



# Determination

Application for revocation of authorisation AA1000453 and the substitution of authorisation AA1000610 lodged by Goulburn Valley and North East Waste and Resource Recovery Groups in respect of joint procurement of certain waste and resource recovery services

30 September 2022

Commissioners: Keogh  
Brakey

## Summary

The ACCC has decided to grant authorisation AA1000610 to enable the State of Victoria, represented by the Department of Environment, Land, Water and Planning, 14 regional councils, 4 alpine resort management boards and Alpine Resorts Victoria (the Participating Councils), to jointly procure a range of waste and resource recovery services until 22 October 2042.

The ACCC considers the proposed joint procurement would be likely to result in public benefits in the form of environmental benefits, reduced transaction costs, increased efficiencies and increased competition in the supply of waste services. The ACCC considers that the proposed arrangements are likely to result in minimal public detriment. Accordingly, the ACCC considers the proposed arrangements would be likely to deliver a net public benefit.

The ACCC has decided to revoke authorisation AA1000453 and substitute authorisation AA1000610 for the one revoked until 22 October 2042. This period of authorisation will allow the parties time to undertake the tender processes and negotiate and execute contract(s), and to give effect to/administer the contract(s) for the supply of waste and resource recovery services.

### 1. The application for revocation and substitution

- 1.1. On 21 April 2022, Goulburn Valley Waste and Resource Recovery Group (**Goulburn Valley WRRG**) and North East Waste and Resource Recovery Group (**North East WRRG**) (both succeeded by the State of Victoria, represented by the Department of Environment, Land, Water and Planning) lodged with the Australian Competition and Consumer Commission (the **ACCC**) an application to revoke authorisation AA1000453 and substitute authorisation AA1000610 for the one revoked.
- 1.2. The requested substitute authorisation was sought to conduct a collaborative tender process for the procurement of a range of waste and resource recovery services and to make and give effect to the contract(s) for the supply of those services. This application was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.3. The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.4. The requested substitute authorisation relates to the same conduct as that to which authorisation AA1000453 applied.<sup>1</sup> However, the requested substitute authorisation seeks to amend the parties to the authorisation (adding 7 Victorian regional councils, 4 Victorian alpine resort management boards<sup>2</sup> and Alpine Resorts Victoria upon its commencement<sup>3</sup>, and removing a New South Wales council) and extend the period of authorisation (from 16 years to 20 years).
- 1.5. On 18 May 2022, the ACCC suspended authorisation AA1000453 and granted interim authorisation under subsection 91(2) of the Act to enable the initial procurement

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<sup>1</sup> Authorisation AA1000453 is available on the ACCC's [public register](#).

<sup>2</sup> These parties were represented by North East WRRG.

<sup>3</sup> See letter dated 14 September 2022 on the ACCC's [public register](#). From 1 October 2022, the 4 alpine resort management boards will be abolished and their functions transferred to Alpine Resorts Victoria.

processes relating to specific kerbside waste and resource recovery services to commence. Interim authorisation remains in place until the date the ACCC's final determination comes into effect, the application for revocation and substitution is withdrawn, or until it is revoked. Interim authorisation does not extend to entering into contracts for the supply of kerbside waste and resource recovery services.<sup>4</sup>

- 1.6. On 30 June 2022, the ACCC issued a draft determination proposing to revoke authorisation AA1000453 and substitute authorisation AA1000610 for the one revoked.

