



OFFICE OF FAIR TRADING

The Producer Responsibility Obligations
(Packaging Waste) Regulations 1997

Paper Collect

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

August 1998

PAPER COLLECT

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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 Paper Collect scheme as required by regulation 31 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the Regulations). This is my report.
- 1.2 Paper Collect is a proposed scheme to be operated by the National Association of Paper Merchants (NAPM).
- 1.3 This advice has been prepared on the basis of the current draft membership agreement which will form the constitution of the Paper Collect scheme. This assessment is based on the broad terms of the membership agreement and additional information which has been provided by the scheme operator.
- 1.4 The Office is content that the Paper Collect 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 and the NAPM as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the Paper Collect scheme meets the requirements of the competition scrutiny.

2 THE PAPER COLLECT SCHEME

- 2.1 Paper Collect will be operated and initially funded by the NAPM. In the longer term it is envisaged that Paper Collect could become a separate business. The NAPM is a trade association representing the UK paper distribution sector of the paper industry.
- 2.2 It is intended that membership of the Paper Collect scheme will discharge members' legal obligations under the Regulations to recover and recycle packaging waste material. The NAPM as operator of the scheme will provide the Environment Agency with details of the scheme members' aggregate obligations.
- 2.3 Membership of the Paper Collect scheme is open to any company within the paper distribution supply chain where the packaging handled is predominantly, but not exclusively, paper.
- 2.4 The scheme operator's main function will be the provision of sufficient compliance evidence to discharge the members' aggregate obligations. The NAPM states that a key feature of the operation of Paper Collect will be the arrangement whereby Paper Collect members will collect packaging waste from customers in the normal course of their business activities, returning this packaging waste to central collection points for subsequent supply and use by reprocessors. Any charges incurred would be directly passed on to members.
- 2.5 The NAPM expects to obtain sufficient evidence to meet the scheme members' overall obligation from the packaging waste arising within the members' own businesses together with waste which is recoverable from a number of their customers' businesses. The NAPM states that if there were a shortfall in the evidence available from these sources they would seek to obtain surplus waste for reprocessing or existing evidence of reprocessing. Any charges incurred by these activities would be passed on to members on a pro-rata basis.
- 2.6 Each prospective member must enter into a separate contract with the scheme operator; this will include obligations to supply necessary information in order that NAPM may meet the requirements of Environment Agency registration. The operator will then aggregate all the members' obligations and supply details of the scheme's overall obligation to the Environment Agency. To meet all its members' obligations, the NAPM will supply evidence to the Environment Agency of recovery and recycling work undertaken by contracted reprocessors.
- 2.7 The charge for membership of Paper Collect will be a fee to cover registration, an annual fee to cover operational and administrative charges, and additional fees to be charged based upon agreed costs 'considered necessary to discharge the members' obligations under the Regulations'. These additional fees are described as those

which are necessary in order to meet any costs directly incurred in order to meet the overall obligation (for instance, the purchase of PRNs).

- 2.8 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. Where a member obtains evidence which exceeds its obligation, it will be compensated for the value of that evidence, either by payment or by an equivalent reduction in the other membership charges imposed by the scheme operator.
- 2.9 Members will be required to sign an annual contract to remain members of Paper Collect. Members may leave the scheme on giving six months' notice in writing following the member's first complete year within 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 COMMENTS RECEIVED FROM THIRD PARTIES

- 3.1 Consultation notices were placed in *Materials Recycling Week* and *Packaging Week* in the week ending 13 March 1998 (see Annex A). Consultation letters were sent to a number of known interested parties. The views of respondents are summarised below.

Paper Collect's operational plan

- 3.2 Some doubts were expressed during the consultation about the NAPM's proposal to set up a system whereby members would collect packaging waste from their customers, returning it to central collection points for subsequent supply to reprocessors. It was suggested that such a system could be impractical as a substantial proportion of these customers will be small, widely distributed and would have relatively small amounts of packaging waste paper. Questions were also raised as to how the process was to be financed.

Paper Collect's use of 'other acceptable trading documents' as evidence

- 3.3 It was noted that the scheme documentation stated that 'other acceptable trading documents' would also be used by the NAPM to offset the scheme's overall obligation, and that by this statement, the NAPM might mean weighbridge tickets or other similar proofs of transit. It was suggested that the NAPM might be intending to exploit a loophole in the Regulations, which do not carry a statutory requirement for PRNs to be used as proof of recycling and recovery. It was suggested that there was a danger that, if put into practice, this could lead to double counting, as reprocessors could issue PRNs for the same waste that the NAPM was counting with its own 'evidence'.

Membership periods

- 3.4 It was suggested by one correspondent that the conditions for leaving the scheme appeared restrictive, in that the minimum membership period was unduly lengthy.

Fees

- 3.5 Concerns were expressed about the fact that the annual fees would not be notified to members until the first quarter of the year and that, should these fees prove unacceptable, it appeared that members would be obliged to continue membership for that year.
- 3.6 It was also noted that it was difficult for a prospective member to determine its overall liability for costs as the membership agreement stated that 'additional fees may be charged based upon agreed costs within [Paper Collect]'.

Concerns about trade association involvement

- 3.7 Some concerns were expressed about the involvement of a trade association in the operation of a scheme and whether an adequate structure would be in place to guarantee that information supplied by members, which may be otherwise commercially confidential, would be completely contained within the scheme management structure.

