



**Response to**  
**DEHLG Consultation Paper**  
**Regulation of the Waste Management Sector**

**October 2006**

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## 1. Introduction

The structure of the waste management sector has changed significantly over the past decade with a partial withdrawal of local authorities from operations and substantial investment by the private sector. Waste management has become highly professionalised and increasingly regulated. Presently there are 29 statutory instruments<sup>1</sup> and 12 different regulators<sup>2</sup> regulating waste management in the State. It has also been a period where public policy has evolved towards an emphasis on the polluter pays principle and the waste management hierarchy. However this period of change is far from complete.

Despite this rapid and ongoing change, it has been concluded in some quarters that the current system is not effective and that public intervention is required. The Minister for the Environment and Local Government has expressed a wish to see a regulator appointed to oversee the future operation and development of the sector in Ireland.

This document is in response to a public consultation process initiated by the Department of the Environment, Heritage and Local Government (DEHLG) aimed at examining possible regulation of the waste management sector.

The Irish Waste Management Association (IWMA)<sup>A</sup> welcomes the ‘consultation paper’, its openness and the scope it offers for informed debate on how waste management should be regulated in Ireland. The need for the review was clear as Government recognised that a conflict of interest exists in the waste market where local authorities act as both market players and regulators of their competitors in the private sector.

An effective, competitive and environmentally sound waste management sector can help the country meet social, environmental and economic objectives. The IWMA believes *effective and better regulation* has a role in helping the waste management sector meet these objectives. However the Association *does not see the need for further regulation and new regulators at this time, rather a more effective use of existing regulatory structures is required i.e. better regulation.*

The objectives of the IWMA response are to:

- Outline IWMA principles on the positive role better regulation can play in contributing to the delivery of an effective, competitive and environmentally sound waste management sector;

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<sup>1</sup> Colloquially known as the Waste Management Acts 1996-2005. Every step of the waste management chain is regulated, including waste management: planning, collection, movement and management activities.

<sup>2</sup> The Environmental Protection Agency, An Bord Pleanála and local authorities organised as 10 Regional Waste Management Authorities.

- Express the views of its membership with regard to structural challenges facing the sector in developing an effective waste management system for the country;
- Suggest constructive solutions to address these structural challenges;
- Challenge assertions expressed in the *Consultation Paper*;
- Contextualise and respond to the five questions posed in the *Consultation Paper*.

The Association welcomes this consultation process and believes in meaningful consultation and dialogue with all stakeholders. The IWMA looks forward to continued interaction with the DEHLG and others in addressing the structural challenges facing the sector and the delivery of an effective, competitive and environmentally sound waste management system.

**A Note:**

The Irish Waste Management Association (IWMA) is affiliated to IBEC and is the recognised national representative body for the private waste management industry in Ireland. Membership consists of a broad spectrum of companies involved in waste collection, recycling, recovery, treatment and disposal, from both urban and rural areas, providing waste management solutions for both the public and private sector. The Association is a member of the European Federation of Waste Management and Environmental services (FEAD<sup>3</sup>). The IWMA aims to improve standards and promote the development of the waste management sector as a recognised, professional and well-regulated industry.

The Association would like to thank its membership, who responded to a wide ranging consultation process, and Dr Kevin Hannigan, KHSK Economic Consultants for the various legal and economic contributions to this paper. Due to the scale and tight timeline of the consultation process, the Association is gathering data which may be sent onto the Department at a future date.

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<sup>3</sup> For further information, visit [www.fead.be](http://www.fead.be)

## 2. Executive Summary

In summary, the Irish Waste Management Association (IWMA) welcomes this consultation process. The need for the review was clear as Government recognised that a conflict of interest exists in the waste market where local authorities act as both market players and regulators of their competitors in the private sector.

However the IWMA *does not see the need for further regulation or new regulators at this time, rather a more effective use of existing regulatory structures is required i.e. better regulation.* The Association looks forward to continued interaction with the DEHLG and others in addressing the structural challenges facing the sector and the delivery of an effective, competitive and environmentally sound waste management system.

The position is based on the following:

- The Department has not produced the evidence as required by policy to justify the introduction of further regulation or a new regulator.
- There are considerable structural problems within the waste management sector mostly related to the role of the local authorities as both regulating agencies and competitors for private businesses. This role should first be clarified by the DEHLG;
- The actions of the local authorities do not always comply with stated policy;
- Existing enforcement, administration and regulation lacks consistency and is inefficient;
- Contrary to perceptions, competition in the domestic waste collection business is intense and margins are tight;
- Prices in the waste sector are driven mostly by landfill charges;
- The era of rapidly rising landfill prices appears to be passed;
- The environment fund is not being used in the most effective manner;
- A new regulator or further regulation is not necessary to address these issues nor would it necessarily be the best way to do so. IWMA believes better regulation or an effective use of existing regulatory structures is the way forward;
- The Association is strongly opposed to any effort to introduce price setting or introduce a power to direct waste to named facilities. This power would be detrimental to competition in the market and the achievement of national policy objectives. This power would be subject to legal challenge. However the IWMA

is open to the incentivisation or disincentivisation of waste to named tiers of the waste management hierarchy in order to meet policy objectives;

- Regulators have encountered considerable and ongoing difficulties in setting prices.
- The Irish situation cannot be simply compared to the situation in other countries as local authorities have walked away from responsibility to handle waste in many areas making the general introduction of competitive tendering impossible in these areas;
- The majority of commercial waste is managed by the private sector and operates as a fully competitive sector. The IWMA sees no requirement for regulation of the commercial waste management sector;
- The private sector is concerned that the introduction of a new regulator would simply add more bureaucracy to a highly regulated sector without addressing the structural challenges facing the sector;
- Experience with existing regulators in Ireland shows that it is possible for a regulator to successfully oversee the liberalisation of a sector and the creation of competitive markets that were previously controlled by public sector monopolies. However, this process is made extremely difficult and may be curtailed where incumbents are allowed to retain control of key assets while competing with the private sector. Therefore IWMA would call for the dual role of local authorities in the sector to be addressed first by ministerial order or legislation;

### 3. Principles on the Role of Regulation in the Waste Sector

#### 3.1. Regulation in Context

The most concise statement on the approach to be adopted in relation to regulation in Ireland is contained in the White Paper *Regulating Better* produced by the Department of the Taoiseach in January 2004. The core of this paper is the setting out of 6 principles that are to guide regulation in Ireland. These are to be applied to any proposal for regulation. They are:

- Necessity: convincing arguments based on data are required before introducing regulation, bureaucratic costs must be minimised and existing regulations must be reviewed regularly;
- Effectiveness: regulations should be targeted rather than general and must only be introduced if they can be enforced effectively;
- Proportionality: alternatives are preferable to regulations if available, the cost of complying should be kept low and penalties for non-compliance must be appropriate, and a system of regulatory impact analysis should be used;
- Transparency: consultations are to be undertaken, PSOs should be clarified in advance and the regulations are to be kept as simple as possible;
- Accountability: regulators and enforcement agencies are to be accountable to the Dáil and an improved appeals procedure is to be developed;
- Consistency: regulatory bodies should be as similar as possible in their activities and regulations in particular sectors are to be tested to ensure they are consistent.

