



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

In respect of a notification lodged by

National Association of Charitable Recycling
Organisations (Charitable Recycling Australia)

in respect of

collective bargaining for the acquisition of waste
management services

Date: 15 April 2021

Notification number: CB10000478

Commissioners:
Keogh
Rickard
Brakey
Court
Ridgeway

Summary

The ACCC does not object to the notification lodged by Charitable Recycling Australia on behalf of current and future member charities to jointly tender for the collection and disposal of general waste and co-mingled recycling under a weight-based billing system. This type of billing will allow charities in NSW to apply for reimbursement of the waste disposal levy contained in the *Protection of the Environment Operations (Waste) Regulation 2014*, which is administered by the NSW Environment Protection Authority.

The ACCC considers the notified conduct is likely to result in public benefits in the form of transaction cost savings and enabling the member charities to have better input into contracts, particularly with respect to applying a weight-based billing system. The ACCC considers there is likely to be minimal, if any, public detriment.

The notification was lodged on 29 January 2021 and the ACCC has decided to allow it to remain in force for 6 years, instead of the default 3 year period. The notification came into force on 12 February 2021 and will remain in force until 28 January 2027, unless it is withdrawn or revoked.

The notification

1. On 29 January 2021, the National Association of Charitable Recycling Organisations (**Charitable Recycling Australia**) lodged a collective bargaining notification¹ on behalf of itself and its current and future members to enable them to jointly tender for the collection and disposal of general waste and comingled recycling under a weight-based billing system (the **Notified Conduct**).
2. The Notified Conduct will apply to 265 sites in NSW, predominantly charity shops operated by Charitable Recycling Australia's members such as Vinnies Shops and Salvos Stores.
3. Waste collectors typically charge customers based on bin size and the number of bin lifts. However, Charitable Recycling Australia submits this gives no price signal to customers to reduce waste because the fee per bin lift is the same regardless of whether the bin is empty or full.
4. Charitable Recycling Australia has negotiated with the NSW Environment Protection Authority (**NSW EPA**) that waste collected with appropriate scales and invoiced/reported separately to each charity will be exempt waste for the purposes of item 7 of section 88 of the *Protection of the Environment Operations Act*. In practice, the exemption will mean the waste levy paid by each charity will be reimbursed.
5. Charitable Recycling Australia submits that existing waste collection vehicles are unlikely to have the required National Measurement Institute certified scales installed. These scales are required in order to accurately measure and account for waste collected at a particular site. However, it submits the size of the joint tender will encourage tenderers to invest in the facilities necessary for weight-based billing

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (CCA)* for collective bargaining by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining which does not involve a collective boycott will generally commence 14 days after the collective bargaining notification is lodged.

which, in turn, will enable charity retailers to be reimbursed for the costs of the NSW waste disposal levy.

6. The intended outcome of the tender process is for each member charity to form separate contracts with the successful tenderer. These contracts are expected to contain near identical terms. However, member charities will remain free to select their own service provider.
7. The Notified Conduct does not include a collective boycott.
8. Charitable Recycling Australia has requested that the notification be in force for 6 years to allow for the tender process, an initial contract term of 3 years and 2 optional one-year contract extensions.²

Consultation

9. The ACCC invited submissions from a range of interested parties, including potential waste management service providers and the NSW EPA. On behalf of its membership, Waste Contractors & Recyclers Association of NSW (**WCRA**) provided a submission. In particular, WCRA noted the following:
 - An aggregated tender will have a negative impact on small and medium enterprise waste and recycling contractors, particularly smaller contractors in regional NSW.
 - Allowing large contracts to be awarded to one or 2 contractors will very likely result in adverse long-term impacts on competition.
 - Collaborative tenders result in market concentration and reduced competition due to the scale of investment required and as such, the Notified Conduct is not in the public interest.
 - In some locations, waste collection services have been provided on a discounted basis or even in-kind and that the notification may discontinue these arrangements.
10. In response, Charitable Recycling Australia submits:
 - The benefit to the charities and society is that the charities gain an exemption from the NSW EPA landfill levy worth an estimated \$1million per annum and will likely gain some efficiencies in reporting and contract management via a common contract and common contract management as well as predicted price reductions through economies of scale.
 - The NSW EPA wants to exempt the charities from the levy but up until now has had no practical mechanism for doing so. Scales on trucks and standardised reporting are pre-requisites for the exemption. The joint tender is the first part of the process of achieving this.
 - The joint tender process will not have a significant impact on competition because the charity sector in NSW represents a small percentage of the total NSW commercial sites available to waste and recycling contractors and each charity retains the discretion to remain with their current

² The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard 3 year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

provider if they so choose and the discretion to not proceed with the contract at all.

