

10 December 2021

Mr Michael Pappa
Analyst, Competition Exemptions
Merger Exemptions & Digital
Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne Vic 3000

General Counsel Dan Pearce

Direct Line [REDACTED]

Email [REDACTED]

Our Ref DSP 19480069

By email michael.pappa@acc.gov.au

Dear Michael

Metropolitan Waste and Resource Recovery Group - Application for Authorisation

Thank you for your email dated 6 December 2021. We respond as follows to the various questions.

Following your question, we note that Annexure B provides the end dates of contracts between existing providers and Participating Councils. Could you please provide the length of each contract, or alternatively let us know whether there is a range of lengths for the existing contracts.

The contracts have a complicated history, as arrangements that were in place in 2017/18 were the subject of various extensions by way of Ministerial exemption from usual contestability obligations, and the contracts that had been with SKM were taken on by Cleanaway following the insolvency of SKM. In essence, contracts of various original lengths have been allowed to run on over the last 4-5 years pursuant to Ministerial exemptions.

We also note that Great Southern states in its submission, "There is no clarity how widely or under what conditions this CGF is intended to be applied. Once the CGF is set under this process it sets a minimum market hurdle for any new or alternative service providers even though it is set without reference to any volumes (economies of scale) and does not stipulate as to whether it will average all tenders fairly or selectively as per the Landfill services tender. To date the CGF has not been applied before a tender and without specific justification."

Could you please provide more information about the proposed CGF mechanism by reference to the following points:

- 1. Will the CGF mechanism affect how suppliers may decide to tender to supply recycling sorting services to the Participating Councils (including the prices and volumes for their tender submission)?**

A CGF should not affect how suppliers tender, as at the time the supplier will not know what orders it may receive from councils. Further, the CGF only comes into effect if there is a lack of capacity with a supplier, which will also be unknown until councils order services.

Melbourne . Canberra . Sydney . Brisbane . Cairns

Level 8 555 Bourke Street Melbourne VIC 3000 DX 422 Melbourne
GPO Box 2154 Melbourne Vic 3001 T +61 3 9321 9999 www.holdingredlich.com

ABN 15 364 527 724

2. Will the CGF mechanism affect competition between suppliers for the supply of recycling sorting services to the Participating Councils, and if so, how?

It is not expected that a CGF will affect competition between suppliers, for the reasons set out at (1).

3. At what point in the procurement process will MWRRG (or its successor) determine that the CGF mechanism should or will be applied?

The CGF would only come into effect if the orders from councils result in the full capacity of a supplier being reached, so the timing of their application is uncertain.

4. If CGF is applied, will it be applied to all Participating Councils (or only a subset of Participating Councils), and will it be applied to average the costs of services paid across all suppliers (or only a subset of suppliers)?

The CGF will apply to councils that seek services in a particular period where the capacity of a supplier is reached. It may apply to all councils and all suppliers, or only be triggered in a period for a group of councils dealing with particular suppliers.

We hope this is a sufficient response, but please let us know if anything further is required at this stage.

Yours sincerely



Holding Redlich