In terms of the Consultation Paper there are important questions in relation to a number of these principles before further regulation could be even contemplated.

1. The IWMA questions the need to introduce a new regulator at this time. The waste sector is already highly regulated by the Environmental Protection Agency (EPA) from an environmental perspective and the Competition Authority from a cost/price/market perspective. The assertion that waste is the only utility sector without a 'specific' regulator as rationale for its introduction is inadequate. In addition no regulatory impact assessment, as required by policy, has been undergone to justify the need for a new regulator or further regulation.
2. The suggestion of further regulation is apparently based on assertions that the Association would question e.g. the perception that inadequate competition in domestic waste collection is universal leading to high margins.
3. The IWMA has serious concerns in relation to the enforcement of regulations. The sector does not need new regulations but the enforcement of existing regulations and a consistent implementation of stated policy.
4. In the UK, following the *Hampton Review on Regulatory Inspections and Enforcement*, the Department of Environment Food and Rural Affairs gave a commitment to reduce the

regulatory burden in the UK by 25% by 2010. In Denmark they published an Action Plan in 2002 containing a target to reduce the regulatory burden on businesses by 25% in four years. In light of international best practice the DEHLG should consider setting an overall target for Ireland.

5. There are serious issues of regulatory inconsistency between the existing 12 regulators governing waste management. This inconsistency and ineffective implementation has hampered the sector. Further regulation that reinforces the status quo will jeopardise the sectors ability to meet environmental, social and economic goals. In summary the IWMA is calling for these principles to be enforced across the waste management sector i.e. better regulation not further regulation.

### **3.2 *Regulatory Experience in Other Sectors***

Experience with existing regulators in Ireland shows that it is possible for a regulator to successfully oversee the liberalisation of a sector and the creation of competitive markets that were previously controlled by public sector monopolies. However, this process is made extremely difficult and may be curtailed where incumbents are allowed to retain control of key assets while competing with the private sector. Therefore IWMA would call for the dual role of local authorities in the sector to be addressed first by ministerial order or legislation before further regulation can be contemplated. A full review of regulatory experience in other sectors is presented in **Appendix 1**.



## **4. Structural Challenges and Solutions Facing the Waste Sector**

The waste management sector is already highly regulated. A robust regulatory regime has a role in supporting the sector meet social, economic and environmental goals. However existing regulation poses structural challenges to the sector in meeting these goals.

### **4.1 Waste Policy**

IWMA is broadly supportive of government waste policy goals with its focus on delivering an integrated waste management system underpinned by the polluter pays principle.

### **4.2 The Role of Local Authorities in the Waste Sector**

#### ***4.2.1. Regulatory Concerns:***

- Under the current regulatory framework, local authorities enjoy a privileged commercial role and a dominant position in key market areas. The consultation paper recognises that local authorities operate as market players in the waste sector, delivering waste management services and infrastructure, while simultaneously controlling the planning and regulation of their private sector competitors. This demonstrates a clear conflict of interest.

#### ***4.2.2. Regulatory Recommendations:***

- Local authorities should be involved in either the provision of waste management services/infrastructure or regulation but not both. As the role of local authorities in the waste management sector is currently enshrined in legislation it should be clarified in new legislation or ministerial direction. Regulators generally implement rather than devise policy. IWMA believes that the responsibility for clarifying the role of local authorities in waste management lies with the DEHLG.
- If local authorities are to be allowed to continue as a market player in the waste management sector, they should compete under the same regulatory and commercial rules as the private sector. This could be achieved by allowing local authorities to transfer their waste asset/operating activities into an independent limited company that would then trade on a level playing field basis with the private sector similar to the system introduced in the UK<sup>4</sup> in the 1980s.

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<sup>4</sup> UK Local Authority Waste Disposal Company (LAWDC) system

## 4.3 Waste Regulation – Planning

### 4.3.1. Regulatory Concerns

The IWMA supports the full implementation of and adherence to the regional waste management plans but has the following concerns:

- While local authorities are market players in the waste sector they also have regulatory powers to dictate the planning of infrastructure by their competitors in the private sector. There is a conflict of interest in the dual role played by local authorities as both waste management planners and waste management service providers.
- Until recently, inconsistencies existed between the treatment of public and private sector developments by An Bord Pleanála (ABP) over the ‘regionalisation’ issue. For example, in the North-east region, Knockharley landfill (a private sector development) and Whiteriver landfill (a local authority development) were subject to differing interpretations on inter-regional co-operation and the proximity principle by ABP. Knockharley could not accept waste from outside the region, but Whiteriver was, and still is permitted to do so. Clearly this situation provided local authority facilities with a competitive advantage and hampered private sector market entry into the same geographical area.
- Furthermore, the Whiteriver decision was a major contravention of the stated recommendations of the regional waste plan. Despite a statutory obligation to have regard for the regional waste management plans, both ABP and the EPA allowed local authorities in the North-east region to expand their landfill capacity beyond that provided for by their own waste management plan for the region<sup>5</sup>.
- Capacities for each waste management technology identified in regional waste management plans are intended to protect waste policy aims such as the waste management hierarchy. If regulators do not protect stated waste policy aims, as in Whiteriver, they disincentivise private investment in alternative competing technologies and at worst promote regional monopolies or a reliance on one technology to the exclusion of an integrated approach to waste management.
- Government policy states that in “*updating the waste management plans the local authorities concerned will pay particular attention to ensuring effective engagement with the private waste industry; and the outcome of this engagement, together with other relevant factors, will be reflected in the final updated waste management plans adopted*”<sup>6</sup>. This is a positive step forward. However, we have only seen partial evidence of ‘engagement’ to date. The IWMA actively participated in the consultation stage of each regional waste management plan, as our membership is playing an increasing role in the delivery and operation of key waste management services. It is felt that private sector concerns are not reflected in the final waste plans adopted. In addition there is no redress mechanism in the plans if valid concerns are

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<sup>5</sup> ABP Reference: PL. 15.E.L. 2004 and EPA Reference 60-2.

<sup>6</sup> Waste Management, Taking Stock and Moving Forward – DEHLG (2004)

not taken on board. The IWMA feels that regulation should provide a clear mandatory rather than arbitrary structure where effective public-private engagement on the waste plans can happen and where the results of this engagement are tangible and quantifiable.

