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OFFICE OF FAIR TRADING

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The Producer Responsibility Obligations  
(Packaging Waste) Regulations 1997

# Recycle UK

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

**October 1997**

# RECYCLE UK

## A report by the Director General of Fair Trading on the competition scrutiny of the Recycle UK compliance scheme

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### CONTENTS

<i>Chapter</i>		<i>Page</i>
1	General summary	3
2	The Recycle UK scheme	4
3	Comments received from third parties	6
4	Assessment	8
5	Conclusions and recommendation	11
 <i>Annex</i>		
A	OFT notice seeking comments from third parties	13

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# 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 Recycle UK compliance scheme as required by regulation 31 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the Regulations). This is my report.
- 1.2 Recycle UK is a scheme established by Practical Recycling Systems Ltd, a wholly owned subsidiary of Wessex Waste Management Ltd.
- 1.3 This is the seventh compliance scheme on which the Office of Fair Trading has completed a competition scrutiny. Companies obligated under the Regulations who wish to join a compliance scheme are now faced with a number of differing alternatives. It has always been the Office's belief that a competitive market is the most effective way of limiting the ability of any one particular scheme to achieve a dominant position or to develop anti-competitive methods.
- 1.4 The Office is content that the Recycle UK 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.
- 1.5 I recommend that you should advise the Environment Agency in accordance with regulation 31(5) that you are satisfied that the Recycle UK scheme meets the requirements of the competition scrutiny.

## **2 THE RECYCLE UK SCHEME**

2.1 Practical Recycling Systems Ltd (PRS), a wholly owned subsidiary of Wessex Waste Management Ltd (Wessex Waste), intends to set up a compliance scheme known as Recycle UK. The scheme will be a cross-sectoral collective compliance scheme potentially open to obligated companies in all stages of the packaging supply chain. PRS states, however, that as there is likely to be an administrative limit to how many members the scheme can accommodate, it anticipates the scheme having no more than 25 members.

### **Operation of the scheme**

- 2.2 Recycle UK, managed by PRS, will use the resources of the Wessex Waste group of companies. UK Waste Management Ltd (UK Waste), in particular, will provide technical and management expertise to PRS. UK Waste's operations are nationwide, involving waste minimisation and recycling, waste collection, industrial waste management and disposal. The scheme will meet its obligations in two main ways:
- maximising the recycling and recovery of members' backdoor waste; and
  - meeting the shortfall between scheme members' obligations and the amount recovered from backdoor waste by targeting the non-obligated commercial and industrial sources and the domestic waste streams.
- 2.3 UK Waste will audit each member's packaging waste stream and will then collect and sort that member's waste. UK Waste will recover and recycle as much as possible of each member's packaging waste and provide Recycle UK with evidence of this to be offset against the scheme member's overall obligation. UK Waste will also attempt to carry out sufficient additional recovery and recycling to meet any shortfall between the scheme's overall obligation and the amounts recovered from members' backdoor waste. If insufficient evidence of compliance is generated by these methods, UK Waste will have to contract directly with third parties on behalf of Recycle UK to meet members' obligations.
- 2.4 In order to source materials not available from members' own waste streams, PRS will utilise the services and resources of other members of the Wessex Waste Group to set up, fund and run domestic kerbside collection services and 'bring schemes' for segregated domestic recyclables. PRS will also seek to increase the use of recyclates, reduce the use of packaging, and maximise the recovery of packaging waste as a feed stock for manufactured fuels.

### **Terms of membership**

- 2.5 Members will be charged a fee to cover the scheme's administrative costs which will be reduced depending on the proportion of their packaging waste obligation that can be satisfied from their own waste. Members will also be charged a 'materials fee'. This will also be calculated in proportion to the amount of a members's obligation which cannot be obtained from its own packaging waste stream, and will be directly related to the true cost of meeting the scheme's obligations by materials type.
- 2.6 Each member must enter into a separate contract with PRS requiring the member to bring its full statutory obligation to the scheme. Each member must supply necessary data to the scheme and agree to surrender to PRS any Packaging Recovery Notes (PRNs) it obtains; these PRNs will then be offset against the scheme's overall obligation. Members must remain in the scheme for an initial period of three years. Any changes in membership rules and conditions will be subject to 30 days' notice from PRS. Members may leave the scheme after the end of their membership contract subject to having given 90 days' written notice.
- 2.7 Each scheme member will be able to nominate a representative to an advisory committee established by PRS as a forum for consultation with scheme members. PRS will consult with the committee on how to increase the use of recycled materials in packaging, to discuss changes in legislation and the reprocessed materials market, and to convey members' views to the Environment Agency. In addition two people nominated by the committee will be entitled to attend PRS board meetings as observers.
- 2.8 Further information on the markets for the various waste streams covered by the Regulations is given in the Director General's July 1997 report on his competition scrutiny of the Valpak compliance scheme. Background information on the waste management sector is provided in the August 1997 report on the Jempac compliance scheme.

