

The Producer Responsibility Obligations
(Packaging Waste) Regulations 1997

Foreman Recycle Pak

**A report by the Director General of Fair
Trading to the Secretary of State for Trade
and Industry on the competition scrutiny of
the Foreman Recycle Pak 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 Foreman Recycle Pak scheme as required by regulation 31 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 ('the Regulations'). This is my report on that scrutiny.
- 1.2 Foreman Recycle Pak is a proposed scheme to be operated by Foreman Recycling Limited of Spennymoor, Co. Durham.
- 1.3 This advice has been prepared on the basis of the current draft membership agreement that will form the constitution of the Foreman Recycle Pak scheme. This assessment is based on the broad terms of the membership agreement and additional information that has been provided by the scheme operator.
- 1.4 I am content that the Foreman Recycle Pak scheme meets the requirements of 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 that 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 Foreman Recycling Limited as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the Foreman Recycle Pak scheme meets the requirements of competition scrutiny.

2 THE FOREMAN RECYCLE PAK SCHEME

- 2.1 The Foreman Recycle Pak scheme will be operated by Foreman Recycling Limited which operates a waste collection and sorting operation situated on an industrial estate in Spennymoor, Co. Durham. The scheme will be open to all industry sectors and will cover all packaging materials.
- 2.2 Although membership is open to all companies having a producer responsibility under the Regulations, the Foreman Recycle Pak scheme is primarily aimed at obligated companies based in the North East of England. The estimated aggregate obligation for the scheme's members in 2000 is 4,200 tonnes. Members will join the scheme for a period of one year and will be able to leave the scheme at any time upon giving three months notice in writing.
- 2.3 Foreman Recycle Pak will meet the aggregated obligations of its members by the operator obtaining Packaging Waste Recovery Notes ('PRNs'). This will be achieved by:
- obtaining PRNs from reprocessors in exchange for scheme members' packaging waste collected by the operator;
 - the use of material collected from non-obligated companies (and others) by Foreman Recycling Limited to procure PRNs to meet the scheme members' obligations;
 - the purchase of PRNs from accredited reprocessors with scheme members being charged at cost for the PRNs purchased; and
 - the acceptance of any PRNs obtained via a member's own recovery and recycling initiatives outside of the scheme which will then be used to offset that member's obligation.
- 2.4 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.
- 2.5 Foreman Recycling Limited has informed the Office that it is not itself an accredited reprocessor under the Regulations, does not intend to gain accreditation as one in the future and does not intend to enter into any exclusive contracts with reprocessors.

3 ASSESSMENT AND RECOMMENDATION

Existing competition

- 3.1 The main sources of direct competition which the Foreman Recycle Pak scheme will face will be the already established large-scale cross-sectoral national schemes such as Biffpack, Clenapack, 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 and there are unlikely to be any significant sunk costs involved in setting up a scheme.
- 3.3 A potential barrier to entry to the market for compliance scheme services is the difficulty which members may have in leaving schemes. As noted above, members will join the Foreman Recycle Pak scheme for a period of one year but will be able to leave the scheme at any time upon giving three months notice in writing. It is therefore unlikely that this scheme's membership requirement will have a significant impact upon 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 Foreman Recycle Pak 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, I have concluded that the Foreman Recycle Pak scheme does not have, and is not likely to have, the effect of restricting, distorting or preventing competition and that 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 Foreman Recycling Limited as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the Foreman Recycle Pak scheme meets the requirements of competition scrutiny.

January 2000
Margaret Bloom
Director, Competition Policy
Office of Fair Trading