- Waste management planning in Ireland consists of several unconnected waste management plans<sup>7</sup> developed in isolation and regulated by several different agencies<sup>8</sup>. Private waste operators now have responsibilities to waste customers on a national basis rather than just in a number of arbitrary functional areas. While IWMA supports the regional waste management plans we are concerned that there is no linkage between the various plans. There is no single agency co-ordinating, monitoring or protecting the regional waste plans in the country. Some commentators have questioned who exactly is responsible for the regional waste management plans?<sup>9</sup>

#### **4.3.2. Regulatory Recommendations**

- Co-ordination of our various waste plans on a national level would better facilitate implementation and delivery. A single agency, with no commercial interest in the sector, should monitor, co-ordinate and protect waste policy goals in the regional waste management plans. The IWMA believe the co-ordination of the regional plans is a policy matter and should be dealt with by the DEHLG and implemented by a resourced EPA.
- The conflict of interest in planning posed by local authorities acting as both market player and regulator of their competitors in the private sector must be addressed.
- The IWMA welcomes the government's recent positive steps towards a common regulatory framework for all comparable waste developments under the remit of An Bord Pleanala.
- All operators must adhere to the provisions of the regional waste management plans and the DEHLG guidance on inter-regional movement of waste equally.
- In order to facilitate public and private sector co-operation in the implementation of the replacement regional waste management plans, a representative from the private sector should be invited to participate in each regional steering group that oversees their implementation. The implementation of the regional plans should be monitored on an ongoing national basis by the DEHLG or a single agency and the results made public<sup>10</sup>.

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<sup>7</sup> Ten regional waste management plans, a National Hazardous Waste Management Plan, a National Waste Prevention Programme and a National Biodegradable Waste Strategy.

<sup>8</sup> Ten regional waste management planning authorities, 34 local authorities, the EPA, An Bord Pleanala and the DEHLG.

<sup>9</sup> Who are the protectors of the Regional Waste Management Plans in Ireland? - CEWEP (2005)

<sup>10</sup> Similar to the Department's review of the current regional waste plans, *National Overview of the Waste Management Plans* – DEHLG (2004)

## **4.4. Waste Facility and Waste Collection Permits**

### ***4.4.1. Regulatory Concerns***

- Ineffective and inconsistent administration/enforcement of regulation by local authorities across ten regional waste management areas.
- Different regulatory regimes exist for private versus public operators in regard to comparable waste management facilities and collection activities.
- The conflict of interest in allowing market players (i.e. local authorities) to regulate their private sector competitors.
- The bureaucracy and cost of regionalising the regulation of permits is prohibitive to private operators.

### ***4.4.2. Regulatory Recommendations***

#### **Conflict of interest**

- The IWMA believes a single central authority, with no commercial interest in waste management, should administer and enforce the regulation of waste facility permits and a single national waste collection permit. IWMA believes the clear candidate for this role is a resourced EPA.

#### **Consistency**

- Comparable public and private waste facilities and waste collection activities should be subject to the same regulatory process and requirements. This process should be administered by an independent competent body with no commercial interest in the sector e.g. EPA.
- The costs, administration and enforcement of both waste facility and collection permits should be consistent across geographical and sectoral (public and private) lines. Consistency facilitates adequate and transparent regulation of the whole sector. Again a centralised agency with no commercial interests such as the EPA is the preferred option.
- We feel that one national waste collection permit, not ten, is the way forward and this should be administered and enforced by the EPA.
- Permits should be flexible to allow small or short-term operational changes without triggering a full regulatory review e.g. the addition of a new vehicle or specialist equipment. This flexibility would help facilitate service provision during periods of high demand or where a vehicle is temporarily out of commission.

## 4.5. Administration of Transfrontier Waste Shipments

### 4.5.1. Regulatory Concerns

Like most waste regulation the administration of waste exports is regionalised. The IWMA is seriously concerned that there is a serious disparity in the administrative costs for shipping waste from different local authority functional areas. We feel that costs in certain regions are excessive, distort competition in the sector and are a barrier to operating in certain regions of the country.

Table 1 provides an overview the disparity in TFS administrative costs across the country in 2005 and 2006 respectively.

**Table 1:** Cross-section of Local Authority TFS Administrative Costs 2005-2006

Local Authority Area	APPLICATION FEE (€) 2006	APPLICATION FEE (€) 2005	FEE/LOAD (€) 2006	FEE/LOAD (€) 2005
Dublin City	€ 125	€ 125	€ 40	€ 40
Dun Laoghaire	€ 0	€ 0	0	€ 0
Fingal	€ 600	€ 534	€ 80	€ 70
South Dublin (SDCC)	€ 600	€ 760	€ 60	€ 120
Galway	€ 160	€ 160	€ 0	€ 0
Limerick	€ 350	€ 350	€ 100	€ 50
Waterford	€ 300	€ 300	€ 20	€ 25
Cork	€ 55	€ 90	€ 55	€ 55
National Average	€161	€158	€36	€32
National Average excluding SDCC	€141	€132	€34	€28

Disparities exist within the Dublin region and with the other main local authority areas. For example South Dublin County Council (SDCC) remains one of the most expensive areas to operate. South Dublin's charges are higher than several areas with comparable TFS volumes and areas who have charge of ports and their associated export activities e.g. Munster and Dublin City. SDCC's TFS administrative charge was 475% more expensive than the national average cost deemed appropriate by other local authorities in 2005 and will be 325% more expensive than the national average in 2006.

IWMA estimates that in 2005, the comparative cost for a typical member company's volume of TFS documents was €43,000 compared to the actual SDCC charge of €20,000 or a national average of €31,700.

#### **4.5.2. Regulatory Recommendations**

- TFS administration should be centralised or co-ordinated by one regulatory body i.e. EPA.
- TFS administration costs should be transparent, proportionate and consistent for all operators across the country. The UK Environment Agency publishes clear pricing guidelines which were drawn up following a public consultation.
- Administration and enforcement costs should be documented, justified and available. Price changes should be signalled as far in advance to operators as possible for budgeting purposes.
- Regulators must validate the necessity for information, ensure utilisation of all available delivery channels and require information to be only collected once.

#### **4.6. Waste Regulation – Financial Instruments**

##### **4.6.1a. Market Based Instruments**

The ‘Environment Fund’ is financed by a levy imposed on the use of landfill or plastic bags. These market based instruments should affect most consumers equally irrespective of who their waste service provider is. The regulatory function of the fund is to change consumer behaviour and to a lesser extent support waste management initiatives<sup>11</sup> Grant aid from the fund is not open to private operators in the waste sector at present. While the private sector agrees with the fund being used to support social or uneconomic infrastructure e.g. bottle banks etc., it has concerns that grant aid from the fund presents a competitive advantage to public operators over private operators when it comes to developing comparable and competing infrastructure. While 60% of municipal waste is collected by the private sector, it cannot access grant aid. Therefore private operators cannot pass on any potential service benefit to their customers that the grants would bring.

By the end of 2005, €42 Million of the fund had been used to support local authority waste management infrastructure and recycling operational costs<sup>12</sup>. Approximately €1.9 million of the fund was used to resource waste management enforcement initiatives by local authorities and the EPA’s Office of Environmental Enforcement (OEE).

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<sup>11</sup> See Section 74(9) of the Waste Management Act 1996, as inserted by section 12 of the Waste Management (Amendment) Act 2001 and the Waste Management (Environment Fund) (Prescribed Payments) Regulations 2003.

<sup>12</sup> Written reply to Question 663, Ref. 30591/05 Minister for the Environment, Heritage and Local Government (Mr Roche) – 25<sup>th</sup> October 2005.

