



OFFICE OF FAIR TRADING

The Producer Responsibility Obligations
(Packaging Waste) Regulations 1997

Biffpack

**A report by the Director General of Fair Trading on the
competition scrutiny of the Biffpack compliance scheme**

July 1997

BIFFPACK

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CONTENTS

<i>Chapter</i>		<i>Page</i>
1	General summary	3
2	Background	4
3	The market	7
4	The Biffpack scheme	12
5	Comments received from third parties	14
6	Assessment	16
7	Conclusions and recommendation	19
 <i>Annex</i>		
A	OFT notice seeking comments from third parties	21

GLOSSARY

This report contains a number of specialised terms whose meanings may not be immediately clear to the general reader. These are explained below:

Converter	a firm that converts raw materials into packaging
Cullet	waste glass that has been recovered for recycling, also known as 'glass recycle'
Downstream companies	companies which, in the chain of supply of a product, are closer to consumers: in this report the term is typically used to refer to those firms that receive, rather than produce, packaging materials - such as retailers handling pre-packed goods
First-mover advantage	a potential competitive advantage gained through being the first operator in a specific market
Obligated company	a company that, under the Regulations, is obliged to recover and recycle used packaging materials
PRN	a Packaging Waste Recovery Note, issued by a reprocessor as evidence of the volume of waste materials it has handled
Upstream companies	companies which, in the chain of supply of a product, are closer to the manufacturers of raw materials: in this report the term is typically used to refer to firms in the business of producing and reprocessing packaging materials
Waste arisings	waste material that is a byproduct of a firm's normal activity

1 GENERAL SUMMARY

- 1.1 This is a report of my competition scrutiny into the Biffpack compliance scheme set up by Biffa Waste Services Ltd, as required by regulation 31 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the Regulations).
- 1.2 The Biffpack scheme will be open to all companies which are obligated under the Regulations, and will cover all materials to which the Regulations apply.
- 1.3 The Biffpack scheme is the third on which I have advised. It is my hope that all these schemes can be registered by the Environment Agency in sufficient time to allow obligated companies a choice as they decide how to comply with the Regulations. A competitive market in this sector is dependent upon there being such a choice. I also intend to advise on a number of additional compliance schemes in the very near future, which I also hope will be registered in time for the deadline.
- 1.4 Having investigated all the issues, I am content that the Biffpack scheme meets the requirements of the competition scrutiny under the Regulations: that is to say, it does not have, and is not likely to have, the effect of restricting, distorting or preventing competition, and it does not lead, and is not likely to lead, to an abuse of market power. Having reached that conclusion, I do not need to consider the remaining question for me under regulation 31, namely, whether - if the scheme is or is likely to have the effect of restricting, distorting or preventing competition - the effect is or is likely to be no greater than is necessary for achieving the environmental or economic benefits mentioned in section 93(6) of the Environment Act 1995.
- 1.5 I recommend that you should advise the Environment Agency in accordance with regulation 31(5) that you are satisfied that the Biffpack scheme meets the requirements of the competition scrutiny.

2 BACKGROUND

The EC Directive

- 2.1 The European Directive on Packaging and Packaging Waste (94/62/EC) came into force on 31 December 1994. Its aim is to harmonise national procedures to deal with waste packaging materials and it applies to all forms of packaging.

The Environment Act 1995

- 2.2 In order to implement the EC Directive in the United Kingdom, section 93(1) of the Environment Act 1995 (the Act) provides for the Secretary of State for the Environment, Transport and the Regions to make regulations for ‘promoting or securing an increase in the re-use, recovery or recycling of products or materials’. Section 93(7) imposes a duty on him to exercise the power to make regulations ‘in the manner which he considers best calculated to secure that the exercise does not have the effect of restricting, distorting or preventing competition or, if it is likely to have any such effect, that the effect is no greater than is necessary for achieving the environmental or economic benefits [set out in section 93(6)]’.
- 2.3 The Act established the Environment Agency (covering England and Wales) and the Scottish Environment Protection Agency (generally referred to throughout this report collectively as ‘the environment agencies’) and transferred to them various functions relating to a wide range of environmental issues including flood defences, contaminated land, abandoned mines, the national parks, air quality, and the reuse of packaging waste material.

