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ABN 40 000 805 425

3 Grant Street Cleveland QLD 4163
PO Box 235 Cleveland QLD 4163

T 07 3488 9600 F 07 3488 9681

legal@jjrichards.com.au
www.jjwaste.com.au

Alex Cicchini
Analyst | Competition Exemptions
Mergers, Exemptions & Digital Division
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

By Email: exemptions@accc.gov.au; and **cc:** alex.cicchini@accc.gov.au

Dear Sir,

AA1000597 – GIPPSLAND WASTE AND RECOVERY GROUP – SUBMISSION

We refer to the Australian Competition & Consumer Commission's ("ACCC") Application for Authorisation and Interim Authorisation released on 16 December 2021 made by Gippsland Waste and Resource Recovery Group ("GWRRG") on behalf of itself and Bass Coast Shire Council, Baw Baw Shire Council, East Gippsland Shire Council, Latrobe City Council, South Gippsland Shire Council and Wellington Shire Council ("Participating Councils") on 15 December 2021 ("the Application").

J.J. Richards & Sons Pty Ltd t/as JJ's Waste & Recycling ("JJ's Waste") objects to the Application which would authorise and provide legal protection from competition law for the Participating Councils to investigate and potentially jointly procure the provision of domestic waste collection and transport services. The primary reasons are outlined below and otherwise further submissions are made at page 3.

1. JJ's Waste has heavily invested in establishing operations in Victoria to provide support to Local Government's seeking the competitive and efficient collection and transport of domestic waste streams.
2. As an active provider in the Victorian local authority waste collection market, the GWRRG proposal will preclude JJ's Waste from a significant proportion of the market.
3. In JJ's Waste experience, even if the GWRRG proposal is for the moment restricted to domestic waste only, it is only a matter of time before it will "creep" into the Commercial & Industrial sector, thereby impacting JJ's Waste even further.
4. The implementation of GWRRG's proposal, serves only to block out competitors and will lead to inefficiencies in the delivery of services. Without competition for such a long period of time, GWRRG will inevitably face no pressure to innovate, pass on price reductions to consumers, upgrade ageing infrastructure or generally remain competitive.

JJ's Waste also objects to the request for interim authorisation on the basis that progressing to a tender process in late January 2022 before ACCC's final determination in May 2022 (we assume that May 2023 is incorrect in the timetable of your letter), can result in tenderers wasting valuable time, resources and money to participate in a tender process that may be abandoned if GWRRG is not granted authorisation.

For the above reasons, JJ's Waste objects to the application for authorisation and interim authorisation.

JJ's Waste would be pleased to provide any further comment that assists the ACCC in considering the Application. If further information is required, please do not hesitate to contact the undersigned on [REDACTED] or via email: [REDACTED].

Thank you for your consideration of our submission.

Yours Sincerely,
J.J. Richards & Sons Pty Ltd

[REDACTED]

Nick Page
General Manager Tendering and Contracts

Submission – AA1000597 – Gippsland Waste and Recovery Group

Item 2.3 – Term of Authorisation

‘GWRRG and the Councils expect that service providers will make capital investments in loading infrastructure and monitoring technology on vehicles and in new vehicles and related support facilities’

A 10-year contract term already allows for the capital investment in loading infrastructure and monitoring technology to be achieved in new vehicles. Past tenders have proven that there is no cost advantage to Councils of this size, via this joint tender process. Each local government is individually large enough to solicit tender prices that benefit from economies of scale. Pricing obtained jointly or separately should be the same. If this is not the case, then consumers in one local government area will be subsidising the cost to the other at their detriment.

Additionally, the current Bass Coast Council contract doesn't finish until 2027 and the East Gippsland contract until 2025, which means there is no real benefit to these Councils participating in this joint tender as they will miss out on any advancements in vehicle technology that will occur in the next 3-5 years.

Item 4.3 Rationale

4.3 1 - Increased Waste and Changing Markets

‘To be viable, processing commitments depend on large volumes of waste. Accordingly, aggregation of waste from Councils is required and the best outcomes will be achieved if this is complemented by more efficient collection and transportation efforts’

This statement is true that processing commitments depend on large volumes of waste (bearing in mind that processing is not a part of this application), due to the associated infrastructure costs. However, efficient collection and transportation efforts will already be available to Councils due to the vehicle technology being able to be written off over a long contract term.

4.3 3 – Collaborative Procurement to Assist in Meeting These Issues.

‘For example, the establishment of larger facility in one part of the region may justify the use of larger and more fuel-efficient new trucks than would be possible in servicing a smaller facility in each council area.’

Larger trucks are not more fuel efficient; they use more fuel and emit more emissions and are restricted by compliance with legal loading legislation. Additionally, they may not be able to navigate all streets requiring bin collections, thereby requiring a fleet with smaller vehicles anyway. A larger facility in one part of the region means trucks have to travel further than if multiple depots existed across different Councils through individual contracts. Local employment will also be limited to that part of the region, restricting jobs and employment opportunities across the other LGAs.

