation lodged by Cairns Regional Council on behalf of itself, Douglas Shire Council and Mareeba Shire Council (the **Councils**) on 28 June 2016.

Interim authorisation is granted to enable the Councils to:

- jointly discuss the procurement of waste collection services
- jointly negotiate and enter into an agreement that will govern the procurement process
- jointly prepare and issue a Request for Tender document
- separately evaluate tender responses, and
- separately negotiate and enter into waste collection contracts between each Council and one or more successful waste collection contractors, subject to the ACCC issuing a final determination granting authorisation.

Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

The Councils seek authorisation to jointly procure waste collection services. They seek authorisation for 12 years which consists of a 9 year initial contract term, two options to extend for 12 months on each occasion, and an additional 12 month option as required to conduct future procurement.

Waste collection contractors will be invited to bid for some or all of the local government areas represented by the Councils. The Councils may decide to appoint the same waste collection contractor, or may each appoint different contractors.

Each Council will separately evaluate tender responses before consulting with each other on their preferred options. In any case, each Council will negotiate and sign a separate waste collection contract with the successful tenderer/s.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Competition and Consumer Act 2010 (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC

conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

The Councils have sought interim authorisation in order to issue a Request for Tender as soon as possible (and ideally by the start of August 2016) given that their existing waste collection service contracts expire in late 2017, and new waste collection contractors require 10-12 months to have adequate time to bid and prepare for service delivery.

Consultation

The ACCC sought submissions from 29 interested parties potentially affected by this application, including industry participants, local and state government and waste industry associations.

To date, one submission has been received from J.J. Richards & Sons Pty Ltd, a waste management service provider. J.J Richards & Sons did not comment on the request for interim authorisation, but in relation to the substantive issue submits that it does not object to this specific application because it proposes to allow for tenders in separable portions and award separate contracts for each Council. J.J. Richards & Sons submits that the ACCC should more generally have regard to the collective impact of joint tendering and contracting arrangements by councils on competition for waste and recycling services.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

In granting interim authorisation, the ACCC took the following factors into account:

- The relevant areas of competition are unlikely to be permanently altered if interim authorisation is granted. The Councils will continue to give effect to existing waste collection contracts and no new waste collection contracts will become effective while the ACCC gives due consideration to the application for authorisation.
- Interim authorisation is likely to enable the Councils to commence a tender process with enough time before their existing waste collection contracts expire at the end of 2017.
- Interim authorisation is likely to enable waste collection service providers, including those that do not currently operate in the local government areas represented by the Councils, to submit a response to request for tender and prepare for the commencement of services if successful.
- There is limited likelihood of anti-competitive detriment during the period of interim authorisation. Each Council will conduct its own evaluation of responses to the request for tender.
- No public submissions were received specifically on the request for interim authorisation.¹

¹ Submissions received by the Councils and interested parties will be considered as part of the ACCC's assessment of the substantive application for authorisation.

Reconsideration of interim authorisation

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.