

The Producer Responsibility Obligations
(Packaging Waste) Regulations 1997

Impact

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

January 2000
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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 Impact 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 Impact is a proposed scheme to be operated by Biffa Waste Services Limited of High Wycombe, Buckinghamshire.
- 1.3 This advice has been prepared on the basis of the current draft membership agreement that will form the constitution of the Impact 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 Impact 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 Biffa Waste Services Limited as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the Impact scheme meets the requirements of competition scrutiny.

2 THE IMPACT SCHEME

- 2.1 The Impact compliance scheme will operate as a discrete unit within Biffa Waste Services Limited ('Biffa'), which already operates the Biffpack compliance scheme. Membership of the Impact scheme will be cross-sectoral, multi-material and limited to obligated companies with an annual turnover of under £5 million. The use of Biffa as a waste management contractor will not be a condition of membership.
- 2.2 The scheme is specifically aimed at smaller companies which will become obligated for the first time when the producer responsibility threshold under the Regulations is reduced from 2000 onwards. The estimated aggregate obligation for the scheme's members in 2000 is 9,000 tonnes.
- 2.3 Members will join the scheme for a period of one year and will be able to leave the scheme upon giving 30 days notice in writing up to 1 September. Under the scheme, Biffa will:
- register members under the requirements of the Regulations;
 - provide members' packaging flow information to the Environment Agency in aggregated form;
 - discharge members' obligations by meeting the targets laid down in the Regulations for recovery and recycling.
- 2.4 Biffa is one of the UK's largest waste management companies and collects waste from industrial, commercial and domestic outlets. It currently collects over 1.7 million tonnes of waste per year, of which Biffa estimates up to 30 per cent is packaging waste.
- 2.5 A proportion of the Packaging Waste Recovery Notes ('PRNs') obtained by Biffa from reprocessors as evidence of recovery and recycling of packaging waste from unobligated sources will be used to offset the Impact scheme's aggregated liabilities. These PRNs will be apportioned among scheme members, along with any costs incurred in obtaining the PRNs, on a pro rata basis according to members' obligations. Members will be obliged to hand over to the scheme any PRNs obtained via their own recovery and recycling initiatives outside of the scheme which will then be used to offset the member's obligation.
- 2.6 Biffa have informed the Office that the increase in Biffa's current and anticipated PRN procurement requirements which will be required to meet the obligations of the Impact scheme's members will not present any significant difficulties. In the event that that the scheme was unable to meet its obligation through the PRN's brought to the scheme by both the members and Biffa, evidence would be procured from reprocessors, local authorities and waste-to-energy plants. The costs of obtaining such evidence would be attributed to members in proportion to their outstanding obligation.

3 ASSESSMENT AND RECOMMENDATION

Existing competition

- 3.1 The main sources of direct competition which the Impact scheme will face will be the already established large-scale cross-sectoral national schemes such as Clenapack, Recycle UK, Valpak and Wastepack. Although, unlike Impact, these schemes are not specifically aimed at the smaller, newly obligated companies, such companies will still be able to become members of such existing schemes. All 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 Another possible barrier to entry to the scheme market is the difficulty which members may have in leaving existing schemes. Members will join the Impact scheme for a period of one year, but will be able to leave the scheme by giving 30 days notice up to 1 September. It is therefore unlikely that this membership requirement will have a significant impact on competition between schemes for members.
- 3.4 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 Biffa, as operator of Impact, has similarly said that it does not envisage entering into any exclusive arrangements with reprocessors on behalf of the scheme.

Comments received from third parties

- 3.5 Consultation notices were placed on 18 and 19 November respectively in *Packaging Magazine* and *Materials Recycling Week* (see Annexe A). Letters inviting comment upon the proposed scheme were also sent to a number of interested parties.
- 3.6 In response to the public consultation exercise conducted by the Office, the view was expressed that Biffa could easily accommodate smaller, newly obligated companies within its existing Biffpack scheme and consequently had no need to set up the Impact scheme. An objection was also raised to the Impact scheme's requirement that PRNs obtained via a member's own recovery and recycling initiatives outside of the scheme must be made available to the scheme to offset that member's obligation since this would prevent the members concerned selling their PRNs on the open market and thereby place a constraint upon other parties seeking to acquire PRNs.
- 3.7 The Regulations do not preclude a company operating two separate compliance schemes and the decision to set up a separate scheme for smaller, newly obligated companies is entirely a matter of choice for Biffa.
- 3.8 The requirement that PRNs obtained via a member's own recovery and recycling initiatives must be made available to the scheme is a feature of several existing compliance schemes. Members will be aware of this requirement before joining the Impact scheme and the Office does not consider that it will significantly distort competition.
- 3.9 Having examined the estimated aggregate and material specific obligations for the scheme's members and the nature and level of existing and potential competition, it is unlikely that a scheme on the scale of the Impact proposal could lead to an appreciable restriction, distortion or prevention of competition or to an abuse of market power.

Conclusions

- 3.10 After considering the scheme, I have concluded that the Impact 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

- 3.11 I recommend that you should advise the Environment Agency and Biffa Waste Services Limited as operator of the draft scheme, in accordance with regulation 31(5), that you are satisfied that the Impact scheme meets the requirements of competition scrutiny.

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

4 ANNEXE A: OFT NOTICE SEEKING COMMENTS FROM THIRD PARTIES

The following notice was placed in *Packaging Week* and *Materials Recycling Week* on 18 and 19 November respectively.

OFFICE OF FAIR TRADING

Impact and Betapack - notifications of compliance schemes

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 two separate schemes. These are:

- (i) Impact, a scheme to be operated by Biffa Waste Services Ltd; and
- (ii) Betapack, a scheme to be operated by Betashred Ltd a joint venture between Grove Environmental (Recycling) Ltd and M & B Haulage & Waste Paper Co Ltd (trading as M & B Waste Management & Transport Logistics).

The Director General invites comments from interested third parties on the schemes to be operated by Impact and Betapack. They should be addressed to:

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Office of Fair Trading
Competition Branch 6
Chancery House
53/64 Chancery Lane
London
WC2A 1SP

Email: neil.stoesel@oft.gov.uk

Please contact Mr Stoessel if you require a summary of the proposed schemes. To ensure your comments are considered as part of our consultation process, they should arrive at the Office by 3 December 1999.