## Machinery of government changes

- 1.7. Goulburn Valley WRRG and North East WRRG were Victorian state statutory bodies and worked with their respective councils and alpine management boards across regional Victoria to plan and manage municipal waste and resource recovery services.
- 1.8. On 1 July 2022, Goulburn Valley WRRG, North East WRRG and all other Victorian statutory waste and resource recovery groups were abolished and their responsibilities transferred to 'Head, Recycling Victoria' (Recycling Victoria)<sup>5</sup>. Recycling Victoria is a unit within the Victorian Department of Environment, Land, Water and Planning. It is responsible for providing leadership and oversight of the management of waste, recycling or resource recovery services on a state-wide, rather than regional, basis.
- 1.9. The State of Victoria, represented by the Department of Environment, Land, Water and Planning, succeeded the Goulburn Valley WRRG and North East WRRG and is an applicant for the current application.<sup>6</sup>

## The Applicants and authorised entities

- 1.10. The Applicants are:

- (a) the State of Victoria, represented by the Department of Environment, Land, Water and Planning, and

- (b) the following councils:

- i. Victorian regional councils located in the Goulburn Valley region (City of Greater Shepparton, Moira Shire, Campaspe Shire, Strathbogie Shire, Mitchell Shire and Murrindindi Shire) and a New South Wales regional council adjacent to the Goulburn Valley region (Murray River Council)
- ii. Victorian regional councils located in the North East region (Alpine Shire, Benalla Rural City Council, City of Wodonga, Indigo Shire, Towong Shire, Rural City of Wangaratta, and Mansfield Shire), and
- iii. Victorian alpine resort management boards located in the North East region (Falls Creek Alpine Resort Management Board, Southern Alpine Resort Management Board, Mount Buller and Mount Stirling Resort Management Board, and Mount Hotham Resort Management Board)

**(the Participating Councils).**

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<sup>4</sup> The interim authorisation decision is available [here](#).

<sup>5</sup> Pursuant to the *Circular Economy (Waste Reduction and Recycling) Act 2021* (Vic).

<sup>6</sup> See letter from Goulburn Valley WRRG and North East WRRG relating to the transition to Recycling Victoria, available on the [public register](#).

1.11. The parties sought to be covered by the requested substitute authorisation are the Applicants and Alpine Resorts Victoria.

## The Proposed Conduct

1.12. The requested substitute authorisation is sought to:

- (a) enter into arrangements to jointly call for tenders for the supply of waste and resource recovery services being one or more of the Relevant Services (defined at paragraph 1.13 below), and
- (b) where agreed among the Applicants and Alpine Resorts Victoria (referred to in paragraphs 1.10-1.11 above), to enter into and give effect to contracts, arrangements or understandings regarding the joint procurement from time to time of some or all of the Relevant Services

(the **Proposed Conduct**).

1.13. The waste and resources recovery services to which the Proposed Conduct relate are:

- domestic kerbside residual waste, recyclables and organic waste collection and transport
- domestic kerbside recyclables acceptance and sorting
- domestic kerbside organic waste (including food organics and/or green waste) acceptance and processing
- residual waste disposal
- resource recovery centre domestic residual waste and recyclables collection and transport
- supply of mobile kerbside bins
- supply of organics kitchen caddies and liners
- landfill and resource recovery data recording systems
- landfill management services, and
- collection, processing, and/or disposal of specific material streams that are disposed of, aggregated at and collected from council-operated resource recovery centres (including in relation to e-waste, clothing and textiles, mattresses and soft furnishings, tyres, polystyrene, rigid and soft film plastics, empty oil containers, de-gassing of whitegoods and gas cylinders, waste automotive oil, the drumMUSTER program<sup>7</sup>, scrap steel, cooking oil, green waste mulching, fluorescent lighting, aggregates and brick, and automotive batteries)

(the **Relevant Services**).

1.14. It is anticipated that a separate procurement process will likely be undertaken in respect of each of the Relevant Services. Suppliers can choose to tender to supply

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<sup>7</sup> The Applicants submit that drumMUSTER is a national program for the collection and recycling of empty, non-returnable metal and plastic 'agvet' chemical containers into useful end-products such as street signs, irrigation piping, plant stakes and outdoor furniture (see page 13 of the application).

one or more of the Relevant Services and supply those services to one or more Participating Councils.

- 1.15. Wodonga City Council and Indigo Shire Council will only participate in some but not the full range of the Relevant Services. This is because they have elected to jointly procure some waste services (specifically, kerbside waste and recycling services) with New South Wales councils under a different authorisation (AA1000612)<sup>8</sup> granted by the ACCC on 14 July 2022.