The Producer Responsibility Obligations (Packaging Waste) Regulations 1997

- 2.4 The Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (SI 1997/648) made under the Act came into force on 6 March 1997. Their aim is to secure a more sustainable approach to dealing with packaging waste, and to reduce the amount of such waste going to landfill. In order to attain these objectives, they place obligations on businesses in the packaging chain to achieve target levels of recycling and recovery in relation to the amount of packaged goods they place on the market. The targets in the Regulations can be met only by increasing the UK’s present overall levels of recovery and recycling. (The levels currently attained are discussed in Chapter 3.) The form of the Regulations, and in particular the decision to place

obligations on the four main activities within the packaging chain¹ and how the burden should be shared between those activities, reflect the outcome of lengthy consultations that took place between Government and the representatives of the businesses affected over a three-year period, from 1993 to 1996.

2.5 The Regulations require certain businesses to register with the appropriate environment agency to recover and recycle specific tonnages of packaging waste, and to certify that those targets have been achieved. Broadly, these requirements apply to waste paper, glass, metals, and plastic packaging materials, and are to be extended (in the form of a recovery target) to cover wood packaging from 1 January 2000. They set out the obligations incurred by way of percentages of packaging material to be recovered depending on the activity carried out. 'Recovery' in this context does not exclusively mean recycling: the EC Directive set out 13 ways in which recovery might be achieved and these are repeated in Part II of Schedule 3 to the Regulations. In practice, the most likely method of recovery, other than recycling, will be the 'waste-to-energy' route through incineration to produce a source of heating and lighting (see R9 of Part II of Schedule 3 to the Regulations: 'The use of waste principally as a fuel or other means to generate energy'). Obligations to recover and recycle waste packaging materials are incurred by all businesses with an annual turnover of £5 million (£1 million from the year 2000) which handle more than 50 tonnes of packaging materials in one year, and which are engaged in one or more of the following activities:

manufacturing packaging raw materials - obliged to recover 6%;

converting material into packaging - obliged to recover 11%;

using packaging to pack products - obliged to recover 36%;

selling packaging to the final consumer - obliged to recover 47%;

or which:

own the packaging on which any of those activities are carried out; or

supply such material to another stage in the packaging chain or to the final user.

2.6 Importers of packaging material are treated comparably, except that there is a 'rolled-up' obligation depending on the point at which the packaging is imported. For

1 The four activities are: manufacturing packaging raw material; converting materials into packaging; packing and filling packaging; and selling packaging to the final user.

example, material imported by a packer in the UK (who sells on to a retailer) carries a 53% obligation (6% + 11% + 36%).

- 2.7 The overall recovery target for all materials is 38% in 1998 and 1999, rising to 43% in 2000, and 52% from 2001 onwards. As part of this recovery obligation, the companies affected have to recycle 7% of each material that they handle in 1998 and 1999, 11% in 2000, and 16% from 2001 onwards.
- 2.8. Obligated companies can either organise the recovery and recycling of sufficient material to fulfill their obligations themselves - by taking the **individual route** - or they can join a registered **compliance scheme**. Membership of such a scheme exempts a firm from its own individual recovery and recycling obligations: the scheme assumes responsibility for meeting its members' overall obligations. Such schemes are required to be registered with the appropriate environment agency.
- 2.9. Regulation 31 provides for a competition scrutiny by the Secretary of State for Trade and Industry, advised by the Director General of Fair Trading, to ensure that a scheme does not have, and is not likely to have, the effect of restricting, distorting or preventing competition, or that, where it does, the effect is or is likely to be no greater than necessary for achieving the environmental or economic benefits in section 93(6) of the Act, and that the scheme does not, and is not likely to, lead to an abuse of market power. The Director General is required to advise the Secretary of State on whether, in his opinion, the Secretary of State may be satisfied that the scheme meets the requirements of the scrutiny. Unless it has been approved by the Secretary of State (following advice from the Director General) a compliance scheme cannot be registered with either the Environment Agency or the Scottish Environment Protection Agency. There is also provision for the Director General to continue to monitor the various schemes and to advise the Secretary of State if he considers that a particular scheme no longer meets the requirements of the competition scrutiny.
- 2.10 Regulation 32 provides that the Restrictive Trade Practices Act 1976 does not apply to any agreement for the constitution of a body which is exclusively concerned with the operation of a registered compliance scheme. Regulation 33 applies to any agreement which does fall within the Restrictive Trade Practices Act, where at least one of the parties is an operator of a registered scheme and the agreement is made for the purposes of that scheme. If it appears to the Secretary of State that the restrictions in an agreement essentially meet the competition test she may give a direction to the Director General requiring him not to make an application to the Restrictive Practices Court in respect of that agreement. The Court may not make an order in respect of an agreement or provision which benefits from a declaration by the Secretary of State.