#### **4.6.1b. VAT**

Unlike the private sector, local authorities do not have to apply VAT to their waste management services. While this is not really an issue for commercial customers, it is an issue at the household level where users cannot claim back VAT.

#### **4.6.2. Regulatory Concerns**

Consumers subject to environmental levies in areas serviced by the private sector may not receive the benefits of the Environment Fund. While the regulation's aim is 'polluter pays' not all the population are impacted by the fund in the same way.

Household consumers serviced by the private sector are subject to VAT. This situation allows local authorities a 13.5% (estimated €30 million) commercial head-start, where there is direct competition between the public and private sector for household services. Similar to the environment fund situation, it means the tax burden is uneven. At worst the extra cost is a disincentive to the uptake of waste management services and encourages unauthorised waste activities e.g. backyard burning. This situation has recently been highlighted as uncompetitive by the European Commission<sup>13</sup>

#### **4.6.3. Regulatory Recommendations**

- Grant aid from the 'Environment Fund' is not being used effectively. Funding should be open to all operators in the waste sector. Funding should be used to fund market development not hinder entry to market.
- In other EU countries, for example, the Netherlands, both public and private waste management services are subject to VAT. This situation needs to be clarified in Ireland. A ministerial order should be issued by the Department of Finance that addresses competitive and social issues posed by the application of VAT on private vs. public operators regarding household waste management services.

### **5. Assertions Made in DEHLG Consultation Paper**

The relevant sections of the paper are identified with text from the paper in italics and by the page number. Certain assertions made in the consultation paper are challenged and supporting data provided.

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<sup>13</sup> Under the Sixth VAT Directive, public bodies should be treated as taxable persons in a number of cases and, at any rate, where doing otherwise would result in significant distortions of competition. Case 430/04 (ECJ, June 2006)

### 5.1. *Observation 1*

*..There are concerns that the high cost of waste management services in the Irish economy may signal a need for better regulation of the sector from a socio-economic perspective...<sup>14</sup>*

In the next sentence the paper accepts that *the evidence is not conclusive*. However, the White Paper on regulation requires that convincing arguments based on research and analyses of data are required before introducing regulation. In the absence of such research to identify the existence of high costs and the reasons for such costs, any conclusion that better regulation is required is an unsupported assertion. Anecdotal evidence does not meet the requirements of the White Paper. The implied assumption of the approach taken in the consultation paper is that the high costs are the result of excess profits in the sector. The industry asserts that prices are driven by landfill costs primarily and that competition has kept margins low in collection. If excess profits exist then incentivising or facilitating greater competition rather than restricted competition as may result from socio-economic regulation is the appropriate response. If costs have indeed been driving prices as the industry argues then simply driving down all costs is not the correct approach as this would reverse the incentives to move away from landfill and would lead to the type of low cost sector with low investment that existed in earlier decades.

### 5.2. *Observation 2*

*..As with any utility which effectively becomes privatised, there is a need to guard against any deterioration in standards of service, and ‘cherry picking’ of customers and any monopolistic generation of excess profits to the detriment of consumers...<sup>15</sup>*

Three issues arise from this passage. First, there is a difficulty in accepting that the waste management sector has effectively been privatised. Certainly private operators play a large and increasing role but the public sector local authorities continue to act to restrain private sector activity and investment in a number of areas through subsidised collection and competing facilities and through majority control of landfill sites. This is identified as the source of the main problems in the sector. Furthermore, it is wrong to characterise the sector as a utility that has simply been privatised. It has changed utterly as a result of the moves to implement the waste hierarchy and all this implies. Second, no evidence is presented of any of the dangers listed. However, the publication of the consultation paper proposes regulation on the perception that such difficulties exist. Finally, there appears to be an assumption that private sector competition leads to excess profits. In fact, the reverse is the case and the excess profits in the waste management sector have existed in

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<sup>14</sup> Part 2, page 7 of the Consultation Paper

<sup>15</sup> Page 11 of the Consultation Paper.



the landfill sector owned by the local authorities where competition has only emerged in recent years and prices have now begun to moderate.

### 5.3. *Observation 3*

Page 12, paragraph (c) & (d) of the paper explicitly recognises the conflicting role of the local authorities but there is no evidence of this in the 5 questions posed towards the end of the paper. In addition the reference on this page to ensuring that full costs are passed on is not further emphasised in the paper. Consequently IWMA stresses that the DEHLG should address the role of the local authorities in the sector before contemplating further regulation in an already highly regulated sector.

### 5.4. *Observation 4*

Part 3, page 14 of the document again refers to the setting of charges by local authorities where they are the service provider but fails to point out that the legislation does not compel them to charge the full cost. There is no comment on the clear contradiction with the previous reference on page 12. The section also refers to the assertion by the Competition Authority that *the market for household waste is not working well for consumers*. Again, no evidence is presented and, indeed, given that this was not the issue being investigated by the Competition Authority no conclusive case was built by their investigation. However, this is used to provide a rationale for regulation to *prevent the possible generation of excessive profits by monopolies*. Even a cursory review of the sector indicates that the difficulties experienced by households in terms of rising prices have been driven by rising landfill prices in the past and the competition is now moderating this difficulty.

### 5.5. *Observation 5*

Page 15 of the paper explicitly recognises the problems associated with the local authorities and states that:

*'Changes in the regulatory framework could address these issues to a significant degree'*.

While this recognition is welcome, no indication is provided regarding what might be contemplated. Furthermore, changes in the regulatory environment do not provide a rationale for a regulator. These changes are required irrespective of whether a regulator is appointed. However, the apparent implication of this section is that these changes to the legislative/regulatory framework will only be implemented in the context of a regulator with greater powers being appointed.

### **5.6. Observation 6**

The quote from Indecon<sup>16</sup> refers to 3 models of service provision – delivery by local authorities, contracting out, and private sector delivery where the local authority has withdrawn. The paper concludes that regulation is required only in the last model. While this is debatable, the problem is that this identification of 3 models ignores the reality of the Irish waste management sector where the local authorities effectively compete with the private sector and can modify the conditions within which the competition takes place. This is the core issue and is ignored here. This competition takes place in 3 respects: in collection where subsidised services may even make private operation non-viable, in disposal to landfills where there is direct competition and where the charging structure can again be used to subsidise the local authorities, and in other waste management technologies where local authority investments that are grant aided by the environment fund displace private sector investment. It is this structural issue of local authority competition that requires examination.

### **5.7. Observation 7**

Page 17, 18 & 19 of the paper:

The distinction between governmental regulation, industry self regulation/co-regulation and performance based regulation is somewhat artificial in practice. The required regulatory framework for the sector will require elements of all 3 approaches. However, it is useful to point out that where a desired outcome is achieved without additional regulation but through the provision of an appropriate incentive framework – this does not necessarily mean that grants or subsidies are provided – then the overall cost of the regulation will be minimised. Ensuring that the incentives are appropriate should therefore be a prerequisite to regulation. This can only be achieved through detailed study of the industry and close consultation with operators to identify the reasons why their actions are out of line with specified objectives, should such a situation arise.