## 2. Background

### Previous authorisations

- 2.1. The conduct approved in authorisation AA1000453 was never engaged in, due to significant changes and uncertainty as a result of the China National Sword<sup>9</sup> policies.<sup>10</sup> Goulburn Valley WRRG and North East WRRG submitted that, due to greater certainty in the regulatory context, the Participating Councils now anticipate being able to engage in the Proposed Conduct.
- 2.2. The North East WRRG, along with some of the councils and alpine resort management boards referred to in paragraphs 1.10(b)ii-iii above are also party to authorisation A91585<sup>11</sup> granted by the ACCC on 2 February 2017 until 31 December 2028. Authorisation A91585 was granted to allow the parties to jointly procure various waste services, some of which overlap with the Relevant Services.<sup>12</sup> However, the services to which authorisation A91585 applies do not include kerbside collection services, which are a major part of the Relevant Services the subject of the current requested substitute authorisation.

### The Goulburn Valley and North East regions

- 2.3. Figures 1 and 2 below show the location of the Participating Councils.
- 2.4. The Goulburn Valley region has a total area of more than 21,000 square kilometres and a population of approximately 195,000.

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<sup>8</sup> This authorisation is available on the ACCC's [website](#).

<sup>9</sup> In January 2018, China introduced its National Sword Policy, which limits the import of low-quality mixed recyclables, including paper and plastic. Source: <https://www.environment.vic.gov.au/sustainability/victorians-urged-to-keep-recycling>

<sup>10</sup> See application, p. 11. Further, at that time Victorian councils extended existing contracts with suppliers rather than undertook a competitive process to procure waste services due to the exemptions under the *Local Government Act 1989* (Vic).

<sup>11</sup> This authorisation is available on the ACCC's [website](#).

<sup>12</sup> Collaborative procurements undertaken under this authorisation include the collection of scrap metals, tyres, e-waste, green waste shedding, mattress and soft furnishing recycling, and de-gassing and recycling of gas bottles.

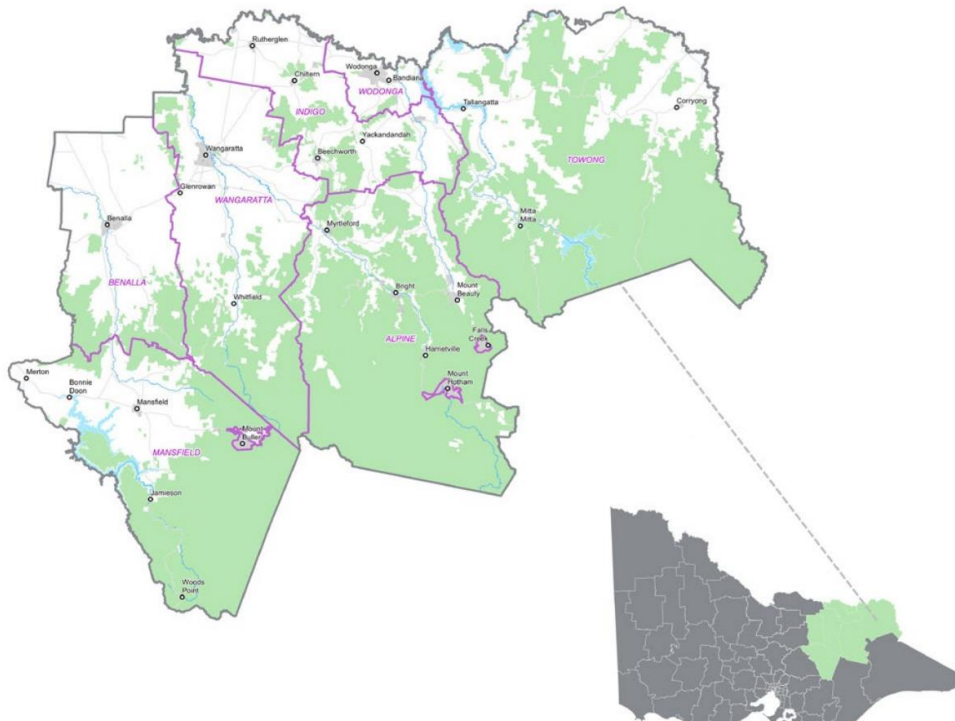
**Figure 1 – Map of the Goulburn Valley region**



