



OFFICE OF FAIR TRADING

The Producer Responsibility Obligations
(Packaging Waste) Regulations 1997

Firpac Limited

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

November 1998

FIRPAC LIMITED

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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 Firpac scheme as required by regulation 31 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the Regulations). This is my report.
- 1.2 Firpac is a proposed scheme to be operated by Firpac Limited, a wholly owned subsidiary of C Firbank & Son Limited of Houghton Regis, Bedfordshire.
- 1.3 This advice has been prepared on the basis of the current draft membership agreement which will form the constitution of the Firpac 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 Consultation notices were placed in the week ending 5 June in *Packaging Week* and *Materials Recycling Week* (see Annex A). In addition, a number of consultation letters were sent to identified interested parties. Comments made in response to the consultation have been noted in the course of this scrutiny.
- 1.5 The Office of Fair Trading (the Office) is content that the Firpac 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.
- 1.6 I therefore recommend that you should advise the Environment Agency, and Firpac Limited as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the Firpac scheme meets the requirements of the competition scrutiny.

2 THE FIRPAC SCHEME

- 2.1 Firpac Limited is a subsidiary of C Firbank & Son Limited (the Firbank Group's holding company) which proposes to operate a scheme under the Regulations under the name Firpac.
- 2.2 Firpac Limited will make use of the services of staff and facilities of Firbank Recycling Limited and the day to day running of Firpac Limited will be administered by the directors of Firbank Recycling Limited. Firbank Recycling Limited is the Firbank Group's operating company and is a wholly owned subsidiary of C Firbank & Son Limited.
- 2.3 It is intended that membership of the Firpac scheme will discharge members' legal obligations under the Regulations to recover and recycle packaging waste material. Firpac Limited as operator of the scheme will provide the Environment Agency with details of the scheme members' aggregate obligations.
- 2.4 Participation in Firpac is open to any customer of Firbank Recycling Limited who has an obligation under the Regulations, and Firpac Limited, through Firbank Recycling Limited, will offer scheme members a waste management scheme for the collection of recyclable materials. This will include onward shipment to accredited reprocessors, using, where possible, Firbank Limited's own fleet of waste collection vehicles.
- 2.5 It is envisaged that the Firpac scheme will have approximately ten participants. Firpac Limited states that scheme members will join the scheme for a period of three years. However, members will be able to leave the scheme on giving six months notice in writing.
- 2.6 Firpac Limited will enter into contracts with reprocessors to obtain evidence that recovery and recycling activities have taken place. At the end of the calendar year, this evidence will be made available to the Environment Agency to demonstrate that the overall recovery and recycling obligations have been met.
- 2.7 Firpac Limited will be funded by the fees of its participants. It is envisaged that an initial fee of £500 (plus the Environment Agency registration fee) will be charged to all members who join before 31 December 1998. The fee for subsequent years will be £500 plus RPI, or an equal proportion of the administrative and operating costs of the scheme spread among all participants, if in excess of this fee. In addition to the yearly fee, further charges will be made, based on 10% of the value of the invoice for the collection of a recyclable commodity which is used to generate evidence of compliance. PRNs will be charged at cost to participants in the scheme.
- 2.8 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 (OFT 193a).
Background information on the waste management sector is provided in the
August 1997 report on the **Jempac** scheme (OFT 193f).

3 ASSESSMENT AND RECOMMENDATION

Existing competition

- 3.1 The most direct competition Firpac will face will be from other schemes, primarily the large-scale cross-sectoral national schemes, such as Biffpack, Cleanapack, 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 evidence to offset their obligations 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 Firpac Limited, as operator of Firpac, 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. Although members will join the scheme for a period of three years, they will be able to leave by giving six months' written notice. While the Office may have concerns if a scheme operating on a larger scale were to have a three year membership period, such concerns are lessened by the likely scale of the Firpac scheme. Additionally, although members may join the scheme for three years, they will be able to leave at any time by giving six months' notice. It is unlikely therefore that this membership requirement will have a significant impact on competition between schemes for members.
- 3.4 Given the level of existing and potential competition, it is unlikely that a scheme on the scale of the Firpac proposal could lead to an appreciable restriction, distortion or prevention of competition, or to an abuse of market power.

Conclusions

- 3.5 After considering the scheme, the Office has concluded that the Firpac 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 Firpac Limited as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the Firpac scheme meets the requirements of the competition scrutiny.

November 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 4 June 1998 and *Materials Recycling Week* dated 5 June 1998.

OFFICE OF FAIR TRADING

Firpac - 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 with the Environment Agency or the Scottish Environment Protection Agency.

The Director General has received submissions concerning the operation of a Scheme to be set up by Firpac Limited, a subsidiary of C Firbank & Son Limited of Houghton Regis, Bedfordshire.

The Director General invites comments from interested third parties on the Firpac 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 25 June 1998.