### **5.8. Observation 8**

Under the heading ‘Price capping’<sup>17</sup>, a comparison is made between the waste management sector and the activity of Comreg in capping the price that Eircom can charge for line rental. This is a wholly inappropriate and misleading comparison for 2 reasons. First, line rental is an almost pure commodity business i.e. it is a single product/service. Waste management is a much more complex service involving a range of technologies, different forms of waste and customers with different requirements. Second, the marginal cost of providing the service for which the rental is charged is very small in most cases. Eircom’s costs are largely fixed costs so the incentive is to spread them over the largest number of users. This is not the case in waste collection where

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<sup>16</sup> Page 16 of the Consultation Paper.

<sup>17</sup> Page 22 of the Consultation Paper.

marginal costs are substantial, the only arguable exception being the landfill sector. Only if this analogy is restricted to landfill can it be justified. Its insertion into the paper at this point suggests that it is possible to apply price control to the whole waste management sector. The IWMA does not support this notion.

### **5.9. Observation 9**

When discussing competitive tendering, the paper<sup>18</sup> states that:

*Competitive tendering may not be appropriate for all local authorities e.g. where a work force is already employed and equipped to provide a collection service.*

A workforce is only likely to be employed where the local authority continues to provide the collection service. As discussed above, this is the only instance in which a competitive tendering process could be acceptable.

### **5.10. Observation 10**

Much of the discussion of operational issues<sup>19</sup>, suggests that the regulator would be given the powers to achieve consistency and co-ordination while removing the local authorities from their dual role. The IWMA welcomes this approach but believes it can be achieved with existing regulatory structures.

### **5.11. Supporting Data**

There appears to be a perception running through the consultation paper that there are excess profits in the waste management sector that arise from an ongoing ability on the part of operators, due to a lack of competition in the industry, to push up prices. Since no evidence for this is provided, it appears to be based on the conclusion of the Competition Authority that, although it found no abuse of market position in the case under review, *the market for household waste is not working well for consumers*. The IWMA believes this perception is unfounded in three respects:

- There is intense competition in most areas in collection. This is not the case only where local authorities effectively prohibit competition or where the route is only viable within the context of supplying a comprehensive service to a larger area or is only marginally competitive;
- Prices have moderated in recent years as landfill prices have eased;
- As a consequence of this competition and the key role that has previously been played by landfill fees in driving prices, margins are not high in domestic waste collection.

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<sup>18</sup> Page 24/25 of the Consultation Paper.

<sup>19</sup> Pages 25, 26 & 27 of the Consultation Paper.

The data and analysis in the Competition Authority report show that waste management prices to households rose in the period 2000 to 2004 in excess of the rise in general inflation as measured by the CPI. This is not a good basis for comparison for 2 reasons. First, the CPI includes a broad range of goods and services and some have risen much faster in price than others. The clearest trend has been that the prices of services have risen consistently and substantially in advance of the CPI for a number of years. Many reasons such as the high labour content of services and the inability to import services can be identified to support this. Waste management is a service and as such might be expected to rise faster than the CPI. Second, price comparisons in this sector over a 5 year period are problematic as waste management is a composite service i.e. it encompasses a number of activities. Due to the evolution of legislation and structural changes in the sector during this period, the nature of the service and its cost drivers have changed markedly. As a result, simply assuming that waste management in 2006 is basically the same as in 2000 is inappropriate and a more complex approach, such as a hedonic pricing model, would be required before conclusions could be drawn from any price changes. Even then, the difficulty remains that the main drivers of prices are outside the collection service, the most important being the cost of landfill, with transport costs also becoming important in recent years. This was recognised to some extent in the Competition Authority report although it is not reflected adequately in the approach taken in the consultation paper.

Table 2 shows the trend in landfill costs in the period 2000-2006. Landfill charges rose rapidly in the period up to 2003 when almost the only available facilities were operated by local authorities. Data derived from the Indecon report shows that total receipts of local authorities from charges for services rose in the period 1996 to 2004 by 112% from €31 million to €1,125 million. However, in line with the principle that user charges should more accurately reflect costs, waste management charges rose almost 14-fold (by 1,279%) from €29 million to €322 million in this period. Furthermore, receipts from landfill operation rose by over 1,000% in this period to €253 million in 2004. As a result, landfill income for local authorities increased from 4.3% of charges income in 1996 to 22.5% in 2004. This reflects the near monopoly position of local authorities in this sector and shows both the driving force for increased domestic costs in waste management and the market structure and incentives that brought it about.

**Table 2: Landfill Costs 2000-2006**

Landfill Costs <sup>20</sup>		
	€ per tonne	% change
2000	47	~
2001	70	+48.5
2002	118	+69.3
2003	155	+31.9
2004	164	+5.3
2005	165	+1.0
2006	147	-11.2

<sup>20</sup> These costs are an unweighted average based on data collected by the IWMA and include the environment levy. It is acknowledged that the actual costs varied considerably around the country.

However, the period since 2004 has seen the first meaningful competition from privately owned landfill and the percentage change in the average cost of landfill in the period 2003- 2006 was a fall of 5.2%. This reflects the fact that, even in this sector where it is acknowledged that competition is far from perfect, an improvement in competition not only slowed the very high increases that were happening but actually reversed the trend. This contrasts with the suggestion in the consultation paper that where competition is poorly developed private operators will be able to push up prices excessively. The problem is clearly a reflection of the monopolistic position of local authorities, particularly in the period before 2004. However, the Competition Authority report was produced against the background where the impact of introducing market controls over landfill prices had not yet become clear.

## 6. Response to Five Questions posed in the Consultation Paper

The consultation paper called for submissions to be structured around 5 questions set out below (text in italics). The need for review is clear as Government has recognised that a conflict of interest exists in the waste market where local authorities act as both market players and regulators of their competitors in the private sector. As this conflict is enshrined in the Waste Management Acts 1996-2005 any clarification or change in the local authorities' role must be considered first via a change in legislation or ministerial direction. Regulators do not devise policy, rather they implement policy. We believe the responsibility for devising policy must lie with the DEHLG.

Presently there are 29 statutory instruments and 12 different regulators regulating the environmental aspects of waste management in the State. The competition authority regulates the sector from a market perspective. Therefore we query the need for further regulation and new regulators at this time. The IWMA would prefer a more effective use of existing regulatory structures i.e. better regulation and enforcement in meeting economic, environmental and social goals.

### (1) *Which model of regulation would be most appropriate for the waste sector?*

- (a) *Governmental regulation; or*
- (b) *Industry self-regulation or co-regulation; or*
- (c) *Performance based regulation.*

The conflict of interest in allowing local authorities to act as both market players and regulators of their competitors must be addressed first in legislation or a ministerial direction. Local authorities must compete on a level commercial and regulatory playing field with their private sector colleagues. Local authorities should be involved in either regulation or operations, not both. The way forward is not really a choice between these alternatives but requires a strong central enforcement agency for performance regulation with an input mechanism for the industry. However, the market should be the key determinant of activity within this regulatory environment.