Excess evidence / own waste arisings

- 3.8 Concerns were expressed about the proposal that members of Paper Collect would be obliged to make all their waste recovery and recycling credits available to the NAPM as operator of the scheme, irrespective of whether the NAPM assisted in the recovery or recycling of this waste.

4 ASSESSMENT AND RECOMMENDATION

Existing competition

- 4.1 Paper Collect is to operate as a scheme aimed specifically at the paper industry. The most direct competition Paper Collect will face will be from other schemes, primarily the large-scale cross-sectoral national schemes, such as Biffpack, Cleanapack, Recycle UK, Valpak, and Wastepack. It may also face competition from another scheme aimed specifically at the paper industry, Paperpak. 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 evidence to offset their obligations on their behalf.

Barriers to entry

- 4.2 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 the NAPM, as operator of Paper Collect, has similarly said that it does not envisage entering into any exclusive arrangements with reprocessors on behalf of the scheme.
- 4.3 Another possible barrier to entry to the scheme market is the difficulty which members may have in leaving existing schemes. Paper Collect's members have to remain in the scheme for a minimum period of one year, and may then leave only on giving six months' notice in writing. Noting the likely scale of the Paper Collect operation, it is unlikely that this will create significant competition difficulties. Given the number of existing schemes competing with Paper Collect, it is also unlikely that the scheme operator could ever tie up sufficient numbers of members to foreclose the market. The Office would, however, be concerned if the majority of schemes were to insist on such a long term commitment from their members, particularly if those schemes were on a larger scale.
- 4.4 Given the level of existing and potential competition, it is unlikely that the scheme could lead to any appreciable restriction, distortion or prevention of competition, or to an abuse of market power. Nevertheless, I will explain below the Office's assessment of the issues raised during the public consultation on the scheme.

Practical implications of the scheme operation

- 4.5 A number of the comments received in response to the public consultation related to concerns about whether the scheme would work in practice. Such concerns, which are summarised in paragraph 3.2, relate to the NAPM's proposals in respect of a waste collection system and the form of the evidence of compliance which the scheme operator will submit to the Environment Agency.
- 4.6 The Office has taken the view that the feasibility of the proposal for the collection of waste by members from their customers does not come within the remit of the Director General of Fair Trading when he carries out a competition scrutiny of a scheme under the Regulations.
- 4.7 The second such concern related to Paper Collect's intention to use 'other acceptable evidence' in order to meet members' obligations. Such concerns are outlined in paragraph 3.3, including the dangers of double counting and of the scheme operator finding itself unable to meet its members' obligations if the environment agencies were to refuse to accept such evidence. Again, the Office has taken the view that such matters should not be considered during the competition scrutiny, but, in any event, we have now been informed that, in offsetting its members obligations, the NAPM will only use evidence which meets the requirements of the environment agencies.

Level of fees

- 4.8 Some concerns were expressed during the consultation about the lack of definitive information as to the likely level of the scheme operator's fees. Fees will be charged on the basis outlined in paragraph 2.7. The Office appreciates that it is impossible at this stage to state accurately what the fees payable for evidence will be. Again, any uncertainty relating to fees will be apparent to prospective members.

Competition concerns created by the involvement of a trade association

- 4.9 Some concerns were raised about a trade association's involvement in a scheme. The Office has been informed that the NAPM will establish a separate, stand-alone, database for Paper Collect and the NAPM's scheme operator functions will operate as a 'secure division' within the NAPM. Data relating to the scheme would be kept separate and confidential within the NAPM and no member will be allowed access to another's submissions, and only aggregated information would be provided in respect of the scheme's membership.

Own waste arisings

4.10 Under the scheme's draft membership agreement it is stated that members will be expected to co-operate with the scheme operator in arranging for waste to be recovered and recycled 'to the benefit of [Paper Collect]'. Members will also be obligated to keep the scheme operator informed about any disposals not made through the scheme, and provide the necessary documentary evidence for such disposals to be logged against the operator's overall obligation. Scheme members will be aware of this requirement relating to their excess PRNs on joining the scheme, and that they will either receive payment or a reduction in other charges if they supply such excess evidence to the scheme. Such a requirement could raise the possibility that the NAPM could receive preferential access to PRNs which would otherwise be on the open market. Given, the likely scale of the Paper Collect scheme, however, it is unlikely that Paper Collect members will have access to sufficient numbers of own-waste PRNs to distort the overall PRN market.

Conclusions

4.11 After considering the scheme, the Office has concluded that the Paper Collect scheme does not have, and is not likely to have, the effect of restricting, distorting or preventing competition, nor will it lead, or be likely to lead, to an abuse of market power.

Recommendation

4.12 I therefore recommend that you should advise the Environment Agency, and the NAPM as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the Paper Collect scheme meets the requirements of the competition scrutiny.

August 1998

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

A OFT NOTICE SEEKING COMMENTS FROM THIRD PARTIES

The following notice was placed in *Packaging Week* dated 12 March 1998 and *Materials Recycling Week* dated 13 March 1998.

OFFICE OF FAIR TRADING

Paper Collect - 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 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 schemes prior to their registration.

The Director General has received submissions concerning the operation of a new scheme to be known as Paper Collect. Paper Collect will be operated by the National Association of Paper Merchants. Membership of Paper Collect is open to companies within the paper distribution supply chain.

The Director General invites comments from interested third parties in relation to the Paper Collect 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 ensure comments are considered in this consultation they should arrive at the Office by 3 April 1998.