3 THE MARKET

Waste packaging materials

- 3.1 The markets affected by the Regulations and by schemes established under them are those for the recovery of recycling of paper, glass, metal and plastic packaging materials. Each of these markets is briefly described in the following sections. Further details of the particular markets are given in Annex A to the July 1997 report on the Valpak compliance scheme.

Paper

- 3.2 The Paper Industry Materials Organisation estimates that some 3.6 million tonnes of paper packaging were used in 1996 (principally paper sacks and bags, and fibreboard packing cases, rigid boxes and cartons), of which 1.4 million tonnes were recycled (39%). Most paper packaging waste is recycled into corrugated case material for sale to box manufacturers. In addition, about 75,000 tonnes (2%) were recovered through waste to energy. Paper and board has an advanced recycling infrastructure already in place and collection could be expanded relatively easily. The recycling target will principally be met through the increased recycling of corrugated packaging, although there is a limited range of end-product use.
- 3.3 The collection of paper and board from commercial outlets is mainly carried out by waste-paper merchants who collect, sort and bale the waste paper and board. Overall there are some 120 such merchants in the UK, but the market is dominated by 10 large firms, owned by the paper mills, which account for about 75% of collected waste paper. Larger quantities will have to be collected for the UK to meet its obligation: this is likely to involve increased collection of smaller lots from retail outlets.
- 3.4 The reprocessing of paper packaging in the UK is highly concentrated. There are only eight board mill groups and these are dominated by four major groups: Smurfit, St Regis (David H Smith), SCA, and British Plasterboard, which together account for about 60% of recycling capacity. The cost of building a new board mill with a recycling capacity of 40,000 - 50,000 tonnes a year is £250 million - £300 million.

Glass

- 3.5 The UK currently produces about 1.9 million tonnes of glass packaging a year (with imports and exports more-or-less in balance): the level of recovery has increased from around 188,000 tonnes in 1989, to some 361,000 tonnes in 1993, and approximately 430,000 tonnes a year at the present time (23% of production). Glass is comparatively easy to recycle - and can be recycled time and time again. The UK has the capacity to recycle about 900,000 tonnes of glass, which would fully satisfy its obligations - although there would have to be a significant increase in the collection of recycled

material, from both commercial and domestic sources.

- 3.6 At the present time, glass packaging is primarily recovered from consumers rather than from commercial outlets. The Glass Materials Organisation estimates that there are already about 50,000 bottle banks spread over 20,000 sites throughout the UK, but it believes that a further 200,000 tonnes of glass could be collected through further expansion of the bottle-bank system. Between 300,000 and 400,000 tonnes of glass containerware are currently sold every year to pubs and other licensed outlets, but most of this ends up in landfill sites because there is no ready means of collecting it after use.
- 3.7 The glass processing market is very concentrated. There are four main companies which sort and clean collected bottles ready for manufacturing new glass products in the UK: Berrymans, the largest independent processor, which sells the recyclate glass (or cullet) to the British Glass Recycling Company; United Glass, which uses the processed cullet itself; Glass Recycling (UK), which deals solely with P L M Redfearn; and Industrial Reclamations, a small processor in Kent.
- 3.8 The glass reprocessing market is also very concentrated. There are only seven reprocessors in the UK, three of which (P L M Redfearn, United Glass, and Rockware) currently reprocess about 90% of the UK's cullet. It is estimated that the construction of a new furnace would currently cost some £13 million.

