



OFFICE OF FAIR TRADING

The Producer Responsibility Obligations
(Packaging Waste) Regulations 1997

Pennine-Pack

**A report by the Director General of Fair Trading to
the Secretary of State for Trade and Industry on the
competition scrutiny of the Pennine-Pack scheme**

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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 Pennine-Pack scheme as required by regulation 31 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the Regulations). This is my report.
- 1.2 Pennine-Pack is a proposed regional scheme covering the areas of Calderdale and Kirklees in West Yorkshire. It is proposed that the scheme will be operated by the Calderdale and Kirklees Green Business Network (GBN). The Office of Fair Trading has been told that GBN is a partnership within the meaning of section 1 of the Partnership Act 1890. The partners consist of Calderdale & Kirklees Business Link, Calderdale Metropolitan Borough Council, Kirklees Metropolitan Council, and the Rural Development Commission (the latter up to October 1998 only). Although GBN is profit making, the Office has been told that the partners will not make any drawings from GBN during its existence. The partners have been advised that this does not take them outside the terms of section 1 of the Partnership Act 1890. The Office has also been informed that Calderdale Metropolitan Borough Council is the partner nominated to accept notices on behalf of the other partners.
- 1.3 This advice has been prepared on the basis of the current draft membership agreement which will form the constitution of the Pennine-Pack scheme. This assessment is based on the broad terms of the membership agreement and additional information which has been provided by an official of the GBN who has been authorised to do so by all the partners. The advice is based on the premise of a scheme which has no members at present.
- 1.4 The Office is content that the Pennine-Pack 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 the Green Business Network as operator of the draft scheme, in accordance with regulation 31(5) that you are satisfied that the Pennine-Pack scheme meets the requirements of the competition scrutiny.

2 THE PENNINE-PACK SCHEME

2.1 Pennine-Pack will be operated and initially funded by GBN (see paragraph 1.2). GBN (based in Sowerby Bridge, West Yorkshire) was set up to assist companies in Calderdale (Halifax) and Kirklees (Huddersfield) to ‘reduce their environmental impact’.

2.2 GBN describes Pennine-Pack as a collective scheme and membership of the scheme will discharge members’ legal obligations under the Regulations to recover and recycle packaging waste material. GBN as operator of the scheme will provide the Environment Agency with details of the scheme members’ aggregate obligations. We have been informed by GBN 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 handled.

2.3 The Pennine-Pack scheme will be regional, covering mainly Calderdale and Kirklees in West Yorkshire. The scheme operator’s main function will be the provision of sufficient compliance evidence, in the form of Packaging Waste Recovery Notes (PRNs), to discharge the members’ aggregate obligations. Pennine-Pack is to be based on the premise that there must be a demand for packaging waste recycle. GBN will therefore negotiate with accredited reprocessors for the free issue of PRNs in return for actively supporting them in developing reprocessing schemes and new recycle products. GBN contends that only as a last resort will Pennine-Pack’s membership fees and materials levies be used to buy PRNs in order to meet the scheme’s overall obligation.

2.4 Membership of Pennine-Pack will be open to all obligated companies in Calderdale, Kirklees and the surrounding fringe areas. Each prospective member must enter into a separate contract with the scheme operator; this will include obligations to supply necessary information in order that GBN may meet the requirements of Environment Agency registration.

2.5 Where the member carries out its own waste recycling and recovery activities and obtains evidence of this, the evidence will be passed to the scheme operator and used to offset that member’s attributed tonnage obligation. Any PRNs which GBN obtains as a result of recycling initiatives which it implements with local non-obligated companies and other organisations will also be used to offset the overall scheme obligation.

- 2.6 GBN is to negotiate agreements with reprocessors for the recycling and recovery of relevant packaging materials. GBN also intends to co-operate with Calderdale Metropolitan Borough Council and Kirklees Metropolitan Council and others in setting up local reprocessing facilities and waste to energy schemes.
- 2.7 The charge for membership of Pennine-Pack will be a standard annual subscription of £750 for all members, which will include the Environment Agency's annual registration fee and the scheme's administration costs. Members may also have to pay a levy of £50 per tonne if the scheme operator needs to fund a material collection and delivery service to collect waste to deliver to reprocessors in return for PRNs. The levy will be charged to those members who still have an outstanding obligation attributed to them after the PRNs, referred to in paragraph 2.5, have been deducted from the tonnage obligation attributed to them.
- 2.8 Members will be required to sign an annual contract to remain members of Pennine-Pack. Any changes in scheme membership rules and conditions will be subject to 60 days' written notice from GBN. Similarly members will be able to leave the scheme subject to 60 days' written notice. They must then discharge their obligations individually or join a different scheme.
- 2.9 Members of Pennine-Pack must provide all data relating to their obligations to the scheme operator. The operator will then aggregate all the scheme participants' obligations and supply details of the scheme's overall obligation to the Environment Agency. To meet all its members' attributed obligations, GBN will supply evidence to the Environment Agency of recovery and recycling work undertaken by contracted reprocessors.
- 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 compliance scheme.

3 ASSESSMENT AND RECOMMENDATION

- 3.1 Pennine-Pack is to operate as a small-scale locally-based scheme. The most direct competition Pennine-Pack will face will be from other schemes, primarily the large-scale cross-sectoral national schemes, such as Biffpack, Recycle UK, Valpak, and Wastepack. 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 to meet their obligation 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 with the reprocessing industry. All schemes so far approved have assured the Office that they are unlikely to enter into such contracts, and GBN, as operator of Pennine Pack, 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. Pennine Pack's members will be able to leave the scheme by giving 60 days' written notice. It is unlikely that competition between schemes for new members will be restricted by GBN, as operator of the scheme, in this way.

Tonnage levy

- 3.4 GBN intends to charge a materials levy of £50 per tonne (irrespective of material) for additional PRNs, over and above any PRNs supplied by the member, or from GBN's recycling initiatives with non-obligated companies, which it requires to meet each member's attributed obligation. GBN has told the Office that it expects to obtain PRNs free of charge from the reprocessors it deals with and that the materials levy will be used to fund a materials collection and delivery service to collect waste to be delivered to the reprocessors. While the Office has some doubts that the scheme operator will be able to obtain sufficient PRNs in all materials free of charge, it will be clear to companies considering joining the scheme that it is the intention that the £50 per tonne levy will apply, and it will be for prospective members to make their decision on whether they join the scheme in the light of this knowledge. The Office does not consider this matter to be a competition issue.

Conclusions

- 3.5 After considering the scheme, the Office has concluded that the Pennine-Pack scheme 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.

Recommendation

- 3.6 I recommend that you should advise the Environment Agency, and GBN as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the Pennine-Pack scheme meets the requirements of the competition scrutiny.

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