



OFFICE OF FAIR TRADING

The Producer Responsibility Obligations
(Packaging Waste) Regulations 1997

Difpak Limited

**A report by the Director General of Fair Trading on the
competition scrutiny of the company's compliance scheme**

July 1997

DIFPAK LIMITED

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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 compliance scheme set up by Difpak Limited, as required by regulation 31 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the Regulations).
- 1.2 The Difpak scheme has been set up by the Dairy Industry Federation (DIF) and is primarily aimed at the members of the DIF. The scheme will deal with all types of packaging material for which it will discharge its members' obligations.
- 1.3 On 15 and 17 May respectively, consultation notices regarding the Difpak scheme were placed in *Packaging Week* and *The Grocer* magazines (see Annex A). In addition a number of consultation letters were sent out directly to interested parties. Comments made in response to the consultation have been noted in the course of this scrutiny.
- 1.4 I welcome the development of compliance schemes in general: the only way a fair and competitive market can be guaranteed in this sector is if companies obligated under the Regulations are given a variety of competing options. In undertaking this competition scrutiny of the Difpak scheme I have considered a number of general issues which appear to me to relate to all compliance schemes. These include whether a scheme is likely to establish a position of dominance; the effects on the market of any exclusive contracts into which the scheme may enter; the criteria upon which potential members are accepted or rejected by a scheme; the levies which a scheme charges and whether there is any disparity between different members; the treatment within the scheme of companies which generate their own waste packaging material; and whether cross-subsidisation between materials in terms of the levies charged is likely to occur within the scheme. I have also considered the ease with which members may leave the scheme - a formidable exit route may constitute an effective barrier to entry.
- 1.5 Having investigated all these issues, I am content that the Difpak 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.

- 1.6 I recommend that you should advise the Environment Agency in accordance with regulation 31(5) that you are satisfied that the Difpak 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 recycle 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.

Milk processing

- 3.19 About 50% of the raw milk produced in the UK is processed into liquid drinking milk and about 22% is processed into cheese, 13% into yellow fats (butter, margarine), 2% into cream and 13% into other products such as yoghurt and chilled deserts. In 1996, the milk processing market had a value of approximately £7 million. There are about

300 raw milk processors in the UK, of which only 20 have the capacity to process more than 100 million litres of raw milk per annum. These 20, which account for 80% of raw milk purchased, are dominated by three large firms, Northern Foods, Dairy Crest and Unigate, which together process about 50% of the UK's raw milk. Milk processing is therefore a relatively concentrated industry.

4 THE DIFPAK SCHEME

- 4.1 The Dairy Industry Federation is a trade association representing the interests of processors of liquid drinking milk and dairy products in England and Wales. Its members process over 90% of the raw milk produced in England and Wales and use about 0.5 million tonnes per annum of non-returnable packaging, and about 100,000 tonnes of returnable glass.
- 4.2 Difpak has been incorporated as a non-profit-making company limited by guarantee. The day-to-day management of the company will lie with its Board of Directors. There will be a maximum of seven directors, of whom two will be appointed by the DIF and three will be appointed from participants. These five directors will together have the right to appoint up to two further directors.
- 4.3 The aim of Difpak is to discharge the producer responsibility obligations of its members. Participation is open to any member of the DIF, its sister organisations in Scotland and Northern Ireland, and other organisations which operate a food business. The DIF has provided an initial contribution to Difpak's start-up costs, and Difpak will be able to make use of the services of the DIF to reduce staff requirements and operating costs wherever it makes economic sense.
- 4.4 Members of Difpak will be required to send to the scheme the same information as would be necessary if they had opted for individual compliance. Difpak will provide advice to help members calculate their obligation and inform the Environment Agency of its members' aggregate obligation.
- 4.5 When the recovery and reprocessing obligations come into effect, Difpak intends to purchase evidence of recovery and recycling in the form of Packaging Waste Recovery Notes (PRNs) from reprocessors. Difpak will then provide the PRNs to the Environment Agency as evidence that it has discharged the recovery and recycling obligations of its participants. The Difpak fee structure will reflect the Regulations: in year one the obligation is to register and the year one fee will cover start up and registration requirements; in year two the obligation is to meet the recovery and recycling targets, and the year two fee structure will have an administrative element and an element related to the member's recovery and recycling obligations. The year two fee will also include an element to provide priming funds for various Difpak -