Source: Sustainability Victoria

2.5. The North East region has a total area of just under 25,000 square kilometres and a population of less than 120,000.

**Figure 2 – Map of the North East region**



2.6. In 2018-19, the total volume of kerbside waste collected across Victoria was approximately 2.19 million tonnes, comprising:

- 1.2 million tonnes – residual waste

- 565,000 tonnes – commingled recyclables and
- 266,000 tonnes – organic waste.<sup>13</sup>

2.7. The combined annual volume of kerbside waste collected by the Participating Councils in the Goulburn Valley and the North East regions in 2018-19 was around 117,000 tonnes.<sup>14</sup> This represents around 5 per cent of Victoria’s combined kerbside waste volume in that year.

### 3. Consultation

- 3.1. A public consultation process informs the ACCC’s assessment of the likely public benefits and detriments from the Proposed Conduct.
- 3.2. On receiving the application, and again following the draft determination, the ACCC invited submissions from a range of potentially interested parties including major suppliers, relevant industry associations, state and federal government and relevant regulatory bodies.<sup>15</sup>
- 3.3. The ACCC did not receive any submissions from interested parties in relation to the application or the draft determination. A pre-decision conference was not requested following the draft determination.

### 4. ACCC assessment

- 4.1. The requested substitute authorisation is sought for the Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsections 90(7) and 90(8) of the Act<sup>16</sup>, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the Proposed Conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct (authorisation test).
- 4.2. In making its assessment of the Proposed Conduct, the ACCC has considered:
  - the application and other relevant information available
  - the relevant areas of competition are likely to be the supply and acquisition of the Relevant Services (listed at paragraph 1.13) in and adjacent to the Goulburn Valley and North East regions
  - in the likely future without the Proposed Conduct, the Participating Councils would be likely to individually procure and contract with suppliers for the supply of the Relevant Services (if those services were not the subject of joint procurement authorised in AA1000453 and A91585, as referred to in paragraphs 2.1-2.2).

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<sup>13</sup> Source: Sustainability Victoria.

<sup>14</sup> This comprises 69,570 tonnes in the Goulburn Valley region and 47,740 tonnes in the North East region (source: Sustainability Victoria).

<sup>15</sup> A list of the parties consulted is available from the ACCC’s [public register](#).

<sup>16</sup> See subsection 91C(7).

## Public benefits

- 4.3. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>17</sup>

- 4.4. Goulburn Valley WRRG and North East WRRG submitted that the Proposed Conduct would be likely to result in significant and sustained public benefits including transaction and other cost savings, efficiencies and economies of scale, enhanced competition, improved services, environmental benefits and the potential inclusion of small service providers in the tender process.
- 4.5. The ACCC has considered the following public benefits:
- environmental benefits
  - reduced transaction costs
  - improved efficiencies, and
  - increased competition in the supply of waste services.
- 4.6. The ACCC's assessment of the likely public benefits from the Proposed Conduct follows.

## Environmental benefits

- 4.7. Goulburn Valley WRRG and North East WRRG submitted that increased efficiency in the collection, aggregation and disposal of waste materials as a result of the Proposed Conduct will reduce greenhouse gas emissions from the transportation of waste between various facilities and from energy used for facility operations. They also submitted that joint procurement is also likely to assist in diversion of waste from landfill to alternative resolutions (e.g. recycling) and result in improved resource recovery rates.
- 4.8. To the extent that the Proposed Conduct enables joint procurement activities that align with relevant government strategies on improving environmental outcomes and promoting a more circular economy, the ACCC considers this would likely be a public benefit.

