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Michael Pappa  
Australian Competition & Consumer Commission

BY EMAIL: [exemptions@accc.gov.au](mailto:exemptions@accc.gov.au)

Dear Mr Pappa

**AA1000581 Metropolitan Waste and Resource Recovery Group & Ors (recycling sorting) – Submission**

We refer to your letter dated 14 October 2021 and thank you for the opportunity to comment on the application (**Application**) by Metropolitan Waste and Resource Recovery Group (**MWRRG**) for the revocation of authorisation AA1000451 and substitution of replacement authorisation AA1000581 dated 11 October 2021 (**Proposed Authorisation**).

Capitalised terms not defined in this letter have the same meaning given in the Application.

Cleanaway has serious concerns about both the public benefit claims made in the Application and the degree of competitive detriment that will arise should the Proposed Authorisation be granted.

While MWRRG's Application is presented as a minor amendment to the current authorisation in place, the changes proposed to the conduct sought to be authorised actually have the effect of fundamentally altering what the Commission previously authorised. In Cleanaway's view, the Commission could not be satisfied that any public benefits arising from that conduct will in fact outweigh the loss of competition.

Cleanaway wishes to draw the ACCC's attention to the following matters in relation to the Application:

1. **Public benefits claimed by MWRRG are unlikely to be realised:** There are a number of reasons why Cleanaway considers that the proposed conduct (as amended) is unlikely to deliver the claimed public benefits. These are outlined below.
  - Most importantly, the Proposed Authorisation would result in suppliers not receiving any guarantee of volumes from any Participating Council. This is a fundamental change from the conduct previously authorised by the Commission, which would have resulted in successful suppliers entering into long term contracts with Participating Councils for an agreed (likely substantial) volume of recycling services. As the Commission previously found, this was likely to stimulate competition to be the successful tenderer, and to incentivise either new entrants to emerge with new facilities, or existing competitors to construct new facilities or upgrade existing MRFs. Under the Proposed Authorisation, suppliers will have no guarantee that they will

receive any particular volume of recycling. This means they will be less incentivised to offer attractive pricing in their tender submission, and it will be difficult to underwrite potential new investment or upgrades on the basis of uncertain volumes.

- The Application suggests that suppliers can have comfort regarding the volume of recycling services to be awarded, even in the absence of guaranteed volumes, because the Participating Councils will be required as part of their statutory duties to dispose of the waste somewhere. Cleanaway submits, with respect, that this does not provide the Commission with the full picture. The volume of recycling services likely to be awarded under the proposed panel arrangement will reduce materially in upcoming years because: (1) the councils who will be participating in the proposed conduct have a smaller volume of waste for processing than those that the Commission originally authorised to participate in the collective procurement (around 40,000 tonnes less); (2) not all MRFs are able to process the sorted glass from the bins that will be introduced as a result of the change in Victorian Government policy, meaning that additional waste volumes will be removed from the general "market"; and (3) there will be a material further reduction in waste volumes (potentially of around 15%) following the introduction of the Victorian Container Deposit Scheme.
- It is not accurate to suggest (as the Application does at page 9 and 12) that a public benefit arising from the Proposed Authorisation is that less waste will be sent to landfills. The reality is that all of the Participating Councils have existing arrangements for the disposal of recycling at one of the three main recycling services (operated by Cleanaway, Visy and Polytrade respectively) in the case of commingled recycling, or any of a number of other MRFs in the case of other types of recyclables (operated by companies such as Australian Paper Recyclers, JJ Richards and others), or could readily secure a disposal arrangement. The only reason that co-mingled recycling delivered from those councils and accepted at a facility would end up in landfill instead of being recycled would be if the waste was contaminated in some respect, or the recyclable material did not otherwise comply with the standards required for disposal at a relevant facility. The Proposed Authorisation is unlikely to result in any material change in the volume of recycling being diverted from landfill.
- Finally, Cleanaway has doubts about the extent that Participating Councils will receive the full benefit arising from a reduction in transaction costs, in light of the proposed change to the authorised conduct which will involve the insertion of MWRRG (or a successor entity) in between the Councils and the suppliers, for the purpose of managing a "common gate fee" mechanism. It is obviously a matter for the Councils whether they consider that such a model is in their interests or those of their constituents, but Cleanaway considers that it may increase costs for Councils in two ways: (1) MWRRG may impose a fee for its intermediary services, which will constitute an extra cost that would not otherwise be payable by the Councils; and (2) Councils that take active steps to manage the level of contamination in their commingled recycling, and to ensure compliance by their residents with bin rules, would ordinarily expect to receive more attractive gate rates as a result, because their waste is cheaper to process. Under the proposed model, those Councils will in effect be penalised by not receiving the benefit of that and instead having to pay the same price as other Councils. This will not assist in encouraging Councils to ensure their streams of recycling waste are "clean".

