OFFICE OF FAIR TRADING

The Producer Responsibility Obligations (Packaging Waste) Regulations 1997

Wastepack UK Limited

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

August 1997

WASTEPACK UK LIMITED

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

CONTENTS

Chapter		*Page*
1	General summary	3
2	Background	4
3	The market	7
4	The Wastepack scheme	12
5	Comments received from third parties	15
6	Assessment	18
7	Recommendation	22

Annex		
A	The levy scheme in operation	23
B	OFT notice seeking comments from third parties	24

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 recyclate’
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 I am authorised by the Director General of Fair Trading under paragraph 7 of Schedule 1 to the Fair Trading Act 1973 to carry out a competition scrutiny of the Wastepack compliance scheme as required by regulation 31 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the Regulations). This is my report.

1.2 Wastepack is a scheme established by Wastelink Limited, an existing waste collection and waste management company. The scheme will be operated by Wastepack UK Limited, a private registered company. The Wastepack scheme will be multi-material, with unrestricted membership, and starts from the premise that there must be a demand and market for the recyclate. Wastepack will therefore negotiate free issue of Packaging Waste Recovery Notes (PRNs) to the scheme in return for direct investment of its membership fees in the development of the reprocessors' recycled product markets, or in venture funding of new technologies and capacity. Wastelink states that at present its member contractors collect about 10 million tonnes of waste from existing clients. Of that total, it estimates that 2 million tonnes is packaging waste, of which about 200,000 tonnes are currently recovered and recycled. Wastelink believes that some 35% of that (70,000 tonnes) comes from non-obligated companies; it believes that this material will be sufficient to meet any shortfall of PRNs within the scheme. Any further shortfall will be raised via the application of a tonnage levy on members. Start up costs will be provided by Wastelink.

1.3 The Wastepack scheme is the fourth compliance scheme on which the Director General of Fair Trading has advised the Secretary of State for Trade and Industry.[1] The development of competition in this market is encouraging, and will help to ensure that no scheme is likely to acquire and abuse a monopoly position. The Office will, however, be monitoring the effect of the Regulations as they come into force, and will be particularly looking at the way in which competition develops between the various schemes, and between schemes and those pursuing the individual compliance route.

1.4 I recommend that you should advise the Scottish Environment Protection Agency in accordance with regulation 31(5) that you are satisfied that the Wastepack scheme meets the requirements of the competition scrutiny.

---

1 The Director General's advice on the Valpak scheme was sent to the Secretary of State for Trade and Industry on 21 July 1997 and advice on the Difpak and Biffpack schemes on 29 July 1997.

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'.[1] 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

1 The Act does not extend to Northern Ireland, where separate legislation will be necessary.

obligations on the four main activities within the packaging chain[1] and how the burden should be shared between those activities, reflect the outcome of lengthy consultations between Government and the representatives of the businesses affected in the 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 categories 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. For further details of the particular markets please see Annex A to the Director General's report on the Valpak compliance scheme sent to the Secretary of State on 21 July 1997.

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 public houses 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 would need to rent or purchase equipment such as a weighbridge, loading shovels, compactors, balers, transport and have access to a site for waste storage and 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 needs 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.[1] The Office of Fair Trading 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.

1 The applicant must not have been convicted of ‘a relevant offence’, must have technically competent management, and must have the finances to discharge its obligations under the licence.

4 THE WASTEPACK SCHEME

4.1 Wastepack UK Limited is a private limited company which intends to operate a national multi-material compliance scheme under the name of Wastepack. It is being set up by Wastelink Limited, a consortium of about 40 small to medium-sized waste management companies spread throughout the country. Together, these firms have a turnover of around £830 million a year and operate about 10,000 waste vehicles, 71 landfill sites, 17 incinerators and many local transfer stations. Through Wastelink's management these firms are able to bid for national client accounts in addition to smaller regional accounts. At present, Wastelink's member contractors recover and recycle about 200,000 tonnes of packaging waste. Wastelink is meeting the initial start up costs of the scheme.