The preferred view of the industry is that structures should be introduced that would amount to co-regulation. This would take the form of a resourced EPA with an allowance for input from the industry.

**(2) *Is there a more appropriate alternative to regulation of the waste sector?***

- (a) No intervention/do nothing; or*
- (b) Incentivisation through use of market instruments.*

Do nothing is not an acceptable option although the action programme identified in the consultation paper is far from ideal. Rather than regulations that could undermine the market and competition that has been created, the Department should be focussing on enforcement and structural issues. The sector has clearly demonstrated that economic incentives do work, e.g. pay by use. The opportunities to achieve objectives through incentives should be maximised. Regulation of private collection services would not reduce prices as these are driven by external costs, particularly landfill costs, and are in line with the principle that waste producers should bear the cost of disposal. The main problem identified is the dual role of local authorities as regulators and market players and the impact on competition in the market. Incentives alone appear unlikely to resolve this issue. Ministerial direction, perhaps through budgetary allocation, to identify and delineate the appropriate role of local authorities is preferable. In addition, a renewed emphasis should be placed on using incentives to achieve policy targets, such as composting and recycling, in both private and local authority operations, although it is important that this does not further distort competition through subsidising facilities that would compete with existing non-grant aided investments. This would be achieved through supporting markets for high grade materials rather than investment grants.

**(3) *Who would regulate the waste sector?***

- (a) Appointment of a new regulator for the waste industry; or*
- (b) Assignment of additional regulatory powers to an existing regulator.*

The IWMA has grave concerns around the possible introduction of another level of bureaucracy and dilution of policy responsibilities within an already highly regulated sector. The Department and a better resourced EPA should be adequate to sort out the issues identified. Overall, provided the industry is allowed an input role and the office is truly independent, the precise structure of the entity is seen as less important than the powers and resources that are provided.

**(4) *What combination of services would fall within a regulators' remit?***

- (a) Domestic waste collection service;*
- (b) Commercial waste collection service;*
- (c) All waste recovery and disposal facilities.*

The role should be in ensuring that local authorities compete on equal terms with the private sector in waste management. The regulator should have a role in standardising and centralising administration issues such as permits, co-ordinating waste plans and the transference of EU law into Irish policy. There may also be a role in ensuring that the incentives to achieve policy targets are appropriate and in enforcing existing policy and

regulations. The regulator should not undermine the market where competition is working adequately, such as in the commercial collection area, and should not direct waste in a manner that would undermine the competition that is emerging in the sector. The decision regarding the regulator's remit should not be based on the type of waste but rather on the competitive structure of the market in question, policy objectives and how these are to be achieved, and the possible existence of market failures such as social objectives. No role is seen for a regulator in commercial waste collection.

**(5) *What functions would a regulator have?***

*Economic Issues*

- (a) Determination of an appropriate waste charging structure;*
- (b) Imposition of Public Service Obligations;*
- (c) Supervise competitive tendering arrangements;*

Waste Charges

IWMA totally opposes intervention in price setting for waste charges. This is in accordance with the Competition Authority. This is being done by the market and would be impossible for the regulator to achieve. Any effort to set prices would lead to large anomalies, would probably increase average prices and would undermine competition. The best solution is to ensure that adequate facilities are created. Should this cause prices to fall thereby reversing the incentives to reduce waste, the best approach is to use the landfill levy to increase costs, rather than reducing supply to increase prices, and recycle these funds into the industry, such as through promoting markets for recovered materials.

Public Service Obligation

There are two aspects to PSOs. The first is geographical and relates to providing a service in areas where it is not commercially viable at average prices. The IWMA is of the opinion that this is really only an issue in a small minority of cases and can be solved through differential pricing and through establishing collection centres in a limited number of cases. In other words, this problem can be solved by appropriate market conditions. There is little danger of this proposal being exploited by operators since any reduction in the service provided would leave the market open to other operators as would any excessive use of different prices. This is a preferable solution to attempting to enforce average prices in all areas e.g. as in the postal delivery service, as the degree of subsidy involved would be excessive due to the much higher marginal costs involved. It is also notable that for the areas with the highest levels of domestic concentration and thus the potential for the lowest prices i.e. Dublin, the local authorities have retained the market and operate in a subsidised manner. Thus, there is an effective reversal of subsidisation, since this subsidy is from public funds, with areas outside Dublin where costs are higher subsidising the capital. This is an indication of the type of structural issue that needs to be addressed before a regulator is contemplated.



The second aspect relates to social objectives as encapsulated in the concept of a waiver for specified social groups. The existing system leads to criticism of the sector for failing to provide the waiver that may previously have been available from local authorities. In cases where a household may not be able to pay the costs of collection it is clear that there is an undermining of both environmental objectives, as the alternative is often illegal dumping, and social principles of equal access to essential services. This imperative gives rise to the PSO but an unfunded PSO would be impossible to introduce in a competitive market as firms would simply withdraw from collection of non-viable areas.

The solution is that this should not be seen as an issue of waste management but as a policy and social welfare objective. An analogy would be television licencing where the funds to provide a service that can be accessed by all – the public nature of broadcasting means that an explicit PSO is not required – are provided by subventions through the social welfare system rather than by an increase in the price of the licence to all users. A similar approach is adopted in public transport. When viewed in this manner it is not difficult to envisage a system whereby a PSO can be introduced and financed in line with competition in waste management. The question that should be asked is whether the benefits to the country of universal waste management in terms of achieving environmental and social objectives outweigh the costs to the country of paying for this service. In the unlikely event that net benefits do not arise then the issue of a PSO does not arise. However, if it is determined that there are net benefits to the country then these can be achieved through the usual means i.e. provisions of the fiscal and welfare systems.

However, this approach has a weakness most notably that some households may experience difficulties in having waste collected due to non-monetary issues, for example, elderly people living away from main routes who may not be in a position to move the waste to a suitable collection point. In addition, there may still be some stigma related to obtaining social welfare. Under such conditions, it is necessary for a central office to act as a single point of contact or appeal rather like an ombudsman. There is an argument that in such cases particular funding may be required and should arise from within the industry such as through the environment fund.

In summary PSOs are a matter of policy. The implementation of a PSO does not require a new regulator. The sector is happy to oblige provided it is compensated either via the Department of Social Welfare or some other source e.g. environment fund.

#### Competitive Tendering

Competitive tendering arrangements generally exist only in commercial waste management and in niche areas. Regulatory supervision is unnecessary in as far as this process operates. IWMA is opposed to an extension to areas where the market operates. However, competitive tendering would have a role where local authorities decide to exit waste collection and could provide the basis for a highly efficient industry to develop. There may be a role for the EPA to oversee such a mechanism although this is not an absolute necessity. Competitive tendering cannot be imposed where competition currently exists.