Aluminium

- 3.9 In 1996, the UK used around 116,000 tonnes of aluminium packaging, primarily in the form of cans, foil, aerosols, barrels, and collapsable tubes. Some 26,000 tonnes (22%) of this material are recovered, of which about 95% is recycled and 5% is recovered through waste to energy. Efforts to collect post-use aluminum packaging have been concentrated on beverage cans and foil which are recovered from household waste.
- 3.10 The infrastructure for collecting aluminium cans is well established. Around 78,000 tonnes of aluminium cans were used in 1995: of this total, some 23,900 tonnes (31%) were subsequently recycled. There are about 5,000 aluminium can banks in the UK, of which 4,000 are owned by local authorities, with the balance on retail sites. Sufficient collection infrastructure and reprocessing capacity for aluminium packaging is already in place to meet the UK's obligations: the key challenge will be to encourage consumers to increase the volume of packaging which is collected.
- 3.11 The UK consumes about 23,000 tonnes of single-material aluminium foil a year, the bulk of which is in the form of foil containers, household foil, and milk-bottle tops. Only around 350 tonnes of foil are recycled a year, mainly collected through voluntary

schemes set up by charities and schools. The low weight of the material and its wide geographic distribution has meant that collecting it on a commercial basis has not proved viable.

- 3.12 Producing primary aluminium involves very high costs, but the recycling costs of secondary aluminium are low and the waste can be melted and reused indefinitely without loss of quality. The construction of a dedicated Alcan recycling plant near Warrington, with a capacity of about 60,000 tonnes a year, cost £28 million compared with the £300 million that would be required for a primary smelter. At present the plant has to recycle cans imported from Europe and the USA because not enough are collected in the UK. Alcan expects to increase the capacity of this plant to about 80,000 tonnes in the next two years. Aluminium foil is mainly recycled by Calder but there are a limited number of other firms in the secondary industry which also recycle small amounts of foil. Most recycled foil is used for cast components in cylinder heads in the automotive industry.

Steel

- 3.13 Around 600,000 tonnes of steel packaging are used each year in the UK, either uncoated (steel drums, for example), or plated with tin or other lacquers to produce a sterile, rust-resistant product for food packaging. Steel is easily sorted and can be recycled at relatively low cost. Some 80,000 tonnes (13%) of steel packaging were collected for recycling in 1996 - mainly from household waste. Local authorities extract steel from incineration residue at waste-to-energy plants by the use of magnetic separation. It is estimated that the UK has the capacity to recycle up to 240,000 tonnes a year, and additional capacity will be needed to meet the UK's obligations, involving large-scale capital investment.
- 3.14 In 1996, the British Steel 'Save-a-Can' scheme, with 2,000 sites nationwide, collected some 6,000 tonnes of steel and aluminium cans. Commercial undertakings - public houses, clubs, restaurants, and garages, in particular - generate a significant amount of steel packaging but most of it is currently not recycled. British Steel has the capacity to recycle 100,000 tonnes of incinerated cans a year and as many de-tinned cans as can be collected. The steel can be recycled into coil and ingots for manufacture into other products. Tin-plating can be removed from cans to upgrade the steel. At present there are two de-tinning plants in the UK. Together they have the capacity to process about 35,000 tonnes of magnetically-separated material a year and produce about 30,000 tonnes of high-quality steel and 120 tonnes of tin.

Plastics

- 3.15 Every year the UK uses about 1.8 million tonnes of plastic packaging, which primarily consists of flexible plastic film (carrier bags or pallet stretch) and rigid containers,

such as bottles and intermediate bulk containers (plastic boxes, crates, and buckets). About 80,000 tonnes (4.5%) of this material were recovered in 1996. A significant increase in the quantity of plastic packaging recovered will be necessary if the UK is to meet its recovery and recycling targets. Post-use plastic packaging is generated both by commercial outlets (plastic film wrap and crates, used for transit packaging) and by households (although, since film wrap may be contaminated by food, only rigid containers are recycled). While the recycling of packaging film and crates is comparatively easy, higher capital investment is required to separate the polymers and produce high-quality recyclate from domestic waste.

