



**Regional Renewable Organics Network –
Application for authorisation AA1000583
Interim authorisation decision
11 November 2021**

Decision

1. The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of application for authorisation AA1000583, lodged by six local councils in the Barwon Region in Victoria and Barwon Region Water Corporation (**Barwon Water**) (collectively, the **Applicants**) on 13 October 2021.
2. Interim authorisation is granted to enable Borough of Queenscliff, City of Greater Geelong, Colac Otway Shire, Golden Plains Shire, Surf Coast Shire and Wyndham City Council (the **Six Councils**) to collectively bargain with Barwon Water as described at paragraphs 6 below. Interim authorisation extends to the Six Councils entering into Waste Supply Agreements with Barwon Water where those Waste Supply Agreements include a condition precedent that they will not come into effect until such time as final authorisation is granted. Interim authorisation does not extend to the Six Councils giving effect to Waste Supply Agreements with Barwon Water.
3. The ACCC grants interim authorisation in relation to Division 1 of Part IV and sections 45 and 47 of the *Competition and Consumer Act 2010* (Cth) (the **CCA**).
4. Interim authorisation commences immediately and remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until the ACCC decides to revoke interim authorisation.

The application for authorisation and interim authorisation

5. Authorisation is sought for 20 years to enable the Six Councils to engage in collective bargaining with Barwon Water to negotiate the terms of waste supply agreements covering the provision of organic waste material and the supply of waste processing services through a Regional Renewable Organics Network (**RRON**). The RRON is a proposed organics processing facility to be developed by Barwon Water in partnership with the Six Councils.
6. Specifically, the Applicants are seeking authorisation:
 - a) for collective bargaining conduct proposed to be engaged in by the Six Councils in order to negotiate the terms of **Waste Supply Agreements** with Barwon Water (**Collective Bargaining**)
 - b) for, at the conclusion of the Collective Bargaining period, the Six Councils to discuss with each other whether any one or more of them will or will not enter into individual Waste Supply Agreements with Barwon Water (on the terms collectively negotiated), notwithstanding that each Council will ultimately make its own independent decision in accordance with its own approval processes, and
 - c) to enter into and give effect to the Waste Supply Agreements.(the **Proposed Conduct**)

7. The Applicants have applied for interim authorisation to engage in the Proposed Conduct as soon as possible. The Applicants submit that if final authorisation for the Proposed Conduct has not been obtained prior to the decision being made by the Councils to enter into the Waste Supply Agreements, then it is intended that a condition precedent would be included in the Waste Supply Agreements to the effect that they would not come into effect until such time as final authorisation for the Proposed Conduct had been obtained.
8. The application for interim authorisation is discussed further below.

The authorisation process

9. Authorisation provides protection from legal action under the competition provisions in Part IV of the CCA for conduct that may otherwise breach those provisions in the CCA. Broadly, the ACCC may grant authorisation if it is satisfied that the likely benefit to the public from the conduct outweighs the likely 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.

Rationale for the Proposed Conduct

10. The Applicants submit that having sufficient volumes of waste material pre-committed by the Six Councils over the medium to long term at agreed gate fees is critical to the commercial viability of the proposed RRON (as is a pre-requisite for the approval of the capital expenditure required to build the waste recycling facility). As part of the investigations into the viability of the RRON, the Applicants have entered into a memorandum of understanding and a non-binding heads of agreement under which the Six Councils will provide Barwon Water with information in order for Barwon Water to assess and determine the commercial viability and value for money derived from the RRON, including:
 - a. the volume of appropriate organic waste material which might be available to the RRON;
 - b. the composition of the relevant organic waste material;
 - c. the certainty as to the volume and composition of organic waste material;
 - d. the potential contamination in the organic waste material; and
 - e. the commercial terms upon which the waste material will be available.
11. The Applicants submit that, it is currently proposed that, following negotiations with Barwon Water, each of the Six Councils will enter into an individual waste supply agreement with Barwon Water for the provision of organic waste material and supply of waste processing services through the RRON.

Interim authorisation

12. Section 91 of the CCA allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
13. The Applicants request interim authorisation on the basis that it will enable them to engage in the Proposed Conduct, enabling investment in the design and construction of the RRON to meet project completion dates.
14. With respect to seeking interim authorisation to enter into the Waste Supply Agreements, the Applicants submit that despite the proposed condition precedent they will be bound to the terms of the Waste Supply Agreements once executed (even before those Agreements are effective). This means that once the Waste Supply Agreements are executed, subject to ACCC authorisation being obtained, Barwon Water can have certainty over the commercial terms the Councils have agreed to. This will underpin the

required investment approvals to conduct the detailed design work, including several technical assessments, obtaining the necessary approvals, procuring the processing equipment and constructing the RRON facility.

15. In particular, there is approximately 12 months required to develop the design of the RRON and obtain all necessary approvals. This phase, which can not commence until the Waste Supply Agreements are executed, is required to commence at the beginning of 2022 to allow sufficient time to commence construction of the RRON in early 2023 and meet a planned July 2024 'Go Live' date.

Consultation

16. The ACCC invited submissions from a range of potentially interested parties including major suppliers, relevant industry associations and relevant regulatory bodies.¹ No submissions were received.
17. 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

18. In granting interim authorisation, the ACCC considers that:
- there is a need for the Applicants to commence the Proposed Conduct in order to allow sufficient lead times for the RRON to be completed by July 2024
 - having regard to the proposed condition precedent, the relevant areas of competition are unlikely to be altered if interim authorisation to collectively bargain and enter into Waste Supply Agreements is granted
 - the ACCC's preliminary view is that the Proposed Conduct is:
 - likely to result in public benefits in the form of efficiencies through transaction cost savings, economies of scale in processing waste and certainty to underpin investment in a new processing facility and better environmental outcomes through greater potential for diversion of organic waste away from landfill, and
 - is unlikely to result in any significant public detriments as the individual councils will remain free to compare the results of the joint bargaining with their best alternative options and individually enter contracts with Barwon Water based on this individual assessment.

Reconsideration of interim authorisation

19. 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.

¹ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.