*Operational Issues*

- (d) *Issue, renewal and revocation (where necessary) of waste collection permits centrally;*
- (e) *Enforcement of waste collection permits;*
- (f) *Determination of the scope and objectives of the regional waste management plans;*
- (g) *Determination of certain waste movements i.e. the direction of waste;*
- (h) *Setting and monitoring minimum standards of service delivery.*

There is pretty much unanimous support for activities *d*, *e*, *f* and *h* to be handled centrally. The preferred candidate is a resourced EPA to carry out the implementation aspects of this role. The DEHLG could play the policy role in operational issue *f*. Indeed, the prospect of progress in relation to these administrative, legislative and policy issues is seen as the main argument in favour of this review. The division of the country into 10 areas where regulations are interpreted differently, the efficiency of the bureaucracy varies and even permit costs vary is very inefficient and unhelpful. There is also a perception that the local authorities have used their powers in this area to compete unfairly. Even where they might exit collection activities, local authorities can still use their powers to prevent private operation and innovation. Centralisation would ease these difficulties. However, it is imperative that the local authorities would be subject to the regulator and on the same conditions as the private sector.

The IWMA is open to the incentivisation or disincentivisation of waste to tiers in the waste management hierarchy but is strongly opposed to the direction of waste to named infrastructure by a regulator. Directing waste to named facilities would affect competitiveness in the market directly. By directing waste to named facilities, uneconomic infrastructure could be facilitated to the detriment of comparable and competitive infrastructure. Private sector investment and national policy objectives would be jeopardised. The power may be deemed illegal due to restrictions it would place on the waste market. Such a power would be subject to legal challenge.

The regulator would need to ensure that the incentives that operate in the sector are appropriate to achieve the objectives that have been set out in policy to reduce the proportion of waste being landfilled. Thus, when interpreted as a power to ensure that waste is handled by technologies in accordance with the waste hierarchy there is some merit in arguing for control of the flows of waste. However, this would only amount to enforcement of the regulations as currently exist and this can be achieved either through regulations or, more efficiently, through ensuring that the appropriate market incentives are in place. The definition of 'directing waste' in the context of the role for a regulator must not go beyond this approach.

## 7. Conclusions

In summary, the Association welcomes this consultation process. The need for the review was clear as Government recognised that a conflict of interest exists in the waste market where local authorities act as both market players and regulators of their competitors in the private sector.

However the IWMA *does not see the need for further regulation/regulators at this time, rather a more effective use of existing regulatory structures is required i.e. better regulation.*

- The Department has not produced the evidence as required by policy to justify the introduction of further regulation or a new regulator.
- There are considerable structural problems within the waste management sector mostly related to the role of the local authorities as both regulating agencies and competitors for private businesses. This role should first be clarified by the DEHLG;
- The actions of the local authorities do not always comply with stated policy;
- Existing enforcement, administration and regulation lacks consistency and is inefficient;
- Contrary to perceptions, competition in the domestic waste collection business is intense and margins are tight;
- Prices in the waste sector are driven mostly by landfill charges;
- The era of rapidly rising landfill prices appears to be passed;
- The environment fund is not being used in the most effective manner;
- A new regulator or further regulation is not necessary to address these issues nor would it necessarily be the best way to do so. IWMA believes better regulation or an effective use of existing regulatory structures is the way forward;
- The Association is strongly opposed to any effort to introduce price setting or introduce a power to direct waste to named facilities. This power would be detrimental to competition in the market and the achievement of national policy objectives. This power would be subject to legal challenge. However the IWMA is open to the incentivisation or disincentivisation of waste to named tiers of the waste management hierarchy in order to meet policy objectives;

- Regulators have encountered considerable and ongoing difficulties in setting prices.
- The Irish situation cannot be simply compared to the situation in other countries as local authorities have walked away from responsibility to handle waste in many areas making the general introduction of competitive tendering impossible in these areas;
- The majority of commercial waste is managed by the private sector and operates as a fully competitive sector. The IWMA sees no requirement for regulation of the commercial waste management sector;
- The private sector is concerned that the introduction of a new regulator would simply add more bureaucracy to a highly regulated sector without addressing the structural challenges facing the sector;
- Experience with existing regulators in Ireland shows that it is possible for a regulator to successfully oversee the liberalisation of a sector and the creation of competitive markets that were previously controlled by public sector monopolies. However, this process is made extremely difficult and may be curtailed where incumbents are allowed to retain control of key assets while competing with the private sector. Therefore IWMA would call for the dual role of local authorities in the sector to be addressed first by ministerial order or legislation;

The Association looks forward to continued interaction with the DEHLG and others in addressing the structural challenges facing the sector and the delivery of an effective, competitive and environmentally sound waste management system.

# Appendices

## **Appendix 1: Regulatory Experience in Other Sectors**

### ***A1 Telecommunications***

The telecommunications regulator has had to deal with the two issues of an inefficient incumbent which retained control of a large market share and key infrastructure and a rapidly changing technology that necessitated considerable changes in policy and legislation. The ideal situation would have been if the regulator could have enforced a meaningful separation of the business into the supply of retail telecom services and the sale of access to the system. If this had been achieved then Eircom would have been competing for use of the system on the same terms as other operators.

The approach taken by the regulator in landline services has been to allow competition in the market to dictate prices in the retail services but control of prices where access to the infrastructure is concerned. This has always been seen by the regulator as an interim solution while access is opened up – local loop unbundling – but this has been greatly delayed – and has been the area where the regulator has experienced least success. This has frequently put the regulator and the incumbent at odds with each other suggesting that it is not inevitable that any regulator will act to preserve the status quo. It is notable that the regulator's efforts have been directed at introducing market competition as a means of setting prices and trying to mimic this outcome where this has not been possible. The clear lesson here is that where the local authority both controls landfills and collects waste it will act to distort the market in a manner that supports its activities.

Where new technologies have been important as in mobile phones, the approach taken has been a licencing system that is aimed at achieving competition but avoiding excess competition as might result for competing infrastructure. Again there are parallels with the waste management sector in that where a new market is created i.e. where the local authority that had previously controlled collection allows competition to emerge, a competitive tendering system can be used to introduce competition while also avoiding excess competition that would be inefficient, environmentally damaging and lead to fragmentation of the market.

### ***A2 Electricity***

The Commission for Energy Regulation (CER) was initially established in 1999 to oversee the liberalisation of Ireland's electricity market. Its remit was expanded to include regulation of the natural gas market in 2002. Other energy markets remain outside its remit. Despite the considerable period since its establishment, the most obvious conclusion regarding developments in this period is that there has been very little market liberalisation in either market with the ESB retaining a dominant position in

electricity. Furthermore, lack of appropriate investment has resulted in a network where Ireland is ill-equipped to meet present challenges and opportunities such as reducing the emissions content of energy consumption and participation in the single electricity market in Europe (SEM).

It is commonly accepted that the electricity sector comprises 4 different industries with very different cost structures where the most appropriate type of competition varies considerably. The 4 industries are generation, transmission, distribution and customer services. Of these only transmission is a natural monopoly i.e. the costs of creating the system mean that it is best for only 1 firm to own and operate the system so as to spread the costs over the largest possible market. Even within transmission, some elements can be opened to competition the most obvious example being an international interconnector. In addition, maintenance and other services could be open to tendering. Generation is increasingly seen to be a competitive market particularly given the imminent introduction of the single electricity market in Europe. Distribution is an intermediate case where considerable investment in infrastructure is required but not enough to justify a monopoly since a model such as the local loop unbundling approach in telecommunications can be used. Actual distribution and sale of electricity is clearly suitable for competition. No good arguments exist why customer services should not be competitive.