‘For example, the move to separate services for glass and organic materials is more readily accommodated by suppliers dealing with multiple Councils, rather than a supplier establishing the facilities needed to provide and collect such bins on a single Council basis.’

The above statement is true for glass and organics processing facilities but is not applicable to collection and transportation. The Councils are large enough to individually procure collection vehicles and associated infrastructure required. Joint tenders are very limited in economies of scale if there are different commencement dates and, in this case, there are 5 different start dates for 6 Councils.

Item 5 – Proposed Conduct

‘to facilitate these joints activities, a group of representatives from each of the Councils, as well as GWRRG, will be established (the Working Group).’

The process of establishing the Working Group to oversee the procurement process adds significantly to the cost of administering the contracts. It is likely meetings would need to be convened between the various participating Councils to establish common ground prior to meetings with the contractor. Issues may be peculiar to one or other Councils resulting in lost time for other participants.

In addition, while some documentation may be similar, it is anticipated individual Councils will still have input to all aspects of the tender process and will need to involve the same amount of internal and external resources to the process. There are unique service requirements for both Councils that will now have to be encompassed into one document. In addition to the meetings that would normally be held within each Council, there will need to be combined meetings to resolve issues. Therefore, it is likely overall transaction costs will increase.

'The proposed joint arrangements will be voluntary for each of the Councils. A Council that does not opt-in to the Proposed Conduct may choose to proceed independently and continue to individually procure its own collection and transport services'

It means individual Councils may have to go through the tender process again and these costs have to be recovered and will add to the service price. For example, a regional group of 5 Councils in Victoria was approved by ACCC to jointly tender, but the tender process was so complicated due to the different start dates, contract terms and individual Council requirements, that no contracts were awarded, and each Council had to individually re-tender.

'It is also proposed that service providers in the bidding process may bid for: a) the provision of services to each participating Council independently; and b) the provision of services to a cluster of the participating Councils...'

This seems to contradict the supposed benefit of the whole process. It means GWRRG tender bids have to be prepared for individual Councils or a cluster of Councils and adds significant cost to participate in the tender process. It may prevent some companies from participating in the process at all, thereby limiting competition. The result is an extremely complex tender bid for service providers to prepare and for GWRRG and Councils to evaluate, potentially resulting in confusion and thereby increasing the risk that individual Councils will opt out of the process.

Item 6 – Market

'Importantly, the larger market for commercial and industrial waste remains separate from the proposed procurement...'

In reducing the contracts available for domestic service providers, this will reduce the number of commercial and industrial waste service providers available in the Council areas, as some of these providers (particularly the smaller operators) will find they can no longer operate without the support of the income or facilities established for a domestic contract. Reduction in presence of commercial and industrial service providers reduces competition amongst the remaining suppliers.

Item 8 – Public Benefit

The complexity of the joint tender process will potentially result in fewer tenders being submitted, notwithstanding the ability to tender for separable portions for each local government area. Some companies that participate in waste collection tenders for smaller contracts may not participate in larger processes. Based on the many tenders throughout Australia each year, the number of tender responses received by a Council for a waste collection contract does not correlate to the size of the LGA. The price outcome is also impacted by a multitude of other factors.

For reasons stated above, there is an equal possibility the number of tenders received could reduce. In broader market terms, a reduction in the total number of contracts available and a variation in start dates and contract terms will lead to a reduced number of skilled, experienced service providers over time leading to reduced competition and increased costs. Granting authorisation will be to the detriment of surrounding LGA's in terms of long term, sustainable competition and the positive impact this has on long term pricing, service quality, innovation and environmental outcomes.

Item 9 Public Detriment

“perceived detriment of the proposed collaborative procurement may be a decrease in competition”.

Each of the Councils will have numerous small businesses within their LGA that rely on or are a part of the local waste and recycling supply chain. For instance, local Mum and Dad operators who have a small fleet of trucks or skips, local cardboard/paper recycling businesses and subcontractors that supply heavy equipment at landfills. In turn there are secondary supply chain businesses that rely on those primary suppliers for business, for example tyre suppliers, welders and mechanics. The revenue these businesses earn is spent locally and remains in the LGA economy, as does employment. These small collection and transport businesses may not have the expertise to bid for a complex joint tender and not be willing to partner with another supplier. The proposal will be at the expense of these small local businesses and will be to the detriment of the local economies overall.

Additionally our experience is that once a proposal is given exclusivity for a certain area of waste, it is only a matter of time before there is a gradual expansion (creep) into other areas of waste, including commercial and industrial. For example, some Councils offer commercial collections of MGB's or bulk bins as a part of their tender specification, which will be to the detriment of local businesses that collect and transport commercial and industrial waste.