

Final V4.

Executive Manager
Dublin City Council
Environment and Engineering Department
Floor 4, Block 1
Civic Offices, Wood Quay
Dublin 8

Date 19th November 2007

Re: Proposed Variation of the Waste Management Plan

Dear Sir/Madam,

I am writing to you on behalf of the Irish Waste Management Association (IWMA) in relation to the Dublin Local Authorities recent notice of their proposed variation of the Waste Management Plan for the Dublin Region, 2005-2010.

The IWMA is the recognised representative organisation for the private waste management industry in Ireland. The Association is affiliated to both IBEC (www.ibec.ie) and the European waste industry body, FEAD (www.fead.be).

Please find attached comments from our Association for consideration by the Dublin Local Authorities. For the process to be meaningful and the consultation effective, we submit that a meeting between the Association and the Authorities together with its consultants, is necessary and we hereby formally request such a meeting at your earliest convenience.

We confirm that such a meeting can be attended at short notice by a small number of key IWMA officials and we await hearing from you with a mutually convenient time date and venue.

Regards



Erik O'Donovan
Secretary
IWMA



Submission on Proposed Variation of Dublin Waste Management Plan

Date 19th November 2007

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1. Background

On 19th September 2007, the Dublin Local Authorities¹ (the “Dublin Authorities”) published a public notice of their proposed variation of the Dublin Regional Waste Management Plan 2005-2010 relative to the collection of household waste in the Dublin Region. The proposed variation includes the insertion of a new Section 18.4A and amendments to Sections 17, 18 and 20 of the plan.

The proposed variation seeks to grant exclusive rights to local authorities with respect to household waste collection services. The effect and import of the proposal is to grant local authorities sole discretion to provide the service themselves or tender some or all of these services to private operators.

This proposal has been clearly flagged to us as raising very significant issues of concern for our members’ businesses. Subsequently the IWMA prepared this submission.

We hope these comments prove constructive to the overall process.

¹ Dublin City Council, Dun Laoghaire-Rathdown County Council, Fingal County Council and South Dublin County Council.

2. Process of the Proposed Variation

The policy and market landscape of the Irish waste sector has changed dramatically over the last 15 years. **Appendix 1** illustrates several of the key policy milestones.

The IWMA question the timing, legality and structure of the process in varying the plan.

IWMA and its membership have engaged with the Dublin Authorities on a review of its regional waste collection permit regime since 15th January 2007. It is our understanding that the permit review process will be used to implement proposals relative to the direction of waste. Following a public consultation process, initiated on 22nd February, the Association provided the Dublin Authorities with its written position in relation to this permit review on 16th March 2007. We understand that, on foot of this submission, the Dublin Authorities accept that they do not currently have the power to direct waste through waste collection permits and are therefore seeking to change the waste plan in order to provide themselves with that power.

On 8th June, the Dublin Authorities published a public notice of intent to prepare a variation of the Dublin Regional Waste Management Plan 2005-2010 relative to the collection of household waste in the Dublin Region. The Association provided the Dublin Authorities with its written position in relation to the notice of intent on 9th August 2007.

IWMA view the ‘ownership of waste’ and ‘direction of waste flows’ as being intrinsically linked processes i.e. one can facilitate the other. The timing of the Dublin Authorities’ proposal to vary the Dublin waste plan is inappropriate at this time, given that:

- The related waste collection permit review process is still ongoing. IWMA questions the timing of the proposed variation considering that the outcome may predetermine the permit review process and preclude operators from a potential market opportunity.
- The ownership of waste is not entirely clear in law. Therefore, a variation to the Waste Plan, by the Dublin Authorities that proposes to grant the Authority ownership of household waste, would, we submit, be *ultra vires* the Authority’s powers.
- Under Section 22(11) of the Waste Management Act 1996, the local authority in reviewing their plan must have regard to the proper planning and development of their functional area. There can be no pre-determination of issues by the local authority or its agents in advance of the review process. We are concerned that a recent report² commissioned by the Authority indicates a clear predetermination of this issue by the Authority and its agents. The report states that, ‘Dublin Local Authorities are currently undergoing a legal process of varying the Waste Plan to ensure the management of the service remains as a public sector function’.