- 3.16 Plastics reprocessing in the UK is a fragmented business, made up of some 120 separate firms. Two constraints limit the range of possible end products from recycled material: first, colour contamination - coupled with the high cost of adding new colour - means that such products must be a drab shade; and secondly, the possibility of bacterial contamination means that the material cannot be employed in the food and drinks industries - the very sectors which account for the bulk of virgin plastic packaging. At present, plastic recyclate is used to make such products as refuse sacks, benches, drainage pipes, coat hangers, flower pots, fibre filling, strapping, engineering plastics, carpet backing and floor tiles, garden and street furniture, window and door frames and fence posts, synthetic wood products, wheelie bins and composting bins.

Waste-to-energy schemes and composting

- 3.17 Apart from recycling waste packaging as reusable material, both the European Directive and the UK Regulations provide for recovery to be achieved through conversion into energy. In this context, 'energy recovery' is defined as 'the use of combustible packaging waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat'.
- 3.18 Another possible means of recovery is composting, or 'organic recycling' - although it is not anticipated that this will play a significant role. Organic recycling is defined as 'the aerobic (composting) or anaerobic (biomethanization) treatment, under controlled conditions and using micro-organisms, of the biodegradable parts of packaging waste, which produces stabilized residues or methane'. For the purposes of the Regulations, landfill is not seen as a form of organic recycling. These alternative forms of recovery and recycling are not considered further in this advice.

Waste management sector

- 3.19 The waste management sector is involved in the collection, initial sorting and disposal or treatment of waste. This waste emerges from a variety of sources and includes household, commercial, industrial, agricultural and clinical waste. There are three

main options for the waste: landfill, which is where the large majority of waste is disposed of; incineration; and recycling.

- 3.20 The waste management sector essentially comprises local authorities and private sector waste management companies, many of which are small local operators or niche suppliers (dealing, for example, solely in paper and board collection), which operate their own collection rounds as well as contracts for local authorities. It is a fragmented sector but appears to have been undergoing a period of consolidation and there are now a number of companies which operate on a national scale and handle many different types of waste. The largest companies include Onyx, Sita, Biffa Waste Services, Cleanaway and Shanks & McEwan.
- 3.21 To set up as a waste management company, a new entrant needs to rent or purchase equipment such as a weighbridge, loading shovels, compactors, balers, transport, and have access to a site to store the waste and carry out limited sorting. Some recycling firms will loan sorting equipment free of charge in return for delivery of the sorted waste to their plant. A new entrant also needs to obtain a licence to operate as a waste management company for which it would need to demonstrate that it has planning permission and an established-use certificate; that it has satisfied the Water Regulation Authority that it will not pollute the Environment, harm human health or damage local amenities; and demonstrate that it is operated by a fit and proper person. The Office is not aware of any restrictions on the number of licences issued in particular areas and it seems unlikely that the requirements would act as a significant regulatory barrier to entry.