## Reduced transaction costs

- 4.9. Goulburn Valley WRRG and North East WRRG submitted the Proposed Conduct is likely to result in significant cost savings that would not be achieved if each of the Participating Councils were to conduct its own procurement process separately. For instance, the Proposed Conduct would enable a working group comprising representatives of the Participating Councils to be established for each joint procurement process to consider tender submissions.

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<sup>17</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.



- 4.10. The ACCC accepts that the Proposed Conduct would be likely to deliver transaction cost savings including by avoiding or eliminating the unnecessary duplication of administrative costs associated with each of the Participating Councils conducting separate tenders.
- 4.11. The ACCC also considers the Proposed Conduct would be likely to result in transaction cost savings for suppliers, including by reducing or eliminating the administrative burden of dealing with the procurement processes of multiple Participating Councils.

### **Increased efficiencies**

- 4.12. Goulburn Valley WRRG and North East WRRG submitted that a number of waste processing facilities in the Goulburn Valley and North East regions are currently underutilised. They submitted that the aggregation of the Participating Councils' waste volume under the Proposed Conduct will create efficiencies and economies of scale which in turn will encourage innovation and new investment by service providers.
- 4.13. The ACCC accepts that aggregation of the Participating Councils' waste volume would be likely to enable service providers to realise operational efficiencies and economies of scale in the delivery of waste services, which may facilitate lower average costs for each of the Participating Councils. The Proposed Conduct may also reduce the risks associated with any investment in upgraded or new facilities and technologies.

### **Increased competition in the supply of waste services**

- 4.14. Goulburn Valley WRRG and North East WRRG submitted that joint procurement is likely to increase competition for the provision of waste and resource recovery services in the Goulburn Valley and North East regions, because the joint procurement is likely to attract interest from a greater number of service providers, including smaller service providers and those who may not have entered the market previously.
- 4.15. The ACCC considers that the Proposed Conduct may result in a public benefit through offering prospective tenderers a more substantial volume of waste for collection and/or processing, which may result in existing or new service providers competing more vigorously to win the service contracts.

### **Public detriments**

- 4.16. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*<sup>18</sup>

- 4.17. The Participating Councils may be considered to be each other's competitors in the acquisition of waste and resource recovery services within the Goulburn Valley and North East regions. By conducting their procurement jointly rather than individually, the Participating Councils are agreeing to no longer compete. The Proposed Conduct may therefore lessen competition in the acquisition of the Relevant Services, although in practice any such competition between these entities is limited.

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<sup>18</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

4.18. Goulburn Valley WRRG and North East WRRG submitted that the Proposed Conduct will not result in any discernible public detriment, because:

- the tender process will be open and transparent
- participation will be voluntary for the Participating Councils and for service providers (who may choose to deal with the Participating Councils on a purely bilateral basis)
- the proposed process affords service providers with flexibility as they may choose to tender to supply one or more Participating Councils, and/or tender to supply one or more Relevant Services, and
- it is currently anticipated that any joint decisions regarding allocation of waste volume would be made on an ad-hoc basis and would have no significant anti-competitive effects.

4.19. The ACCC considers that public detriments may arise as a result of joint procurement arrangements where the group comprises such a substantial portion of the market that it reduces competition between providers of the relevant waste and resource recovery services – that is, by limiting the number of customers for which service providers compete.

4.20. However, the ACCC considers that the extent of this public detriment would likely be limited for the following reasons:

- each of the Relevant Services would likely entail a separate tender process (as mentioned in paragraph 1.14). This would likely enable service providers, including smaller providers, to be able to tender for one or more waste streams and tender to supply one or more Participating Councils
- the Participating Councils' combined annual kerbside waste volume (comprising domestic residual, recyclables and organics) comprises around 5 per cent of the total volume of kerbside waste collected in Victoria
- the tender processes would be transparent and competitive<sup>19</sup>, and
- the Proposed Conduct is voluntary for both service providers and the Participating Councils.