4.2 Wastepack intends that the scheme should operate so as to achieve the requirements of the Regulations 'at no additional cost' to members: that is, at no greater cost than it would cost a member presently to have the waste removed for landfill. Wastepack will charge annual membership fees as shown below and Wastepack's business plan states that:

> No additional cost can therefore only be achieved if the member invites us to assist him in lowering his costs by the use of recycled products or by using our associate companies to reduce his other non-core operational costs by an amount at least equal to his fees.

The overall Wastepack plan consists of three parts: the registered compliance scheme itself; increasing the size of the market for recyclable waste materials; and Railink, a project aimed at extracting packaging waste from the waste stream and its removal to the appropriate waste reprocessors.

The compliance scheme

4.3 The Wastepack scheme will be open to all companies in the UK with obligations under the Regulations. On joining, each new member will be visited by Wastepack's Field Compliance Team who will calculate the member's total obligation as well as its current level of recovery and recycling of packaging waste. Where the member carries out these activities and obtains PRNs, they will be passed to Wastepack. Any PRNs which become available through waste collected from non-obligated companies will also be passed to Wastepack, whenever possible. PRNs obtained by either method will then be used against the scheme's overall obligation.

4.4 The Field Compliance Team will agree with each member its ability to increase the level of recycled materials and products purchased, used, handled or manufactured, and will negotiate with reprocessors to produce the recycled materials or products identified at the required quality and price. Wastepack anticipates being able to obtain free PRNs in return for expanding the end-use market for recycled materials and products.

4.5 Wastepack intends to charge annual fees ranging from £1,000 to £10,000 per company depending on annual turnover, plus the Scottish Environment Protection Agency registration fee which will range from £100 to £600 depending on the number of members ultimately in the scheme.

4.6 Wastepack reserves the right to raise additional funds from its members by means of a tonnage levy if there is an overall shortfall in meeting the Scheme's recycling or recovery activities. The levy will be applied to those members of the Scheme which the Executive Board considers have not co-operated fully with the Field Compliance Team's recommendations. It will be applied in direct relation to the obligated tonnages of the members and will be the minimum required to purchase sufficient additional recovery or recycling evidence for the scheme to meet its total obligations. An example, supplied by Wastepack, of how the levy scheme might operate in practice is shown in Annex A.

4.7 Wastepack will be governed by an Executive Board comprising four Wastepack Executive Directors (effectively the four Wastelink directors) and six Scheme Members, elected by the membership, with one member from each sector: retail, packer/filler, packaging manufacturer, convertor, reprocessor, and the waste-management industry.

4.8 Wastelink has assured the Office that there will be no requirement for any member of Wastepack to be a client of Wastelink, either at the time of joining the scheme or subsequently. Within the scheme, all members will be treated 'on an exactly equal basis', regardless of which waste management company they use to handle their own-waste arisings and recycling and recovery activities.

Increasing the size of the market

4.9 As the second part of the broader plan, Wastepack expects its members to enter into a voluntary commitment to meet the targets set by the Field Compliance Team for the use of recycled material: the scheme will put buyer in touch with seller with the expectation that the seller of the recyclate can provide material of the same quality as virgin material and at the same price. It is expected that the buyer will then buy the recycled material, but that he will not use the existence of its availability as a bargaining tool to force down the price of virgin material, on pain of dismissal from the scheme.

4.10 For various reasons, some companies will not be in a position to increase their use of recycled material: Wastepack will therefore seek out new markets for recycled products outside the membership and, where required or desirable, use membership fees in venture-funding of new technologies and increased reprocessing capacity.

Railink

4.11 Wastelink believes that, while there are more than sufficient prospective landfill sites throughout the country, they are not always near to urban areas or accessible to vehicular traffic. There are, for instance, many disused open cast coal and quarry sites with existing rail connections which could relatively easily be converted into landfill facilities. The Railink plan therefore requires the establishment of 60 local railhead transfer stations for transfer of the waste from lorry to railway wagon, and six major landfill sites. Each such development would be subject to planning permission. The company believes that six million tonnes of waste could be diverted into the Railink scheme of which 50% will be recyclable. Each landfill site will therefore incorporate a materials recovery facility to separate the recyclable material from the rest and stockpile it for return in full train loads to recycling centres. Some of the waste would also be usable in waste-to-energy recovery.