4 THE BIFFPACK SCHEME

- 4.1 Biffpack is a compliance scheme that will operate as a discrete unit within Biffa Waste Services Limited (Biffa). Membership of the scheme will be cross-sectoral, multi material and unrestricted, although Biffpack will reserve the right to refuse membership. Under the scheme, Biffpack will:
- register members under the requirements of the Regulations;
 - provide members' packaging flow information to the Environment Agency in aggregated form;
 - discharge members' obligations by meeting the targets laid down in the Regulations for recovery and recycling.
- 4.2 Biffa is one of the UK's largest waste management companies and is involved in the collection of waste from industrial, commercial and domestic outlets. It has 41 depots spread throughout England and Wales and collects about 1.7 million tonnes of waste a year, of which it estimates that up to 30% (0.5 million tonnes) is packaging waste. Where Biffa collects evidence of recovery and recycling from reprocessors in the forms of Packaging Recovery Notes (PRNs) for packaging waste collected from unobligated sources, Biffpack will take ownership of the PRNs and use them to offset the scheme's aggregated liabilities. This benefit would be apportioned among members, along with any costs incurred in obtaining the PRNs, on an equal basis. In the event that the scheme was unable to meet its obligation through the PRNs brought to the scheme by both the members and Biffa, evidence would be procured from reprocessors, local authorities, members' excess waste arisings, and waste-to-energy plants. The costs of obtaining these additional PRNs would be paid by members according to the level of obligation which they had brought to the scheme.
- 4.3 The charge for membership in 1997/98 will be based on the cost per member of Environment Agency registration plus an additional charge to cover running costs. From 1 April 1998, membership will be charged on the basis of an annual subscription plus the cost of acquiring the evidence of recycling and recovery necessary to meet the shortfalls of the scheme. These costs would be charged back to members at the end of each calendar year on an apportioned basis set against the net obligation they brought to the scheme, taking into account their own recycling and recovery activities and the recycling activities of Biffa.
- 4.4 Members will be entitled to leave the scheme by giving 30 days' notice. Any member leaving before 31 December will not be required to pay the apportioned costs of meeting the targets for that year as they would take the full year's obligation with

them, but they would be required to pay any outstanding apportioned costs for the previous year.

- 4.5 Biffpack intends to set up an Advisory Committee with representation from each packaging sector to monitor the progress of the scheme and consider ways in which the membership could improve the success of the scheme. The Committee will not have any executive powers within the scheme.

5 COMMENTS RECEIVED FROM THIRD PARTIES

- 5.1 Consultation notices were placed on 12 and 13 June 1997 respectively in *Packaging Week* and *Materials Recycling Week* (see Annex A). The views of the respondents are summarised below.

Dominance

- 5.2 A small number of firms expressed concern that Biffpack might become dominant and abuse its position.

Links between Biffa and Biffpack

- 5.3 While some firms welcomed the prospect of a waste management company setting up a compliance scheme, others expressed concern at the concept. The concern appears to be twofold.

Restriction of access to PRNs

- 5.4 First, firms were concerned that Biffpack might be able to tie up a significant proportion of PRNs through its links with Biffa. Waste management schemes are expected to be important sources of PRNs. If Biffa collected a significant amount of packaging waste for which Biffpack could obtain PRNs it might be difficult for firms which were members of alternative schemes or pursuing the individual route to obtain PRNs to discharge their own obligations.

Distortion of the market for waste management

- 5.5 Secondly, concern was expressed that membership of Biffa might be a prerequisite to joining Biffpack, or that Biffa customers might receive preferential treatment within Biffpack creating a strong incentive for firms to use Biffa to handle their waste, rather than the firm of their choice.

Limiting of membership numbers

- 5.6 The summary of the Biffpack scheme states that it retains the right to refuse membership, without clarification as to the circumstances in which it would refuse membership. Concern was expressed that Biffpack might discriminate as to which obligated companies it accepted as members.

Apportionment of PRNs

- 5.7 The summary provided by Biffpack did not explain how the PRNs which Biffa obtained from non-obligated companies would be apportioned to members. Concern was expressed that they might not be apportioned equitably among members.

Other concerns

- 5.8 Concern was also expressed that members did not appear to have a role in developing the scheme and that the scheme might become dominated by retailers. Neither of these two concerns are competition concerns and are therefore not considered any further in this advice.

6 ASSESSMENT

6.1 I have considered the level of competition that Biffpack is likely to face and whether it is likely to restrict, distort or prevent competition. The main issues are set out below.

Dominance

6.2 Biffpack is being set up as a national cross-sectoral compliance scheme. Of the further compliance schemes which have submitted a formal notification to my Office, Valpak, Wastepack and Recycle UK intend to operate on the same basis. It seems likely that these and any other such schemes will be the most direct source of potential competition Biffpack will face and they will have the potential to constrain its fees and levies, and act as a spur to improve efficiency.