## Balance of public benefit and detriment

4.21. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct would be likely to result in a public benefit and the benefit would outweigh the detriment to the public that would result or be likely to result from the proposed conduct, including any lessening of competition.

4.22. The ACCC considers the Proposed Conduct would be likely to result in public benefits in the form of environmental benefits, reduced transaction costs, increased efficiencies and increased competition in the supply of waste services.

4.23. The ACCC considers that the Proposed Conduct would be likely to result in limited public detriment due to a number of factors: the proposed procurement would enable service providers, including smaller providers, to tender to supply one of more of the

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<sup>19</sup> See page 40 of the application.

Relevant Services, and/or tender to supply one or more Participating Councils; the Participating Councils' combined kerbside waste volume is small relative to the total kerbside waste volume in Victoria; the tender processes would be competitive and transparent; and participation in the Proposed Conduct is voluntary for the service providers and the Participating Councils.

4.24. For the reasons outlined in this determination, the ACCC is satisfied that the Proposed Conduct would be likely to result in a public benefit and that this benefit would outweigh the detriment to the public from the Proposed Conduct that would result or be likely to result.

## Length of authorisation

4.25. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>20</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits would outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

4.26. In authorisation AA1000453, the ACCC granted authorisation for 16 years (comprising of 6 years to conduct joint procurement processes and 10 years to make and give effect to contracts).

4.27. In the current application, the Applicants request substitute authorisation for approximately 20 years, comprising:

- approximately 5 years to conduct the joint procurement processes for some or all of the Relevant Services at various times between 2022 to 2026. This period will allow a separate procurement process for each of the Relevant Services to be conducted, and
- a maximum 15-year operating term for each of the contracts entered into.

4.28. Goulburn Valley WRRG and North East WRRG submitted that a 15-year contract term is preferred by most service providers because it more easily allows investment in upgraded or new infrastructure.

4.29. The ACCC accepts that the longer contract period sought would be likely to provide more certainty for, and support the investment decisions of, new and existing service providers. Given the ACCC considers that the Proposed Conduct would be likely to deliver a net public benefit, the ACCC has decided to grant authorisation AA1000610 until 22 October 2042.

## 5. Determination

### The application

5.1. On 21 April 2022, Goulburn Valley WRRG and North East WRRG (both succeeded by the State of Victoria, represented by the Department of Environment, Land, Water and Planning) lodged an application to revoke authorisation AA1000453 and substitute authorisation AA1000610 for the one revoked. This application was made under subsection 91C(1) of the Act.

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<sup>20</sup> Subsection 91(1).

- 5.2. The requested substitute authorisation is sought for the Applicants and Alpine Resorts Victoria (as described in paragraphs 1.10-1.11 above) to engage in the Proposed Conduct (as defined in paragraph 1.12 above).

### The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the proposed conduct would be likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct.
- 5.4. For the reasons outlined in this determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct (as defined in paragraph 1.12 above) would be likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC has decided to revoke authorisation AA1000453 and substitute authorisation AA1000610 for the one revoked.

### Conduct which the ACCC has decided to authorise

- 5.6. The ACCC has decided to revoke authorisation AA1000453 and substitute authorisation AA1000610 for the one revoked. Authorisation AA1000610 enables the Applicants and Alpine Resorts Victoria (as described in paragraphs 1.10-1.11) to engage in the Proposed Conduct (as defined in paragraph 1.12) to collectively procure a range of Relevant Services (as defined in paragraph 1.13).
- 5.7. Authorisation is granted in relation to the provisions in Division 1 of Part IV of the Act and section 45 of the Act.
- 5.8. The ACCC has decided to grant authorisation AA1000610 until 22 October 2042.

## 6. Date authorisation comes into effect

- 6.1. This determination is made on 30 September 2022. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into effect on 22 October 2022.