### **3 COMMENTS RECEIVED FROM THIRD PARTIES**

- 3.1 Consultation notices were placed in the week ending 25 July 1997 in *Packaging Week* and *Materials Recycling Week* (see Annex A). The views of respondents are summarised below.

#### **The three-year membership period**

- 3.2 Concern was expressed by a number of respondents about the requirement for members to remain in the scheme for an initial period of three years. It was suggested that such a requirement was excessive and would restrict competition between schemes.

#### **Concerns that the scheme will primarily benefit those with large amounts of 'own-waste'**

- 3.3 It was suggested that Recycle UK will be a scheme working primarily to the benefit of large-scale holders of waste, mainly retailers. It was felt that only those companies with sufficient backdoor waste to bring to the scheme would be welcome. It was claimed that the operation of Recycle UK would, in practice, exclude those parts of the packaging chain which had no access to backdoor waste. In this sense it was felt that the proposed scheme discriminated against upstream members of the packaging chain.

#### **Limits on membership numbers**

- 3.4 Concern was also expressed that the scheme's summary suggests that Recycle UK would only accept members in limited numbers dependent on the availability of uncommitted waste obtained from PRS's sister company UK Waste. It was felt that this was an anti-competitive restriction, aimed at satisfying the obligations of a selected few companies which did not have onerous obligations under the legislation. It also potentially accessed waste which was easy to collect and unbalanced those schemes which were more broad based.

#### **Links between waste-management companies and compliance schemes**

- 3.5 Some concern was expressed about the requirement that UK Waste would collect and sort each scheme-member's waste. Currently a producer may have an agreement with another waste collector and it was felt that the fact that this independence would be removed and could have a detrimental effect on the producer.

- 3.6 It was suggested that PRS would be in a position to tie-up large amounts of reprocessing capacity on a contractual basis, making reprocessing certificates difficult and costly to obtain for companies outside the scheme. The respondent who raised this issue was particularly concerned about smaller companies and those which fell below the initial threshold but which become obligated in 2000, who may find that they are unable to join a compliance scheme and are unable to discharge their obligation under the law.
- 3.7 The commitment to fund and run kerbside collection schemes was welcomed by one respondent who felt that this approach recognised the importance of recovering material from the domestic waste stream and not just targeting the more easily available commercial and industrial waste.

## **4 ASSESSMENT**

- 4.1 The Office has considered the level of competition Recycle UK is likely to face and whether the scheme is likely to restrict, distort or prevent competition.

### **Dominance**

- 4.2 Six compliance schemes have so far been registered with the environment agencies. Three are described as national cross-sectoral schemes (Biffpack, Valpak and Wastepack), one is a scheme mainly specific to the dairy industry (Difpak) and two are best described as regional schemes (Jempac and Wespack). Obligated companies have the choice of joining these schemes or of registering individually with the environment agencies. It is therefore true to say that a competitive market exists in the industry created by the Regulations, and the ability of any one scheme to dominate is lessened by this competitiveness. The Office will closely monitor the level of competition between compliance schemes as the recovery and recycling obligations in the Regulations come into effect.

### **Barriers to entry**

- 4.3 As stated in previous reports, 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. A potentially more significant barrier to entry relates to exclusive contracts, in particular, contracts with the reprocessing industry. All compliance schemes so far approved have assured the Office that they were unlikely to enter into such contracts, and Recycle UK has similarly said that it does not envisage entering into any exclusive arrangements with reprocessors.

### **Links between the scheme and UK Waste**

- 4.4 As with other similar schemes, concern was expressed during the Recycle UK consultation about links between schemes and waste management companies. Such concerns appear to relate mainly to the fact that waste-management companies are seen as being a significant source of PRNs. Recycle UK will have access to spare PRNs from UK Waste's existing waste-collection activities. UK Waste has informed the Office that if any of its customers request the PRNs attributable to their waste, those PRNs will be passed to the customer, irrespective of whether the customer is obligated. UK Waste will also accommodate those customers who may prefer UK Waste to retain the PRNs in relation to their waste and have the value of those PRNs reflected in the terms of their contract with UK Waste.