sponsored activities to increase the amount of recovery and recycling carried out in the UK. Additional measures which may be taken (if funds are available) include:

- pilot schemes to demonstrate the viability of recovering certain materials; and
- providing support for charities and voluntary organisations to set up collection points for segregated consumer packaging waste.

4.6 It is intended that members will also explore with their customers (the retailers) means of encouraging consumers and local authorities to segregate packaging waste by material, and Difpak will establish relationships with various trade associations and others to facilitate recycling and recovery systems. Difpak also intends to set up user groups to analyse the collective obligations of participants to identify solutions which will improve packaging waste collection and recovery and encourage the use of alternative packaging materials which can more economically be recovered.

5 ASSESSMENT

- 5.1 Many third parties who responded to the Difpak consultation did not anticipate any competition concerns arising from the Difpak scheme. Others stated that the comments they made on the Valpak scheme might also apply to Difpak. These were essentially concerns that the scheme might become dominant; that it might tie up capacity through exclusive contracts; and that it might cross subsidise between materials.
- 5.2 I have considered the concerns raised by third parties and additionally considered whether Difpak is likely to distort competition in the milk processing market.

Dominance

- 5.3 Difpak has been set up as a sector specific scheme targeted primarily at DIF members which it estimates have a combined obligation of the order of 0.5 million tonnes of non-returnable packaging and 100,000 tonnes of returnable glass packaging. This represents about 7% of the UK's total obligation under the Regulations.
- 5.4 Difpak is, however, also open to other firms which operate a food business, a sector which is likely to account for a significant proportion of the UK's obligation. Difpak is, however, likely to face competition from cross-sectoral schemes, particularly for firms with a food business but which are not milk processors. Of the further compliance schemes which have submitted a formal notification to my Office, I have consulted on four - Valpak, Biffpack, Wastepack and Recycle UK - which intend to operate on a national cross-sectoral basis. It seems likely that such schemes will be the most direct source of competition Difpak will face and they have the potential to constrain its fees and levies, and act as a spur to improve efficiency. In any event, Difpak has been set up as a non-profit making organisation, a fact which should remove any incentive to charge excessive levies.
- 5.5 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. For this reason, Valpak is likely to be the strongest competitor to Difpak (assuming that both meet the registration requirements of the Environment Agency), particularly in the wider food sector.
- 5.6 The Regulations allow individuals 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.

- 5.7 From 1 January 1999, members may leave the Difpak scheme on giving one month's notice. Until then, Difpak's members are only able to leave the scheme if Difpak increases the level of fees or alters the terms and conditions of the Membership Agreement. Members are, therefore, only obliged to remain with the scheme until the end of the first year in which they have recovery and recycling obligations and even within this time could still leave if fees or membership terms and conditions changed. I do not consider that this restriction will unduly tie members to the scheme.

Exclusive contracts

- 5.8 I would be concerned if Difpak were able and likely to tie up a significant proportion of packaging waste, or its recovery or recycling capacity, and thus restrict the ability of others to obtain PRNs. Because of its nature and size, however, Difpak is unlikely to have the bargaining power to achieve this.

Cross-subsidisation between packaging materials

- 5.9 Difpak has said that recovery and recycling levies will be determined primarily by the cost of PRNs for each material. The intention will be to purchase the minimum quantity of expensive PRNs (in, for example, plastics) to meet the relevant members' recycling targets, and to achieve the recovery target using cheaper PRNs (in, for example, paper and glass). There may, therefore, be a degree of cross-subsidisation between materials, but this will be no more than is allowed for by the Regulations.