6.3 It is difficult at this stage, however, to judge the level of actual competition Biffpack will face from these schemes, particularly because it is not clear which schemes will obtain regulatory clearance. I have already completed a competition scrutiny of the Valpak scheme: in my report I discussed the possibility that Valpak may benefit from a ‘first-mover’ advantage because of its close and high profile involvement in the development of the Regulations. This suggests that it has the potential, at least, to be a strong competitor to Biffpack (assuming that both Valpak and Biffpack meet the registration requirements of the Environment Agency).

6.4 The Regulations allow individual companies the option of arranging the discharge of their obligation themselves. The individual route, however, is unlikely to be a close substitute to membership of a compliance scheme, because it does not offer the same degree of convenience or security in terms of immunity from prosecution that membership of a scheme offers. Some waste management companies are, however, offering to obtain PRNs to offset a firm’s entire obligation, thereby providing the convenience of a ‘one-stop shop’. This is likely to prove to be a closer substitute to membership of a scheme, but it is impossible to judge, at this stage, how effective a constraint this option will be in practice.

6.5 Whether the level of competition Biffpack will face will be sufficient to constrain the level of charges it sets and ensure that high levels of efficiency are attained remains to be seen. Valpak is, nevertheless, likely to be a strong competitor because of its first-mover advantage. I intend to monitor the level of competition among compliance schemes as the Regulations come into force.

Distortion of competition in the waste management market

- 6.6 Concern was also expressed to my Office that Biffpack's links with Biffa meant that an obligated company may be required to employ Biffa to handle its waste management as a condition of becoming a member of Biffpack, or that Biffa's clients may receive preferential treatment within Biffpack. Biffpack has told my officials, however, that members will be free to use the waste management firm of their choice for their own waste recovery and recycling activities, and that all members will be treated on an equal basis.

Limiting of membership numbers

- 6.7 I have particularly sought clarification of any circumstances under which Biffpack would refuse membership: Biffpack has told my officials that it only envisages refusing membership where a firm has an unsatisfactory credit check. The scheme is otherwise open to all obligated firms.

Restricted access to PRNs

- 6.8 A key concern when assessing Valpak's scheme was the prospect that Valpak might tie up significant proportions of packaging waste or reprocessing capacity with exclusive contracts. Biffpack has told my officials that it is unlikely to enter into any exclusive contracts with reprocessors, but that it will have access to PRNs from Biffa's existing waste collection activities. Some third parties expressed concern to my Office about this because they anticipate waste management companies being important sources of PRNs. If Biffa collected a significant proportion of a particular type of packaging waste for which Biffpack obtained the PRNs (irrespective of the tonnage obligation Biffpack needed to discharge), it could restrict the ability of other schemes or companies following the individual route to discharge their obligations.
- 6.9 Biffa has told my Office that it collects about 1.7 million tonnes of waste each year, of which over 10,000 tonnes is cardboard and over 4,000 tonnes is glass. Of this waste, Biffa estimates that about 0.5 million tonnes (30%) is packaging waste. In 1996, the UK was estimated to have a total of 8.7 million tonnes of packaging waste and Biffa therefore collects roughly 6% of the UK's packaging waste. On the face of it, this suggests that Biffpack is unlikely to be able to tie up a significant proportion of PRNs as a result of its links with Biffa, especially as Biffpack will only receive PRNs for the packaging waste which Biffa collects from un-obligated sources. Where Biffa receives a PRN for handling an obligated company's own packaging waste, it has said that it will pass that PRN on to the obligated company (irrespective of whether the company is a member of Biffpack).
- 6.10 I do not therefore consider that Biffpack, at least initially, will be able significantly to

restrict non-members' access to PRNs in any particular waste stream. The Regulations do, however, provide me with a continuing monitoring role.

Apportionment of PRNs

- 6.11 Biffpack has said that it intends to distribute the PRNs it receives from Biffa equitably among its members, regardless of the level of each members' tonnage obligation. Any charges which it incurs in obtaining these PRNs will be similarly apportioned among members.
- 6.12 Biffpack has confirmed that the cost of obtaining PRNs which are required in addition to those obtained via Biffa will be split among firms on a pro rata basis according to the net liability of each member. It proposes to charge all members the same amount for PRNs in a particular material.