5 COMMENTS RECEIVED FROM THIRD PARTIES

5.1 Consultation notices were placed in the week ending 13 June 1997 in *The Financial Times*, *Packaging Week*, and *Materials Recycling Week* (see Annex B). The views of respondents are summarised below.

General

5.2 The addition of another competitor to the compliance scheme market was welcomed by many respondents.

Overestimation of capacity

5.3 Some respondents suggested that Wastelink may have over-estimated the amount of packaging waste it currently handled. The Wastepack business plan states that Wastelink collects around 2.5 million tonnes of packaging waste per annum, of which 1 million tonnes is recovered and recycled. However, some respondents stated that the total UK packaging waste recovery is around 2 million tonnes per annum and that Wastelink represents less than 10% of the total collected by the waste management industry. The figures now shown in paragraph 1.2 are as corrected by Wastelink following consultation with its member contractors.

'No additional costs' philosophy

5.4 It was suggested that this element of Wastepack's business plan was flawed in that implying that the costs for members would be no greater than they currently paid to have their waste recycled, recovered or landfilled ignored the fact that under the Regulations, a business's obligation will be based on the amount of packaging it uses or sends out, rather than that which it receives. We were also told that current landfill costs of around £20 per tonne fall well short of the funds required to collect and sort most packaging materials. Extra costs would be incurred, and it was not clear to some respondents how these would be funded unless through inflated packaging purchase prices set up in tied contracts with reprocessors.

5.5 Wastepack's contention that the way to achieve the recovery and reprocessing target is by influencing and developing the market for recycled material was doubted by those who said that the primary barriers to increasing the use of recyclate were technical and economic ones which were not susceptible to influence and development in the way envisaged.

5.6 It was also suggested that Wastepack may have based its economic arguments on the false premise of existing recovery volumes which are being achieved in a profitable commercial environment. Attention was drawn to the fact that the Department of the Environment, Transport and the Regions has estimated that between £300 - £600 million of support would be needed to compensate the industry because packaging waste recovery cannot be achieved economically. The valuation of PRNs is seen as the means for injecting this support. Wastepack intends to acquire PRNs free of charge, and will use its membership fees, estimated at £9 million, to fund the required recovery. It was suggested that this figure would not be sufficient to fund the recovery required to meet Wastepack members' obligation targets.

'Closed loop' concerns

5.7 The business plan stresses the need for 'buyers and sellers of the obligated companies working in partnership for their mutual, financial and environmental benefit'. Some respondents said that this implied that businesses which joined the scheme would be expected to purchase their packaging raw materials from reprocessors designated by Wastepack. This would tie up relationships between reprocessors, packaging manufacturers and packer-fillers and suppliers such that normal freedoms to trade would be inhibited. We were told that this would, in many cases, lead to unfair competition where non-scheme members were quoting for business against Wastepack scheme members. The fundamental tenet of 'no additional cost' is that members should specify recycled product - this was seen as being fundamentally anti-competitive.

5.8 It was also suggested that the Wastepack scheme would work most for the benefit of holders of waste, primarily retailers, with some advantages for reprocessors, where Wastepack will guarantee long-term back-to-back contracts for those within the closed loop system. To meet members' obligations 'at no additional cost' would require members of Wastepack to be either waste holders or reprocessors. Wastepack could then use its power to obtain PRNs irrespective of obligation and give them preferentially to its members, with the option to sell the rest at the best price in the open market.

Links between Wastepack and Wastelink

5.9 While some firms welcomed the prospect of a waste management company setting up a compliance scheme, others expressed concerns at the concept.

5.10 One concern relates to the restriction of access to PRNs, in that Wastepack might be able to tie up a significant proportion of PRNs through its links with Wastelink. Waste management schemes are expected to be important sources of PRNs. If Wastelink were to collect a significant amount of packaging waste for which

Wastepack 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.

5.11 The Wastepack literature states that scheme funds will be invested in reprocessing facilities at Wastelink members' transfer stations. As such facilities will handle non-packaging materials, scheme funds could potentially be used to support non-packaging related activities of Wastelink members.