- 4.5 UK Waste has told the Office that it collects about 650,000 tonnes of packaging waste each year. In 1996, the UK was estimated to have a total of 8.7 million tonnes of packaging waste and UK Waste therefore collects roughly 7½% of the UK's packaging waste. When this is considered alongside UK Waste's intention to give PRNs to those who ask for them, it is unlikely that Recycle UK will be able to tie up a significant proportion of PRNs as a result of its links with UK Waste.

### **Distortion of competition in the waste management market**

- 4.6 In earlier reports, the Office has said that it would have concerns if scheme members had to employ a waste management company connected to the scheme to handle its packaging waste disposal as a condition of becoming a member of the scheme. This is, in fact, a condition of membership of the Recycle UK scheme. Members of Recycle UK are expected to use UK Waste's collection services for dry, solid, non-hazardous waste - the waste stream from which recyclable packaging is obtained. PRS states that the prime source of packaging waste has been identified as the waste stream which arises at the facilities of obligated companies. In order to maximise the recycling potential of this waste stream, and to minimise the cost of compliance, an integrated plan, developed by UK Waste, to combine a member's own waste stream with its obligation, is considered to be the best and most economically beneficial option for scheme members. Taking account of the likely size of the Recycle UK operation, and noting the arguments in favour of such close ties on a relatively small scale, the Office is prepared in this instance to accept that such a requirement would not be anti-competitive, nor would it amount to an abuse of market power. It will be clear to companies considering joining the scheme that they will be required to use UK Waste to handle their packaging waste arisings and they can make their decision in the light of this knowledge.

### **Requirement to stay in the scheme for three years and the limiting of membership numbers**

- 4.7 It is a requirement of membership that initial Recycle UK members agree to stay in the scheme for a minimum of three years. Recycle UK states that such an initial period of commitment is necessary to allow the scheme to undertake the required investment and development of the infrastructure and long-term contractual arrangements needed to ensure that sufficient levels of waste packaging material can be collected, sorted and recycled to meet the members' obligations. In previous reports we have stated that the ability to leave a scheme easily is an important factor in ensuring that a competitive market exists in the compliance scheme industry. The Office has, however, noted the arguments made by PRS in respect of this three-year commitment, and noting that it is only for the first three years of the scheme's existence, and also noting the likely scale of the Recycle UK operation, we are prepared to accept in this instance that a three-year membership period is justifiable.

We would, however, be concerned if the majority of schemes were to adopt such a membership condition, in particular, if those schemes were on a larger scale. Once again, a decision to join the scheme will be made in the knowledge of this condition.

- 4.8 As far as the limiting of membership numbers is concerned, the Office considers that the compliance scheme market is sufficiently competitive to allow for the development of schemes which aim to cater for small groups of companies. It is not the case that obligated companies unable to join the Recycle UK scheme will not be able to meet their obligations as viable alternatives for such companies do exist.

## **5 CONCLUSIONS AND RECOMMENDATION**

### **Conclusions**

- 5.1 Three main areas of concern have been considered in this report. In respect of the links between Recycle UK and UK Waste, and the possible adverse effects of this on the PRN market, the Office is satisfied that such effects will be negligible. We particularly welcome the fact that (where requested) PRNs will be passed on to both obligated and non-obligated customers of UK Waste. We have also looked closely at PRS's insistence that scheme members contract with UK Waste for their packaging waste collection services. After considering the arguments presented by PRS and noting the likely scale of the Recycle UK operation we accept that such a state of affairs is not likely to restrict, distort or prevent competition or lead to an abuse of market power. The Office has also looked with particular care at the requirement for members to remain in the scheme for an initial three year period. We are prepared, in this instance, to accept the arguments presented, but such a restriction on ease of exit may require careful monitoring. We would also been concerned if more schemes (in particular, larger schemes) were to ask for such a long-term commitment from their members. This is an area which the Office will monitor particularly closely.

### **Recommendation**

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

October 1997

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



# ANNEX

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## A OFT NOTICE SEEKING COMMENTS FROM THIRD PARTIES

The following notice was placed in *Packaging Week* dated 24 July 1997 and *Materials Recycling Week* dated 25 July 1997.

### OFFICE OF FAIR TRADING

Recycle UK - 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 a submission concerning the operation of a new compliance scheme to be known as Recycle UK. Recycle UK will be operated by Practical Recycling Systems, a wholly-owned subsidiary of UK Waste Management Ltd.

The scheme will be open to all obligated companies in all industry sectors. It will also cover all material types to which the Regulations apply. These materials are glass, steel, aluminium, plastic, paper and fibreboard.

The Director General invites comments from interested third parties about the Recycle UK scheme. 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 13 August 1997.