Fees

- 6.13 I would have been concerned if Biffpack developed a dominant position and charged discriminatory registration fees or levies to members competing in the same product or service market. Biffpack has said, however, that all members will be treated equally with one level of fees for all companies. It proposes a fee structure which will encourage members to join for two years, by allowing a discount for joining for this reason. Prospective members will be able to take this into account when considering whether or not to join Biffpack and it is not likely significantly to distort competition. Members are entitled to leave on giving 30 days' written notice.

7 CONCLUSIONS AND RECOMMENDATION

Dominance

- 7.1 Although it is difficult to assess the level of competition which Biffpack will face, it appears unlikely that the scheme will achieve a level of dominance in the market. It is likely to face strong competition, in particular from Valpak. I intend to monitor closely the level of competition amongst compliance schemes as the Regulations come into force.

Distortion of competition in the waste management market

- 7.2 I welcome, and note, Biffpack's statement that all members will be free to use the waste management firm of their choice, and will not be required to contract with Biffa.

Limiting of membership numbers

- 7.3 I am satisfied that the Biffa scheme is open to all obligated firms, and that there are no undue restrictions on membership.

Access to PRNs

- 7.4 Although Biffpack does not intend to enter into exclusive contracts with reprocessors, it will have access to PRNs from Biffa's waste collection activities. The actual level of PRNs to which Biffa will have access means that it is unlikely that Biffpack would be able to tie up a significant proportion of PRNs as a result of its linkage with Biffa. I welcome the assurance that PRNs received by Biffa for handling an obligated company's own packaging waste will be given to the obligated company, irrespective of whether that company is a member of Biffpack. Nevertheless, this is an area I intend to monitor closely as competition develops in the market.

Apportionment of PRNs

- 7.5 The equitable apportioning of PRNs obtained (and any charges incurred in obtaining them) by Biffpack from Biffa among members is a satisfactory method of dealing with this matter. I am also satisfied with Biffpack's intention to allocate the costs of obtaining PRNs which are required in addition to those obtained via Biffa on a pro-rata basis according to the net liability of each member.

Fees

7.6 With regard to registration charges, Biffpack has said that one level of fees will apply to all companies. Biffpack has also confirmed that the cost of obtaining PRNs required in addition to those obtained from Biffa or from members will be split on a pro-rata basis according to the liability of each member.

Recommendation

7.7 I therefore recommend that you should advise the Environment Agency, in accordance with regulation 31(5), that you are satisfied that the Biffpack scheme meets the requirements of the competition scrutiny.

July 1997

John S Bridgeman
Director General of Fair Trading

ANNEX

A OFT NOTICE SEEKING COMMENTS FROM THIRD PARTIES

The following notice was placed in issues of *Packaging Week* and *Materials Recycling Week* dated 12 and 13 June 1997 respectively.

OFFICE OF FAIR TRADING

Biffpack and Wastepack UK Ltd - notification of compliance schemes

The Producer Responsibility Obligations (Packaging Waste) Regulations 1997 ('the Regulations')

Under these Regulations, certain businesses have obligations regarding the recovery and recycling of packaging. They can either act alone to meet the requirements of the Regulations, or join a registered compliance scheme which will assume this responsibility for its members.

The Director General of Fair Trading has a duty to undertake a competition scrutiny of all compliance schemes prior to their registration.

The Director General has received submissions concerning the operation of two separate compliance schemes. They are:
(i) Biffpack, a scheme to be operated by Biffa Waste Services Ltd; and
(ii) Wastepack UK Ltd.

Both schemes will be open to all industry sectors and will cover all material types to which the Regulations apply.

The Director General invites comments from interested third parties in relation to the schemes to be operated by Biffa Waste Services Ltd and Wastepack UK Ltd. They should be addressed to:

David Blocksidge
Office of Fair Trading
Competition Policy Division
Field House
15-25 Bream's Buildings
London EC4A 1PR

Please contact Mr Blocksidge if you require summaries of the proposed schemes. To be considered as part of this consultation, comments must be received by 30 June 1997.