



Goulburn Valley Waste and Resource Recovery Group (GVWRRG) and North East Waste and Resource Recovery Group (NEWRRG)

Application for revocation of AA1000453 and the substitution of authorisation AA1000610

Interim authorisation decision 18 May 2022

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation AA1000453 and has granted interim authorisation in respect of the application for authorisation AA1000610 in substitution for the authorisation suspended.
2. The application for revocation of authorisation AA1000453 and substitution of authorisation AA1000610 was lodged by the Goulburn Valley Waste and Resource Recovery Group (**GVWRRG**) on behalf of itself and seven local councils and North East Waste and Resource Recovery Group (**NEWRRG**) on behalf of itself, seven local councils and four alpine resort management boards (together, the **Applicants**) on 21 April 2022.
3. Interim authorisation is granted to enable the Applicants to commence initial procurement processes for specific domestic kerbside waste and resource recovery services. Specifically, interim authorisation is granted to enable:
 - discussions between the Applicants about the procurement of Kerbside Waste and Recovery Services (defined below at paragraph 9);
 - the negotiation and entry into a Memorandum of Understanding between the Applicants that will govern the joint procurement process, including the evaluation of tender responses;
 - the preparation of the Request For Tender (**RFT**) and draft service contracts for the Kerbside Waste and Recovery Services;
 - GVWRRG and NEWRRG issuing the RFT to the market on behalf of themselves and the other Applicants;
 - the evaluation of tender responses by the working group established by GVWRRG and NEWRRG; and
 - the negotiation of contracts for the Kerbside Waste and Recovery Services by some or all of the Applicants and Service Provider(s).
4. Interim authorisation does not extend to enabling the Applicants to enter into contracts for Kerbside Waste and Recovery Services.
5. Interim authorisation commences immediately and remains in place until the date the ACCC's final determination comes into effect, the application for re-authorisation is withdrawn, or until interim authorisation is revoked.

The Applicants

6. The Applicants are:

- Goulburn Valley Waste and Resource Recovery Group (**GVWRRG**), on behalf of itself and seven local councils which it represents (which are the City of Greater Shepparton; Moira Shire; Campaspe Shire; Strathbogie Shire; Mitchell Shire; Murrindindi Shire; and Murray River Shire), and
- North East Waste and Resource Recovery Group (**NEWRRG**), on behalf of itself, seven local councils (which are Alpine Shire; Benalla Rural City Council; City of Wodonga; Indigo Shire; Mansfield Shire; Towong Shire; and, the Rural City of Wangaratta) and four alpine resort management board (which are 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 application for revocation and substitution (re-authorisation)

7. The Applicants seek re-authorisation for 20 years to:

- enter into arrangements to jointly call for tenders for the supply of defined waste services being one or more of the Relevant Services (defined below at paragraph 9), and
- where agreed among the Applicants, 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 **Conduct**).

8. The conduct for which re-authorisation is being sought is the same as the conduct which is the subject of the existing authorisation AA1000453. This application seeks to revoke the existing authorisation and substitute authorisation AA1000610, which includes additional parties.

9. The waste services to which authorisation AA1000453 currently applies and for which the Applicants seek re-authorisation include:

- 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 (RRC) 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 RRC's (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,¹ scrap steel, cooking oil, green waste mulching, fluorescent lighting, aggregates and brick, and automotive batteries)

(together, the **Relevant Services**).

The authorisation process

10. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (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.

Interim authorisation

11. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Conduct while the ACCC is considering the substantive application.

12. The Applicants sought interim authorisation to enable them to call for tenders for the supply of the following specific Relevant Services:

- the collection of kerbside residual waste, comingled recyclables, Food Organics and Garden Organics (**FOGO**) and glass,
- the acceptance and sorting of the collected comingled recyclables and glass,
- the acceptance and processing of FOGO and
- the acceptance and disposal of residual waste

(together, **Kerbside Waste and Recovery Services**).

13. The Applicants sought interim authorisation on the basis that a number of the existing Kerbside Waste and Recovery Services contracts made with the relevant councils are due to expire from February 2023.

14. The Applicants intend to release a tender for the Kerbside Waste and Recovery Services around 16 May 2022 to allow prospective service providers with reasonable lead times from contract award to service commencement. The Applicants submit that without a reasonable lead time, the quality of responses received will be impacted, as will the extent of competition able to be generated from the market.

15. The Applicants sought interim authorisation for:

- discussions between the Applicants about the procurement of Kerbside Waste and Recovery Services;
- the negotiation and entry into a Memorandum of Understanding between the Applicants that will govern the joint procurement process, including the evaluation of tender responses;
- the preparation of the Request For Tender (**RFT**) and draft service contracts for the Kerbside Waste and Recovery Services;
- GVWRRG and NEWRRG issuing the RFT to the market on behalf of themselves and the other Applicants;
- the evaluation of tender responses by the working group established by GVWRRG and NEWRRG; and

¹ 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.

- the negotiation and entry into contracts for the Kerbside Waste and Recovery Services by some or all of the Applicants and Service Provider(s) (with such contracts each being subject to a condition precedent of final authorisation being granted by the ACCC, if final authorisation hasn't already been granted by that time).

16. The Applicants submit that a grant of interim authorisation for Kerbside Waste and Recovery Services will not have any anticompetitive impact because the relevant market(s) will not be affected unless and until any new contracts for those services will become effective.

Consultation

17. The ACCC invited submissions from a range of potentially interested parties including major suppliers, relevant industry associations and state government and relevant regulatory bodies.²

18. The ACCC did not receive any submissions in relation to this application for interim authorisation.

Reasons for decision

19. In granting interim authorisation, the ACCC considers that:

- There is a need for the Applicants to commence preparations for the joint tender process in order to minimise the risk of interruption of service, or having to enter into short-term supply arrangements, if long-term arrangements for the services are not in place when the councils' existing contracts expire.
- The relevant areas of competition are unlikely to be permanently altered if interim authorisation is granted to allow the Applicants to commence the joint tender process but not enter into contracts.
- In authorisation AA1000610, the ACCC considered that the same type of conduct was likely to result in public benefits in the form of reduced transaction costs, improved efficiencies and investment, increased competition and environmental benefits.
- In authorisation AA1000610, the ACCC relevantly concluded that the same type of conduct was unlikely to result in significant public detriments given that each individual waste stream will likely have a separate tender process, and that the Conduct is voluntary for both service providers and the participating councils.

Reconsideration of interim authorisation

20. 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.

² A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.