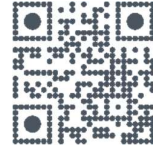




Intelligent Australian Recycling



iQRenew Pty Ltd
(ACN: 129 936 063)
13 Lucca Road Wyong, 2259
NSW

t +61 (02) 9119 4950
e info@iqrenew.com

29 May 2024

Attention: Anna Pound
Assistant Director | Competition Exemptions
ACCC
23 Marcus Clarke Street, Canberra, ACT 2601

Sent by email: exemptions@acc.gov.au

Dear Ms. Pound,

Hunter Resource Recovery Applications for Authorisation (Ref: AA1000670)

Thank you for your letter dated 15 May 2024.

I am writing on behalf of IQ Renew to express our concerns regarding Hunter Resource Recovery's ("HRR") application for authorisation to enter into and manage a new three-year contract extension with Solo Resource Recovery ("Solo").

Background

Currently, there is a long-term contract between HRR and Solo for kerbside collection, processing, and distribution of recyclate services, as covered by the ACCC's existing authorisation A91289 and new authorisations AA1000647 and AA1000648. This contract will have been in place for 12 years when it expires on 30 June 2025.

Proposed New Contract

The services to be provided under the "new, short-term" contract between HRR and Solo are identical to those covered by the current long-term contract. Authorisation for HRR to enter into this new contract extension with Solo would allow for the continuation of these services for an additional three years, until 30 June 2028. Accordingly, this "short-term" contract effectively extends the existing arrangement from a 12-year contract to a 15-year contract.



Market Conditions

It is worth noting that there have been several significant events that have materially changed market conditions since the contract for these services provided to HRR were last subject to a competitive process in 2012. These include:

- From 2012 a significant shift occurred in the gate fees charged to councils to process recyclables as a result of declining markets for offtakes. Processing gate fees around Australia were forced to lift (up to 1,000% in some cases).
- Commencement of NSW's container deposit scheme in December 2017, which provided a new income stream for processors of recyclable material.
- Significant impacts of China's "Green Sword" Policy from January 2018, which decimated the market price of recyclable materials in Australia.
- Increased secondary processing capacity now exists as a result of processors' investing capital (and state government grant funding) to develop secondary processing infrastructure to facilitate the transition to a more circular economy.
- Commencement of export ban in July 2022 of waste plastics that are not sorted into single resin/polymer type or processed into engineered fuel. This ban also caused the price of recycled plastic in Australia to drop materially.
- Introduction of new regulations on the export of waste paper and cardboard that are due to commence in July 2024.

Statutory Obligations

Section 55 of the NSW Local Government Act 1993 ("LGA") mandates the tendering of local council contracts. Pursuant to this legislation, HRR (in the absence of authorisation from the ACCC) has a statutory obligation to invite tenders before entering into a contract of this nature. These legal requirements aim to ensure openness and accountability, build anti-corruption capacity, and achieve the best value for money for ratepayers.

Submission on the Application

IQ Renew has several concerns about the potential impact of HRR's proposed conduct, including its effects on competition in the region, potential abuse of market power, value for money, lack of transparency, public trust, and environmental considerations. We request that the ACCC consider the following points when assessing HRR's application:

Effects on Competition

HRR has stated in its applications (AA1000647 and AA1000648) that the rationale for the proposed conduct is to promote and stimulate competition within the market. However, fair and effective tender processes are crucial to ensuring true competition and delivering the best outcomes for the community. Since the services provided by Solo to HRR under the current contract have not been subject to a competitive process since 2012, extending this contract without competition contradicts HRR's stated objective of promoting competition.



Additionally, I note that the proposed authorisation is not the only exemption that HRR has sought during the last 12 months. Please could the ACCC consider the cumulative impact of a further exemption on the potential to substantially lessen competition in the region.

Please provide clarification on whether the proposed authorisation contravenes the principles of fair competition as outlined in the Competition and Consumer Act 2010, specifically Section 45, which prohibits contracts that restrict dealings or affect competition.

Market Power

Newcastle City Council (“NCC”) is currently considering tender submissions for processing up to 15,000 tonnes per annum of recyclable material. Solo participated in this process and submitted a proposal. Solo already handles a significant volume of the Hunter Region’s recyclable material through its current contract with HRR. If Solo were to be awarded the NCC contract along with a three-year extension to the HRR contract without a competitive bid process, it would effectively control a substantial majority of the region’s recyclable material. This raises concerns about potential abuse of market power and reputational damage to local councils and regulators involved with the HRR application.

Furthermore, should Solo secure the NCC contract and the HRR volume in an uncontested manner, this will exclude companies like IQ Renew and other competitors from effectively competing, potentially impacting long-term viability and competition in the region.

Value for Ratepayers

Section 8A of the LGA sets out the guiding principles for the exercise of functions by local councils. Section 8A(1)(b) requires councils to “carry out functions in a way that provides the best possible value for residents and ratepayers.” HRR has stated that the rationale for the proposed conduct is to provide an efficient and cost-effective process for ratepayers. However, given that the services provided by Solo to HRR have not been subject to a competitive process since 2012, it is difficult to see how HRR member councils are discharging this obligation.

The ACCC’s Description of Conduct regarding the three-year contract extension states, “The commercial terms are still to be negotiated between the parties.” It is challenging to understand how these terms can be negotiated to deliver the best value for ratepayers without a competitive tender process. With more than a year remaining on HRR’s current contract with Solo, there is sufficient time to conduct a public tender process.

Additionally, if the commercial terms are still subject to negotiation, it would appear that Solo will be negotiating from a position of some strength knowing its prices will not be tested by the market.



We request the ACCC to consider and comment on the following:

- The justification for HRR to be exempt from its statutory obligations for tendering local council contracts pursuant to Section 55 of the LGA.
- The benefit to residents and ratepayers if Solo were to be awarded the HRR contract without a public and competitive process.

Transparency and Accountability

Local councils are required by Section 8A(2)(e) of the LGA to ensure their decision-making is “transparent” and that decision-makers are “accountable for decisions and omissions.” More transparency is needed, and comprehensive commercial and legal justifications should be provided for the proposed three-year contract extension that does not comply with LGA requirements.

Public Trust

IQ Renew believes this application has the potential to undermine community trust and may contravene the ethical guidelines and duty of care principles outlined in Section 439 of the LGA. HRR member councils were forced to pay higher fees for recycling services after the closure of the Gateshead material recovery facility (“MRF”) in 2020 due to increased freight costs for transporting material to Solo’s subcontracted MRFs in Sydney, Grafton, and Melbourne. These increased costs were incurred despite the availability of an alternate MRF in Somersby, less than 90km away from HRR member councils.

Given these increased costs and the proximity of an alternate MRF close to the Hunter Region, ratepayers may become concerned about any decision to award a three-year extension rather than testing the market ahead of the expiration of Solo’s current contract in June 2025. A failure to conduct a competitive process could adversely impact the public’s trust in its elected representatives.

Environmental Considerations

Section 8A(2)(d) of the LGA requires local councils to consider the principle of ecological sustainable development when making decisions. The carbon footprint of transporting recyclable materials to Solo’s subcontracted MRFs in Sydney, Grafton, and Melbourne would be substantially greater than that of an alternate supplier capable of processing the material in a MRF situated closer to HRR member councils. HRR member councils could better satisfy residents’ environmental concerns by conducting a tender process that considers environmental impacts as part of the assessment criteria.



I look forward to your comments. If you have any queries or require additional information, please do not hesitate to contact me at [REDACTED] or [REDACTED].

Yours sincerely,



Danny Gallagher
Chief Executive Officer

