



Loddon Mallee Waste and Resource Recovery Group applications for authorisation A91596 & A91597 Interim authorisation decision 14 September 2017

Decision

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the applications for authorisation A91596 & A91597 lodged by the Loddon Mallee Waste and Recovery Group (**LMWRRG**) on 17 August 2017.

Scope of interim authorisation

Interim authorisation is granted for LMWRRG and three of the participating councils, the City of Greater Bendigo, Mount Alexander Shire and Macedon Ranges Shire, to jointly develop requests for tenders (RFTs) and negotiate with selected Service Providers for the following waste and resource recovery services:

- domestic kerbside waste, recyclables and organic waste collection
- domestic kerbside recyclables acceptance and processing
- domestic organic waste acceptance and processing (including food organics and green waste)
- supply and collection of bulk bins and skips; and
- collection and processing of specific material waste streams (such as e-waste, mattresses, tyres and certain plastics)

Interim authorisation is not sought or granted to enter into or give effect to any waste collection contracts.

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

The applications for authorisation

On 17 August 2017, LMWRRG lodged applications for authorisations A91596 & A91597 to make and give effect to contracts, arrangements or understandings in relation to joint procurement of waste and resource recovery services.

The applications were lodged by LMWRRG on behalf of itself and eight councils in Victoria. The eight councils are the City of Greater Bendigo, Rural City of Mildura, Rural City of Swan Hill, Gannawarra Shire, Loddon Shire, Buloke Shire, Mount Alexander Shire and Macedon Ranges Shire.

These contracts arrangements or understandings relate to:

- the joint development of requests for tenders (RFTs) by LMWRRG and each of the Participating Councils in respect of waste and resource recovery services.
- the negotiation with selected Service Providers of joint arrangements between multiple Participating Councils for the delivery of services
- the ongoing administration and management of contracts where joint arrangements for the acquisition of waste and resource recovery services are entered into by multiple Participating Councils.

Authorisation is sought for the following waste and resource recovery services:

- domestic kerbside collection, acceptance and processing of waste (including recyclables and organic waste);
- the supply, collection, acceptance and processing bulk bins and skips; and
- the collection, processing and/or disposal of specific material streams (such as e-waste, mattresses, tyres and certain plastics).

The proposed conduct will involve two successive joint tenders. The first joint tender will include three councils: the City of Greater Bendigo, Macedon Ranges Shire, and Mount Alexander Shire. These councils' existing contracts for waste and resource recovery services are due to expire in 2018. A second joint tender process is proposed to be conducted in 2019 for the remaining councils.

Authorisation is sought for a total period of 16 years. This comprises an initial period to conduct joint procurement processes before existing waste contracts expire and an operating term of 11 years.

Interim authorisation

Interim authorisation is sought for LMWRRG and three of the participating councils, the City of Greater Bendigo, Mount Alexander Shire and Macedon Ranges Shire, to immediately progress their joint procurement.

LMWRRG submits that interim authorisation will enable these councils to put in place arrangements before their existing contracts for waste and resource recovery services expire in 2018.

Interim authorisation is not sought to make or give effect to any contracts arising out of the joint procurement process. Contracts will only be entered into if the ACCC decides to grant final authorisation.

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.

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.

Consultation

The ACCC sought submissions from 55 interested parties potentially affected by this application, including general and specialised waste and recycling service providers in Victoria.

The ACCC received one public submission prior to the application for interim authorisation. Both submissions focus on the substantive application for authorisation.

J.J. Richards & Sons Pty Ltd (**J.J. Richards**) opposes authorisation but did not comment specifically on the application for interim authorisation. It 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.

The ACCC will consider J.J. Richards' concerns and any other submissions on the substantive application for authorisation in preparing the draft determination. Submissions on the substantive application for authorisation close on 18 September 2017.

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 has taken the following into account:

- The relevant areas of competition are unlikely to be permanently altered if interim authorisation is granted. The existing waste contracts will continue until the ACCC makes its final determination.
- Interim authorisation is not sought to enter into or give effect to any contracts. Contracts will only be entered into or given effect to if the ACCC decides to grant final authorisation.
- Granting interim authorisation will support the applicants to plan their procurement processes and align procurement schedules.
- Interim authorisation is only sought for three of the eight participating councils.
- Conditions in the relevant markets are unlikely to vary significantly depending on whether or not interim authorisation is granted.

The ACCC has considered the submission lodged by J.J. Richards and will have regard to the issues raised there in its 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.