Although there has been some private generating capacity installed and some private retailing, little progress has been made in addressing the key structural issues that exist. The most important is the continued use by the ESB of its control of the transmission network to effectively control the market. Clearly, a sharp and transparent division is required between the ownership/operation of the network – which should remain in state hands – and the remainder of the business.

However, the approach taken by the regulator has been largely ineffectual and has tended to concentrate on price setting for new generating capacity and retailing. While models have been developed in this regard, there is very little evidence that a market is operating to drive the prices in any particular direction. Rather, prices adjust in line with external factors principally the price of oil. As a result, there is little payoff from competition within the sector.

The experience with electricity regulation provides 3 key lessons. The first is that markets depend not just on permits to supply goods or services but also on the creation of appropriate structures that give an incentive to compete. Otherwise an incumbent such as the ESB can manipulate the market through control of key infrastructure to effectively avoid competition in any real sense. Second, providing the regulator with the ability to set prices is no guarantee of an efficient system. The regulator has effective control of both the retail and wholesale prices for electricity in Ireland. Yet this is just a 2<sup>nd</sup> best approach with the competitive market price being the ideal. Certainly liberalisation of prices in Ireland would not be advisable at the moment given the almost total market power of the ESB. But this shows that controlling prices is a replacement for the market and market prices, not a means to achieve them. As widely accepted, there is no reason

to think that centralised price setting will be as effective at allowing a market to set prices so the likely result of this approach is an inefficient sector. Third, despite being established as an independent body, the CER shows that regulatory capture by an incumbent, whereby an operator with a large market share can either block reforms directly or distort incentives to do so, is a real danger.

### **A3    *Taxis***

There are clear market failures in the taxi sector that require regulation. The need for standards is obvious but price controls are also required. The problem is the unequal position in which the customer is placed compared to the supplier. While individual taxis might be deemed to be competitors – this is open to legal interpretation – the search costs for a customer are such that there is really no opportunity to shop around. It has also been made clear that individual taxis would not allow this. The key reform of recent years was the belated realisation in practice that quality control does not imply quantity control provided regulations are enforced. Ensuring enforcement provides the rationale for accepting that taxis act within union rules and do not compete. Given that prices were set centrally for years, in consultation with the taxi union and given that there was effective enforcement of standards by the sector with central monitoring, there was really no good economic reason for a regulator to be introduced. However, this was done to ensure the continued co-operation on which the system depended as it was perceived that this would provide a voice and some certainty for taxi operators.

From the beginning, however, it was clear that the central issue would be pricing. It would now appear that the expectations of operators that the regulator would act more in their interests than would alternative arrangements are unfulfilled. To date a more rationalistic approach is being adopted with prices being set to move towards a marginal cost outcome, i.e. what would exist if a free market could operate.

It would be erroneous to draw overly close analogies between the waste management and taxi sectors particularly since the waste management operators do not behave as a cohesive entity but as competitors. The customers – except in a minority of cases where alternatives might not be available – are not at a disadvantage and the costs of comparing alternative suppliers and switching are relatively low. Furthermore, marginal costs differ markedly in different areas. Thus, the rationale for price setting is removed. However, the key lesson from the taxi sector is that regulatory capture by incumbents is not automatic. Any intervention that undermines the viability of the waste sector risks leading to a reduction in standards and compliance.



#### **A4 Broadcasting**

The BCI was established in 2001 and has responsibility in a number of areas including the licensing of independent broadcasting services, the development of programming and advertising standards and the monitoring of licensed services to ensure compliance. It is notable that creating a market in this area is not seen as a function the assumption being that the market will emerge and operate within the legislative environment provided certain competitive conditions are met. Judged by this measure the regulator has been successful with competitive markets emerging in most areas and a much more commercial approach on behalf of RTE including the growth of independent programme makers.

There is a clear parallel between the situation a decade ago and the waste sector in that a dominant entity controlled the market and was also greatly involved in determining regulations. The success of the BCI has been based on avoiding market control and the regulator does not in any meaningful respect control prices. It provides a centralised entity for issuing licenses on a system akin to competitive tendering but without providing finance. It also has authority for compliance. However, there are a number of remaining weaknesses. Probably the most obvious is that there is still no clear agreement on what constitutes a public service in broadcasting so that there is still a valid argument that RTE is in a position to access public funds to subsidise inefficient operations that undermine the private sector. This relates to its more commercially orientated channels. On the other hand, there is insufficient accounting clarity to justify an expansion of the public interest role of RTE so that non-commercial operations that would previously have been seen as being worthy of support have been scaled back. An argument can therefore be made that despite the success in creating a viable competitive broadcasting sector, this has been achieved at some cost in terms of the loss of public services. To date this debate has not been resolved and it is likely not in RTE's interest to push this issue. Furthermore, it is arguable that this is the type of issue where the Departments needs to take the lead role.

Overall, the BCI experience shows that where a market is left to set prices a regulator can be effective as a central agency for issuing permits, handling administrative issues, implementing policy and ensuring compliance. The likely responsibility of a similar agency in waste management would be much more extensive and much greater resources would be required. However, a key lesson is that even where there are important issues of public interest that require regulation, this does not imply that price control is a necessary objective.

#### **A5 *Financial Intermediaries***

There are similarities between the BCI and financial regulator in that the emphasis is placed on ensuring compliance and enforcement rather than price control, although there is greater monitoring of prices through the regulations. In general, revenues are dictated by the market. The major difference is that the market is composed of a highly fragmented independent element and a consolidated part made up of large financial firms.

The regulator has been faced with introducing a lot of new compliance requirements but the major benefit is that the office is consequently increasingly becoming the single entity for handling these issues. Once again, this experience indicates that this role can be undertaken successfully by a well resourced agency provided the concentration remains on legislative issues rather controlling the market.

#### **A6 *Aviation***

An important similarity between the aviation and waste management sector is that the sector is characterised by two quite different sub-sectors – service provision and infrastructure. However, the main difference is that the two dominant operators in each aviation sub-sector, Aer Lingus and Aer Rianta, operate separately and do not compete. The contrast with local authorities and where vertical integration has taken place in waste management is obvious. While there is obvious interdependence in aviation there has also been tension between the operators and the basic idea of customer relationships between infrastructure supplier and service supplier has been poorly developed. As a result, infrastructure has not always developed in line with service provider requirements leading to falling standards of service provision in some instances. This has led to ongoing arguments regarding costs and the regulator has concentrated on price control in the infrastructure business. On the other hand, pricing has been left to the competitive market in service provision.

The approach that has been taken by the regulator provides a possible template for a regulator in waste management in identifying that separate sub-sectors comprise the industry and it is necessary to adopt quite different approaches in each. However, the concentration has been on price setting for infrastructure. This has led to ongoing conflict and underlines the potential for this issue to dominate activity if such powers are provided.