2. **Competitive harm will be greater than acknowledged in the Application.** The Application suggests that the Participating Councils account for around 13% of recycled waste in Victoria, and 1% of the total volume nationally. Cleanaway submits that these figures do not provide the Commission with a meaningful insight into the likely extent to which competition will be lost between Councils as a result of the Proposed Authorisation. The reality is that the Participating Councils collectively account for around two-thirds of the commingled recycling waste that requires processing in the State of Victoria, and they have substantial buyer power as a result. National waste volumes are irrelevant to the analysis, since commingled recycling is not typically transported across State borders – by way of example, councils in Sydney will not consider disposing of their recycling at facilities in Victoria. Similarly, it is not accurate to look at total recycling volumes in Victoria, because the type of waste that municipal councils have (i.e., commingled recycling from household recycling bins) is typically processed in a different way and often at different facilities to the recyclables that come from C&I collections or other sources such as container deposit schemes.

Conversely, current suppliers in the industry do not require the Proposed Authorisation in order to be incentivised to compete strongly to secure Council waste volumes. Cleanaway, for example, has been investing heavily in the assets it acquired from SKM in order to ensure that they are compliant with regulatory requirements, and will also be continuing to invest in areas such as MRFs and downstream processing capability.

3. **No urgency for procurement by 8 November 2021:** Finally, Cleanaway submits that the ACCC should not grant interim authorisation to MWRRG and the other applicants. This is clearly not a matter that is in fact so urgent that the tender process needs to be commenced by 8 November 2021 – to the contrary, the applicants have allowed the entirety of the 12 month period they were granted under the original authorisation for the conduct of the tender process to pass without procurement commencing.

Further, there is no obvious harm to the applicants that will arise if they are required to wait until the ACCC's final authorisation decision to commence the procurement process. As noted above, there are a number of current suppliers of commingled recycling services operating in metropolitan Melbourne. All of those suppliers compete strongly with each other, and have capacity to continue accepting recycling from the Participating Councils. As part of normal industry practice, the current supply agreements with the councils can be extended as required until a new arrangement is established.

Conversely, in light of the concerns raised above, Cleanaway submits that it would be highly detrimental for potential suppliers of the recycling services to have to commit time and resources to participating in the tender before the ACCC has had time to closely assess the impact of the conduct on the market and determine whether the conduct should be authorised. This would place an unreasonable burden on suppliers, particularly where the waste management sector is currently managing an unprecedented set of circumstances to ensure continuity of services across Victoria, including managing COVID-19 related restrictions and also dealing with ongoing regulatory changes in the industry.

In short, the changes to the terms of the original authorisation mean that if the ACCC grants the Proposed Authorisation, the Applicants are unlikely to secure the public benefits described in the Application, while the competitive detriment arising from the conduct will be significant.

Cleanaway thanks the Commission again for the opportunity to comment and please do not hesitate to contact me on [REDACTED] or [REDACTED] should you wish to discuss this further.

Yours sincerely



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Solid Waste Services