² RPS (July, 2007) Dublin’s Waste Management Strategy and the Impact on Climate Change: Assessment Report

- The Department of the Environment, Heritage and Local Government (DEHLG) review of the Irish waste management market structure is ongoing³. An attempt by the Dublin Authorities to vary the Dublin Regional Waste Plan in a manner that predetermines, pre-empts or prescribes the outcome of a national policy review would be viewed as *ultra vires* the Authority's powers and contrary to the standard rules of governance and accepted democratic procedures.
- DEHLG Circular WIR 09/07 (26th July 2007) informs local authorities of a forthcoming and significant change in waste management policy that would affect the delivery of waste management infrastructure and regulation that encourages such infrastructure. It is noteworthy that the Circular requests that 'in the interim, local authorities should refrain from any action which would potentially compromise the effect of a direction along the above lines.' The IWMA submits that the proposed variation of the waste plan would constitute such an action and would be in contravention of the direction expressed by the Minister in this circular.
- It is understood that the procedure for a variation to the waste plan provides that a copy of the proposed variation be submitted to the Minister for the Environment and the EPA. There is no indication in the consultation documentation that the Minister was served. The IWMA request that the Authorities clarify this issue.
- The Dublin Regional Waste Management Plan 2005-2010 was only recently adopted in 2006. Certain market structures and environmental solutions are already in place on the basis of this plan and should be given time to operate as such.
- The private sector is already engaged in the direct collection of household waste in the Dublin region. A change to the region's waste plan with a specific objective of ending this activity would be considered a commercial challenge, which would be tested in the courts.
- The policy, legal, environmental, and socio-economic justifications provided by the Dublin Authorities and its agents for the proposed variation are not reasonable and necessary.
- The IWMA require clarity on why this proposal, which has significant implications for the structure of the national household waste market and existing private sector investment in this market, was and is not subject to a Regulatory Impact Assessment.
- IWMA and several stakeholders provided a written response to the Dublin Authorities' notice of intention to vary the plan on 9th August 2007. While we welcome the fact that the Authorities refer to concerns in our submissions in Section 5 of their consultation paper for the proposed variation of the plan (19th

³ DEHLG (3 August, 2006) Regulation of the Waste Management Sector and the upcoming *International Review of Waste Management Plans, Practices and Procedures*, provided for in Programme for Government (June 2007) as outline by DEHLG at the Dublin Local Authorities Waste Management Forum, 1 November 2007.

September 2007), we are concerned that they have not responded to them. IWMA submits that a written response from the authorities is essential in a consultation process such as this.

The IWMA reiterates its stated position of the 16th March and the 9th August 2007 on both the ownership and direction of waste flows.

3. Role of the Private Sector in Waste Management

The last decade has seen the rise of a professional, consolidated and highly regulated⁴ private waste industry, characterised by the involvement of significant international, semi-state, national and publicly-listed companies. Some of these companies are also investing in international waste management ventures. Unlike the public sector, the private sector is characterised by both vertical⁵ and horizontal integration⁶. The private sector is committed to moving up the value chain not only in terms of the waste management hierarchy but also in terms of maximising the energy and resource value of the waste streams collected. The private sector has brought expertise, innovation and competition into the Irish waste market.

National waste policy⁷ and the National Development Plan 2007-2013 (NDP) recognise the significant positive role that the private sector plays in the delivery of waste management infrastructure and services and policy objectives.

Local authorities are no longer the principal providers of waste management services and infrastructure in the State. Forfás estimates that the private sector collected 67% of municipal waste in 2006, with a further 5% collected by private operators under public contract. Nearly all commercial waste and approximately half of household waste is collected by the private sector⁸. Up to 2005, an estimated €250 million has been invested in waste management infrastructure, most of which has been private investment⁹. The private waste sector is the principal player in delivering waste solutions and in meeting national and EU waste policy objectives. **Appendix 2** illustrates the significance and extent of private sector involvement in waste management at both regional and national level.

⁴The private waste sectors' operational activities are regulated by several bodies - 10 Regional Waste Management Authorities, 34 Local Authorities, the National TFS Office, the Environmental Protection Agency, An Bord Pleanála and the veterinary inspectors from Department of Agriculture, Fisheries and Food.

