

The Producer Responsibility Obligations  
(Packaging Waste) Regulations 1997

# **Toddpak**

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

**January 2000**  
OFT 295

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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 Toddpak 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 Toddpak is a proposed scheme to be operated by F.D. Todd & Sons Limited ('F.D. Todd') of Thirsk, North Yorkshire.
- 1.3 This advice has been prepared on the basis of the current draft membership agreement that will form the constitution of the Toddpak 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 Toddpak 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 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 F.D. Todd as operator of the proposed scheme, in accordance with regulation 31(5), that you are satisfied that the Toddpak scheme meets the requirements of competition scrutiny.

## **2 THE TODDPAK SCHEME**

- 2.1 The Toddpak scheme will be operated by F.D. Todd. F.D. Todd is involved in the collection of commercial and industrial wastes and the operation of landfill sites. The company is an accredited reprocessor under the Regulations, dealing with energy recovery from packaging waste.
- 2.2 The scheme operator states that it intends to operate on a scale and basis that will attract companies of a small to medium size, with obligations to suit. Though no ceiling will be placed on membership obligations, the compliance scheme will be geared to suit members with total obligations of less than 200 tonnes. It is intended that membership of the Toddpak Scheme will discharge members' legal obligations under the Regulations to recover and recycle packaging waste material. F.D. Todd as operator of the scheme will provide the Environment Agency with details of the scheme members' aggregate obligations.
- 2.3 Any PRNs generated by members from the recycling of materials will be used to offset that member's obligation. Toddpak will operate on the basis that it will meet the remaining aggregated obligations of its members by obtaining Packaging Waste Recovery Notes ('PRNs') through the recovery and recycling of packaging waste. This recovery and recycling will be achieved by:
- the receipt of PRNs by the operator in exchange for the recovery and recycling of members' packaging waste;
  - the collection activities performed by F.D. Todd where F.D. Todd will use the material collected from non-obligated companies (and others) to procure PRNs to meet its members' obligations;
  - the purchase of PRNs, or packaging material which could be exchanged for PRNs. The costs for purchase of such evidence would be charged to members according to the ratio the of outstanding liability of each member.
- 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 F.D. Todd states that scheme members will join the scheme for a period of one year. However, members will be able to leave the scheme at any time on giving three months notice in writing.

### **3 ASSESSMENT AND RECOMMENDATION**

#### **Existing competition**

- 3.1 The most direct competition Toddpak 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 F.D. Todd, as operator of Toddpak, 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. Members will join the scheme for a period of one year, but will be able to leave at any time by giving three 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 Toddpak 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 Toddpak 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 F.D. Todd as operator of the proposed scheme, in accordance with regulation 31(5), that you are satisfied that the Toddpak scheme meets the requirements of competition scrutiny.

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