5.12 It was also suggested that schemes such as Wastepack would tie-up the commercial waste packaging market, which was relatively easy to access, forcing those outside the scheme to meet their obligations through the more difficult and expensive consumer waste stream.

Tonnage levy

5.14 Wastepack has reserved the right to charge some members increased fees if it is not meeting its targets. The basis for deciding which members would have to pay was not made clear in the literature.

6 ASSESSMENT

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

Dominance

Market definition

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

6.3 The Director General has already completed his competition scrutiny of Valpak and Biffpack and these two national cross-sectoral schemes have recently been registered. If Wastepack is registered it will immediately face actual competition from these two schemes.

6.4 The Regulations allow individual companies the option of arranging the discharge of their obligation themselves. This individual compliance route is, however, unlikely to be a close substitute for 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.

Barriers to entry

6.5 Other similar schemes may also be set up and registered in due course. Regulatory barriers to entry to setting up a properly constituted compliance scheme are not considered to be significant; there are also unlikely to be any significant sunk costs involved in setting up a scheme.

6.6 A potentially more significant barrier to entry relates to exclusive contracts. A key concern when assessing Valpak's scheme was the prospect that Valpak might tie up significant proportions of packaging waste or recovery and reprocessing capacity through long term exclusive contracts. Other compliance schemes have assured the Office that they were unlikely to enter into such exclusive contracts, and Wastepack has similarly said that it does not intend to enter into any exclusivity arrangements with reprocessors or others within the waste industry or members of the scheme. The only exception would be where it entered into a joint venture to fund new technology.

6.7 Wastepack will, however, have access to PRNs from Wastelink's existing waste collection activities. These PRNs will be required to enable the scheme to meet its 'no additional costs' philosophy. Some third parties expressed concern to this Office about this particular aspect because they anticipate waste management companies being important sources of PRNs. If Wastelink were to collect a significant proportion of a particular type of packaging waste for which Wastepack obtained the PRNs (irrespective of the tonnage obligation it needed to discharge), it could restrict the ability of other schemes or companies following the individual route to discharge their obligations.

6.8 Wastepack has told the Office that Wastelink members collect about 2 million tonnes of packaging waste, of which about 200,000 tonnes is currently recovered and recycled. Wastepack is only likely to have access to PRNs for non-obligated companies' packaging waste and it estimates that about 35%, or 70,000 tonnes, of packaging waste currently recovered is collected from non-obligated companies. This suggests that initially, at least, Wastepack will not be able to use its association with Wastelink to tie up a significant proportion of packaging waste. Its objective is to recover 500,000 tonnes of waste by the year 2000, of which it hopes that 175,000 tonnes will come from non-obligated companies.

Summary

6.9 Competition among schemes (and possibly waste management companies) to attract and retain members is potentially strong, particularly as none of the schemes which the Office has so far considered imposes any significant restrictions on the ability of its members to leave the scheme. It is therefore not immediately obvious that Wastepack will establish a dominant position with market power. Nevertheless, the Office will monitor competition in this market particularly closely as the Regulations come into force.

Tonnage levy

6.10 Wastepack's membership agreement suggests that it intends to adopt a relatively subjective method of assessing which firms will be liable for the tonnage levy for each member if there is a shortfall in the scheme. Clause 11.9 states:

> 'The amount of any tonnage levy to be applied shall be decided by the Executive Board, and shall be applied initially to any Members of the scheme who, in the Executive Board's view, have not co-operated fully with the terms and conditions of Clauses 10.9 and 10.10 of this Agreement, although if sufficient funds cannot be raised from all such members, then the tonnage levy may be extended to all Members of the scheme.'

Clause 10.9 states:

> [the member shall] 'use its best endeavours to, either on its own volition, or as requested by Wastepack, increase the use of recycled packaging waste in materials and products which it purchases, uses, handles or manufactures'.

Clause 10.10 states:

> [the member shall] 'either on its own volition, or as requested by Wastepack, encourage its suppliers, clients and consumers to assist in increasing recycling and/or recovery levels of packaging waste'.