⁵ Private operators provide integrated total waste management solutions i.e. the same operator can collect and process the waste, then market the products and energy extracted.

⁶ The private sector typically operates at regional, national and international level.

⁷ DEHLG (2004) Circular WIR 06/04 (Review of Waste Management Plans) and Section 4.6 of DEHLG policy statement, *'Taking Stock and Moving Forward'*

⁸ Forfás (March, 2007) Waste Management in Ireland: Benchmarking Analysis and Policy Requirements

⁹ Forfás (June, 2006) Waste Management Benchmarking Study

4. Assertions on the Proposed Variation

4.1 Policy/Legal Assertions on Proposed Variation

IWMA believe that private sector involvement in the Irish waste market is both significant and positive in terms of meeting policy/legal objectives. As detailed below, the IWMA submit that the proposed variation is not reasonable and necessary in terms of meeting policy/legal objectives.

The Dublin Authorities and their consultants¹⁰ have made the following policy/legal assertions to justify their proposed variation to the waste plan:

- The Dublin Authorities submit that private sector involvement in the household waste market could result in the environmental and public health objectives of the Dublin waste plan not being met.
- The Dublin Authorities submit that direct collection of household waste by municipalities is common across Europe and cite a Forfás report series that notes that Ireland is unusual among benchmark countries in not having the same level of local authority involvement in household waste collection. Local authorities submit that they should control the market.

IWMA Observations:

Policy Objectives:

- IWMA refutes any suggestion that private sector involvement is negative to environmental policy objectives. Our analysis clearly shows that the private waste sector is playing the predominant role in meeting Ireland's waste policy objectives (Appendix 2).
- IWMA supports the implementation of integrated, competitive and environmentally sound waste management infrastructure and services that meet environmental and socio-economic policy objectives. This objective is shared with the Dublin Authorities; however, the Association does not believe that the proposed variation is necessary or required to meet this shared objective given that the private sector are already the principal player in meeting policy objectives (Appendix 2 and Appendix 3).

Structure of Household Waste Collection Market:

- It is true that the structure of Ireland's waste market is different to other benchmark countries. In the report series, the Dublin Authorities refer to¹¹, Forfás also noted the conflicting role of local authorities in the waste market and a need to reform that structure:

¹⁰ Francis O'Toole, Trinity College Dublin (September 2007) *Household Waste Collection: An Economics of Competition Policy Perspective* and RPS (September 2007) *Uncontrolled Fracturing of the Dublin Household Waste Collection Market – Environmental and Technical Report*

¹¹ Forfás, 2007 *Waste Management in Ireland: Benchmarking Analysis and Policy Requirements* and Forfás (June, 2006) *Waste Management Benchmarking Study*

Market Reform to Promote Competition: The increasing involvement of the private sector in waste collection and infrastructure provision in recent years has given rise to much debate about the competitive structure of the market, and, in particular, the market uncertainty arising from the potentially conflicting role of the local authorities as service or infrastructure provider and as regulator of the sector. Given that Ireland has the second highest landfill gate fees of the benchmark countries, the existing market structure needs to be reformed to encourage greater competition between and within waste treatment options. Providing a level playing field for private and public service and infrastructure providers is essential to give Irish businesses a choice of competitively priced waste management solutions.

- The report states that Forfás and the other development agencies (IDA and Enterprise Ireland) support the use of ‘*competition for the market*’ (competitive tendering), which undoubtedly has its merits, when in context. However the Forfás stance is provided in the context of market reform by the Department of the Environment, Heritage and Local Government, not in the context of market reform by market operators, such as the Dublin Authorities, using regulatory powers in their ‘conflicting role’ to grant themselves exclusive rights to market share. Forfás and the other development agencies recommended that:

DEHLG reform the existing regulatory framework for the waste sector and introduce competitive tendering to deliver competitively priced, high quality waste management solutions.