Distortion of competition in the milk processing market

- 5.10 It is possible that industry sector-based schemes may be able to provide their members benefits which cross sectoral schemes are less able to provide, particularly if they can draw upon the experience of a relevant trade association. They may therefore prove to be a particularly effective means of discharging a members' obligation. Difpak has said that it intends to provide advice on the calculation of its members obligations (for example by providing ready reckoners for use in calculating obligations which are specific to milk processors) as well as advice on how members might reduce their obligations or switch to using alternative packaging materials which are easier to recover. Difpak has also said that it will also be able to draw on the services of the DIF which may reduce its administration costs. There may therefore be advantages for a milk processor in joining Difpak but it is not clear that these advantages will

necessarily prove to be significant. Other schemes may be able to provide different benefits which Difpak is less able to provide.

- 5.11 Nevertheless, DIF's members process about 90% of the raw milk produced in England and Wales, and so the question arises as to whether Difpak (if a significant proportion of DIF members were to join the scheme) would be likely to distort competition in the market for milk processing. I have considered three potential means by which Difpak could distort competition by discriminating among milk processors: through manipulating membership criteria; the setting of differing levies; and the treatment of members' own waste arisings.

Membership criteria

- 5.12 First, Difpak could discriminate on which milk processors it allows to join the scheme. If Difpak provided substantial advantages to milk processors which other schemes or other compliance options were unable to provide, milk processors which were denied membership could be disadvantaged. Difpak has told my officials that all milk processors, including those which are not currently members of the DIF (as well as other companies which operate a food business), will be able to join (and some have done so already). On the basis of that statement, I am content that Difpak will not discriminate as to which milk processors are admitted.

Levies

- 5.13 Another potential means of discrimination might be through the charging of different levies to different processors. Again, Difpak has told my officials that for a given material, the cost per tonne of obligation for that material (whether recycling or recovery) will be the same for all members, and I am therefore content that it will not discriminate in terms of levies.

Own waste arisings

- 5.14 Difpak considers that its members will have access to relatively little 'back door' packaging waste themselves. It has nevertheless confirmed that it will not discriminate between members in the way own waste arisings are handled. Furthermore, those members which do possess their own waste will be free to make their own arrangements for its disposal, in particular about which waste collector and reprocessor they use. Members which obtain PRNs as a consequence of this disposal will be able to pass them to Difpak on 'cost neutral' terms (that is, at no additional cost to individual members) in order to reduce their obligation to the scheme.

6 CONCLUSIONS AND RECOMMENDATION

- 6.1 Difpak is the first industry-based scheme upon which I have advised under the Regulations. I have no objection to such schemes as I believe that they may offer many industries the most effective route to meeting their obligations, building on their experience and knowledge of the industry in question.
- 6.2 I welcome the development of competition between schemes, and it is my intention to issue my advice to you on a number of other schemes in the very near future.
- 6.3 I am satisfied that in those areas where competition concerns could arise in relation to compliance schemes, Difpak will not operate in an anti-competitive manner.

Recommendation

- 6.4 I therefore recommend that you should advise the Environment Agency, in accordance with regulation 31(5), that you are satisfied that the Difpak 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 *The Grocer* dated 15 and 17 May 1997 respectively.

OFFICE OF FAIR TRADING

Difpak Limited - notification of a scheme

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 a submission concerning the operation of a company to be known as Difpak Limited. This company intends to operate a compliance scheme which is open to any member of the Dairy Industry Federation, its sister organisations in Scotland and Northern Ireland, and other organisations whose obligations can be effectively discharged by Difpak.

The Director General invites comments from interested third parties in relation to the scheme to be operated by Difpak Limited. 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 a summary of the proposed scheme. To be considered as part of this consultation, comments must be received by 6 June 1997.