6.11 Clause 11.9 appears to grant the Executive Board, which includes six elected members, the ability to discriminate among its members. Wastepack has assured the Office that it will implement the levy in a fair manner, treating all members on an equal basis, and that all prospective members are made fully aware of the possibility of the levy being imposed and how it might operate (as in the example supplied to the Office reproduced at Annex A), so that they can make an informed decision on whether or not to join the scheme. Furthermore, members are free to leave at any time on giving 90 days' notice should they feel unfairly treated and this should provide Wastepack with a strong incentive not to act in a discriminatory way.

'Closed loop' concerns

6.12 It is Wastepack's intention that its members will, wherever possible, buy recycled materials and products from other scheme members, and that members who fail to meet this challenge may be penalised via the tonnage levy. Third parties expressed the concern that this could distort the markets for those materials or products. It is not likely, however, that Wastepack will be operating on such a scale that it will be a significant purchaser of particular recycled materials or products and therefore be in a position to distort competition in those markets. It is in Wastepack's interest to ensure that there is healthy competition among actual and potential suppliers of the recycled products and materials to ensure that its charges to members are low. It therefore seems unlikely that there will be any significant distortion of competition through the operation of this policy.

Distortion of competition in the waste management market

6.13 The Office would have concerns if Wastepack's connections with Wastelink meant that an obligated company would be required to employ Wastelink to handle its waste disposal as a condition of becoming a member of Wastepack, or that Wastelink's existing clients might receive preferential treatment within Wastepack. Wastepack has told the Office, 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, irrespective of which firm they use to handle their waste arisings. It is unlikely, therefore, that Wastepack will distort competition in the waste management market in this manner.

Own waste

6.14 Members of the scheme will be required to pass over any PRNs which they acquire for the recovery or recycling of their own waste to Wastepack. These will be offset against the scheme's total obligation rather than against each individual member's obligation. Where a member becomes liable for a tonnage levy, however, the PRNs which the scheme received from that firm will be then taken into consideration, as illustrated at Annex A. As with the possibility of incurring a tonnage levy, prospective members will be aware of this condition before joining the scheme and the Office does not consider that it will significantly distort competition.

Limiting of membership numbers

6.15 Wastepack has informed the Office that the scheme will be open to all companies regardless of their obligation. It will only refuse to renew membership if it considers that it will not be able to meet a firm's obligation.

Other issues

6.16 Third parties raised a number of other issues, including possible overestimation by Wastepack of recycling capacity - a position which it has since clarified with the Office - and the concern that Wastepack's 'no additional costs' philosophy was flawed and unworkable. Insofar as these issues may be regarded as of significance, they do not relate to potential restrictions of competition and are therefore not considered further.

7 RECOMMENDATION

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

August 1997

Henry L Emden
Assistant Director, Competition Policy Division
for the Director General of Fair Trading

ANNEXES

A THE LEVY SCHEME IN OPERATION

Wastepack has provided the following example of how the levy scheme to recover the cost of any PRNs which it was forced to buy on the open market would work in practice.

	Member's obligation, say	100 tonnes
less	original tonnage recovered and recycled	50 tonnes
less	additional tonnage recovered and recycled via Wastepack initiative and Member co-operation	25 tonnes
less	reprocessor waste requirement generated via product specification amendment by Member in agreement with Wastepack	15 tonnes
Member's residual tonnage obligation		**10 tonnes**

'Net obligation' therefore = 10% of total obligation

If the scheme had five members with net obligations as follows:

Member A	10%
Member B	20%
Member C	30%
Member D	40%
Member E	50%
Total	150%

and it needed to acquire PRNs for 100 tonnes of material @ £150 per tonne, a total cost of £15,000, the levy for each 10% of net obligation would be:

$$\frac{\text{£}15{,}000}{15} = \text{£}1{,}000$$ - applied as follows:

Member A	£1,000
Member B	£2,000
Member C	£3,000
Member D	£4,000
Member E	£5,000
Total	£15,000

B OFT NOTICE SEEKING COMMENTS FROM THIRD PARTIES

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

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.