- There is no indication in the report that Forfás believe the role of market reform or market control lies with local authorities.
- A recent report by the European Environment Agency (EEA)¹², suggests that a ‘one size fits all’ approach to waste management is unnecessary. EEA research shows that several different mechanisms have been employed across Europe to achieve the same policy objectives. Ireland’s progress in recycling and waste policy objectives have been achieved principally by the private sector [Appendix 2]. Any proposal to exclude or restrict a key player such as the private sector is unhelpful.

4.2 Commercial Assertions on Proposed Variation

IWMA believe that private sector involvement in the Irish waste market is both significant and positive in terms of meeting policy/legal objectives. As detailed below, the IWMA submit that the proposed variation is not reasonable and necessary in terms of the realities in the market.

The Dublin Authorities and their consultants¹³ have made the following commercial assertion to justify their proposed variation to the waste plan:

¹² Road from land filling to recycling – common destination, different routes – European Environment Agency, 2007

¹³ Dr Francis O’Toole, Trinity College Dublin (September 2007) *Household Waste Collection: An Economics of Competition Policy Perspective* and RPS (September 2007) *Uncontrolled Fracturing of the Dublin Household Waste Collection Market – Environmental and Technical Report*

- The Dublin Authorities are planning to deliver large-scale regional waste infrastructure. The consultation paper states, ‘a significant reduction in the waste quantities collected by or on behalf of local authorities could affect the viability of these planned facilities’.

IWMA Observations:

- The private sector is the predominant investor in waste management infrastructure and services in the State [Appendix 2].
- The private sector is also trying to deliver large-scale waste infrastructure at regional and national level. The viability of this infrastructure is also based on waste quantities collected.
- IWMA is concerned by the sentiment expressed in the consultation paper, as it seems to imply that large scale local authority waste infrastructure should somehow be subject to different commercial and regulatory rules and pressures than the private sector with respect to equivalent infrastructure that delivers environmental and socio-economic objectives.
- IWMA is concerned that the objective behind the proposed variation is in fact to gain control and title to the household waste market so as to be able to direct it to its own facilities.

4.3 Socio-Economic Assertions on Proposed Variation

IWMA believe that private sector involvement in the Irish waste market is both significant and positive in terms of meeting policy/legal objectives. As detailed below, the IWMA submit that the proposed variation is not reasonable and necessary in terms of meeting socio-economic objectives.

The Dublin Authorities and their consultants¹⁴ have made the following socio-economic assertions to justify their proposed variation to the waste plan:

- The authorities and their consultants submit that the household waste collection market may constitute a natural (local) monopoly and that rather than allow competition in the market, local authorities should be permitted to enforce exclusive rights with respect to household waste collection.
- The Authorities submit that the proposed variation is to prevent potential cherry-picking of service routes.

¹⁴ Dr Francis O’Toole, Trinity College Dublin (September 2007) *Household Waste Collection: An Economics of Competition Policy Perspective* and RPS (September 2007) *Uncontrolled Fracturing of the Dublin Household Waste Collection Market – Environmental and Technical Report*

- Potential loss of collection service to low income households (who may benefit from waivers) in areas where Local Authorities withdraw from the collection market.
- Potential cost/price to consumers in a situation where multiple refuse collection vehicles service individual routes
- The loss of revenue from the loss of household collection services by Local Authorities could potentially jeopardise their ability to provide a ‘universal’ waste service to the region. The service includes waste management infrastructure, education and awareness programs, service to waiver customers and enforcement.

IWMA Observations:

Natural Monopoly

- The household waste collection market does not constitute a natural (local) monopoly. The Authorities proposed variation is not necessary or proportionate to the stated socio-economic objectives. IWMA analysis of the assertions made by the Authorities and their consultants is contained in **Appendix 3**.

