



OFFICE OF FAIR TRADING

The Producer Responsibility Obligations  
(Packaging Waste) Regulations 1997

# **S.W.S. Compak**

**A report by the Director General of Fair Trading to  
the Secretary of State for Trade and Industry on the  
competition scrutiny of the S.W.S. Compak scheme**

**December 1997**

# **S.W.S. Compak**

**A report by the Director General of Fair Trading to  
the Secretary of State for Trade and Industry on the  
competition scrutiny of the S.W.S. Compak scheme**

---

## **CONTENTS**

<i>Chapter</i>		<i>Page</i>
1	General summary	3
2	The S.W.S. Compak scheme	4
3	Assessment and recommendation	6

© Crown copyright 1997  
This material may be freely reproduced except for sale or advertising purposes

# **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 S.W.S. Compak scheme as required by regulation 31 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the Regulations). This is my report.
- 1.2 S.W.S. Compak is a proposed scheme which will be operated in the North East of England by S.W.S. Limited (S.W.S.).
- 1.3 This advice has been prepared on the basis of the current draft membership agreement which will form the basis of the constitution of the S.W.S. Compak scheme. This assessment is based on the broad terms of the membership agreement and additional information which has been provided by the scheme operator. The advice is based on the premise of a scheme which has no members at present.
- 1.4 The Office of Fair Trading is content that the S.W.S. Compak 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 therefore recommend that you should advise the Environment Agency, and S.W.S. as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the S.W.S. Compak scheme meets the requirements of the competition scrutiny.

## **2 THE S.W.S. COMPAK SCHEME**

2.1 S.W.S. is a waste management company, specialising in the disposal, reclamation and recycling of commercial and industrial waste. S.W.S., with an annual turnover of about £2 million, operates from a single site on the outskirts of Hartlepool. It operates a licensed transfer station which collects waste from a large number of regionally based industrial and commercial outlets. It then sorts this waste, extracts contaminants and bales it, before arranging for its recycling or disposal. At present it collects about 100,000 tonnes of waste a year and S.W.S. estimates that this includes about 35,000 tonnes of packaging waste.

2.2 S.W.S. intends to set up a regional compliance scheme based in North East England to be known as S.W.S. Compak. Membership of the scheme will discharge members' legal obligations to recover and recycle packaging waste material and S.W.S., as operator of the scheme, will provide the Environment Agency with details of its members' aggregate obligations. We have been informed by S.W.S. that it is to set up the scheme:

on a cross-sectoral basis - accepting as members, companies in all stages of the packaging supply chain ie manufacturers, convertors, packers and sellers; and

to accept members irrespective of the type or types of packaging material they handle.

2.3 Membership of S.W.S. Compak, though initially targeted at S.W.S.'s existing customer base, will be open to all obligated companies in North East England. S.W.S. states that it has a current customer base of more than 200 customers who will be invited to join the scheme if it is registered. It is envisaged that all 200 customers will be obligated under the Regulations when the turnover threshold is lowered from £5 million to £1 million.

2.4 S.W.S. anticipates that the majority of the scheme's Packaging Waste Recovery Notes (PRNs) will be obtained from the recovery and recycling of its members' own packaging waste. S.W.S. will collect their packaging waste, sort it, weigh it and transport it to a reprocessor in exchange for PRNs which will be used to offset the tonnage obligation attributed to that member. Any charge made by a reprocessor for issuing PRNs for a member's waste will be passed on to that member. S.W.S. also anticipates collecting waste from non-obligated firms who are not members of S.W.S. Compak and obtaining PRNs for this waste on delivery to a reprocessor. If they are not requested by the non-obligated company, these PRNs will be used to offset the scheme's overall obligation. If necessary, S.W.S., as operator of the scheme, will purchase additional PRNs from reprocessors. Members will also be able to bring their own evidence of compliance (in the form of PRNs) which can be used to offset the tonnage obligation attributed to them.

- 2.5 Members will not be obliged to use S.W.S.'s waste management services even though the scheme is aimed at its customers. If members choose not to use S.W.S.'s waste collection services, they will be able to part-offset their obligations with any PRNs they may have. They would have to pay the relevant tonnage levies for the remainder of their obligation.
- 2.6 The charge for joining S.W.S. Compak will be an annual membership fee. This will be a standard fee for all members, regardless of company turnover, covering the Environment Agency's annual registration fee and the scheme's administration costs.
- 2.7 Members will also have to pay tonnage levies, in direct relation to the tonnage obligation attributed to them and types of packaging waste materials handled, if S.W.S. needs to raise extra funds for the purchase of PRNs to meet that member's attributed tonnage obligation. All members will pay S.W.S. the same amount for PRNs which they require in each particular material.
- 2.8 Each member must enter into a separate membership agreement with S.W.S. as operator of the scheme, and members may leave the scheme on giving three months' written notice. They must then discharge their obligations individually or join a different scheme.
- 2.9 S.W.S. envisages refusing membership only if a company is not considered to be financially sound, is located outside North East England, or does not adhere to the Regulations or to the rules of the scheme.
- 2.10 Further information on the background to the Regulations and 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 scheme. Background information on the waste management sector is provided in the August 1997 report on the Jempac scheme.

### **3 ASSESSMENT AND RECOMMENDATION**

- 3.1 S.W.S. Compak is likely to be, at least initially, a relatively small-scale regional scheme. The most direct competition it will face will be from other schemes, primarily the large-scale cross-sectoral national schemes such as Biffpack, Recycle UK, Valpak and Wastepack. It will also face competition from another scheme in the North East of England, Wespack. Obligated companies also have the option of arranging to discharge their obligations themselves or they may be able to arrange for a waste management company to obtain PRNs on their behalf.

#### **Barriers to entry**

- 3.2. As stated in previous reports, regulatory barriers to entry to setting up a properly constituted scheme are not considered to be significant; there are 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 schemes so far approved have assured this Office that they are unlikely to enter into such contracts, and S.W.S. has similarly said that it does not envisage entering into any exclusive arrangements with reprocessors on behalf of the scheme.
- 3.3 Another possible barrier to entry to the scheme market is the difficulty which members may have in leaving existing schemes. S.W.S. Compak's members will be able to leave the scheme by giving three months' notice. It is unlikely that competition between schemes for new members will be restricted by S.W.S. in this way.

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

- 3.4 In consultations on other schemes, concerns have been expressed 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. As S.W.S. handles only approximately 35,000 tonnes of packaging waste each year (out of a UK total of around 8.7 million tonnes) such a link is unlikely to be a source of concern in relation to this scheme. S.W.S has informed this Office that where it collects the waste of customers who are not members of the scheme, any relevant PRNs will, if requested, be made available to those customers, subject to a small administrative charge (this policy applies irrespective of whether the customer is obligated). It is noted that members of S.W.S. Compak will not be obliged to appoint S.W.S. as their waste collection contractor.

## **Conclusion**

- 3.5 S.W.S. Compak, as a regional scheme for firms operating only within North East England, is unlikely to have significant market power either nationally or regionally.
- 3.6 Having investigated the issues, this Office is satisfied that the S.W.S. Compak scheme does not have, and is not likely to have, the effect of restricting, distorting or preventing competition, and nor will it lead, or be likely to lead, to an abuse of market power.

## **Recommendation**

- 3.7 I therefore recommend that you should advise the Environment Agency, and S.W.S. as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the S.W.S. Compak scheme meets the requirements of the competition scrutiny.

December 1997

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