- Saving money on levy and collection/disposal costs will ensure more funds are available to fund the charities' community programs.

ACCC's Assessment

11. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* (Cth) (**CCA**), which requires the ACCC to consider the likely public benefits and public detriments.

Future without the Notified Conduct

12. The ACCC considers that, absent the Notified Conduct, Charitable Recycling Australia's members would continue to individually organise and acquire waste management services.

Relevant areas of competition

13. The ACCC considers that the primary area of competition likely to be affected by the Notified Conduct is for the supply and acquisition of waste management services in various locations across NSW.

Public Benefit

14. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:
 - Reduced transaction costs (such as negotiation and contracting costs) for charities operating in NSW and waste management service providers, compared to the situation where charities negotiate individually with waste management service providers.
 - Increased opportunity for charities to have input into supply agreements relative to a situation where charities individually negotiate with waste management service providers. This may lead to terms of supply that are more comprehensive and that better reflect the circumstances of the charities and service providers, resulting in more efficient outcomes. For example, negotiating for services to be provided on a weight-based billing basis as discussed in paragraphs 3-5 is likely to be more feasible as a group than negotiating individually. Weight-based billing would enable the charities to receive the waste levy exemption, which is desirable for the NSW EPA and the charities.

Public Detriment

15. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between waste management service providers in NSW because:
 - The Notified Conduct is likely to have minimal, if any, effect on the level of competition between waste management service providers. Charitable Recycling Australia submits that the Notified Conduct would cover less than 0.5% of available waste collection from comparable sites in NSW. Accordingly, despite the Notified Conduct, small and medium waste and recycling contractors will continue to be able to compete to supply their services to a range of commercial sites.

- Participation in the Notified Conduct is voluntary for the members of Charitable Recycling Australia, and waste management service providers.
16. The ACCC notes the WCRA's submissions, particularly about the impact on small and medium waste and recycling contractors, and those in regional NSW. The ACCC acknowledges the aggregation of Charitable Recycling Australia's waste management requirements may exclude some small and medium contractors.
 17. Individual charities may elect to engage their own service provider, including at individual locations. However the ACCC acknowledges that the intent of the tender is to aggregate services, with the objective of securing services with weight-based billing in order to receive reimbursement of the waste levy.
 18. While the tender is open to all service providers, the aggregation of services across charity groups in NSW does increase the chance that many or all of the charities will choose a larger and state-wide provider that can offer a service with weight-based billing. However, the tender does not represent a large proportion of total possible waste collection contracts in NSW. As such, the ACCC considers that the Notified Conduct is unlikely to affect the ability of small and medium size providers to continue to operate, and similarly, that it will not affect the level of competition in the market.

Period for which the Notification will be in force

19. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of 3 years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
20. In this case Charitable Recycling Australia requests the notification to be in force for 6 years.
21. The ACCC considers that it is appropriate for the notification to remain in force until 28 January 2027 (i.e. 6 years from the date it was lodged) for the following reasons:
 - The likely public benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total public benefits are likely to be greater with the extended notification period.
 - The extended notification period is unlikely to increase the minimal public detriment which is likely to result from the Notified Conduct.

Decision

22. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the minimal, if any, detriment to the public that is likely to result.
23. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93 AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.
24. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 17, in accordance with s 93AD(5), the ACCC is satisfied that a six year notification period is appropriate in all the circumstances.
25. Therefore, the protection provided by notification CB10000478 commenced on 12 February 2021 and will continue until 28 January 2027, unless the notification is withdrawn or revoked.

26. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.