Promoting Universal Service

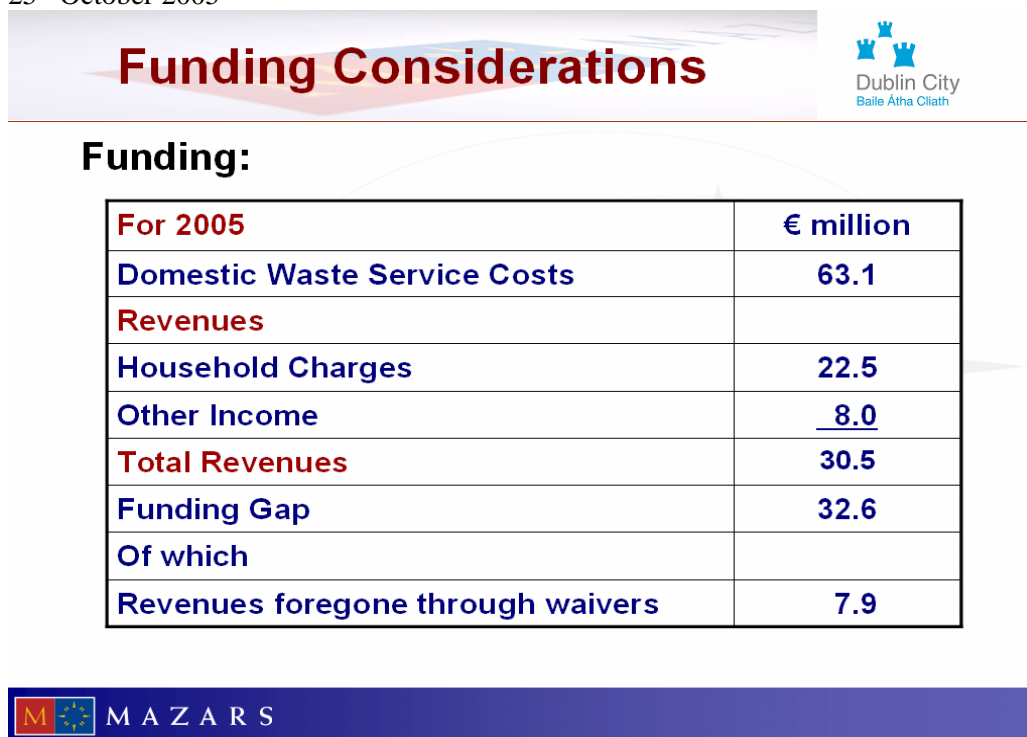
- The ‘Environment Fund’ is financed by a levy imposed on the use of landfill or plastic bags. These market based instruments should affect most consumers equally irrespective of who their waste service provider is. The regulatory function of the fund is to change consumer behaviour and to a lesser extent support waste management initiatives¹⁵ 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 67% 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 provided to support local authority waste management infrastructure and recycling operational costs¹⁶. Approximately €11.9 million of the fund was used to resource waste management enforcement initiatives by local authorities and the EPA’s Office of Environmental Enforcement (OEE). Recent estimates of capital funding for local authority recycling projects from the Environment Fund is said to be €100 million (DEHLG, 2 November 2007).
- 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.

¹⁵ 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.

¹⁶ Written reply to Question 663, Ref. 30591/05 Minister for the Environment, Heritage and Local Government (Mr Roche) – 25th October 2005.

- 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 Commission¹⁷
- IWMA would conclude that the private sector is happy to deliver the proposed universal service, but it must have access to the same financial supports afforded the local authorities. IWMA also submits that a universal service can be achieved without granting exclusive rights to local authorities.
- Some Dublin Authorities appear to have been losing revenue necessary to provide an universal service prior to direct private sector competition in the region. It is unclear how excluding private sector competition would alter this situation.

Figure 1: Mazars Report on Funding of Dublin City Council Waste Management Services, 25th October 2005



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

¹⁷ 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)

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 regulation 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 private 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 licensing 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 necessarily require a new regulator. The private sector is happy to oblige provided it is compensated either via the Department of Social Welfare or some other source e.g. environment fund. IWMA submit that a public service obligation can be achieved without granting exclusive rights to local authorities.

Cherry-picking of Services

- The private sector operates in 50% of the Irish household market. Potential abuse of the household market by a private operator is open to investigation by the Competition Authority and competition from peers within the market. The Competition Authority has found no such abuse by the private sector.
- The private sector plays such a large role in household waste collection around the country by virtue of the fact that local authorities have simply withdrawn from the market, with the exception of high density and lucrative urban centres such as Galway, Cork, Waterford and Dublin.
- The private sector has chosen to act as an operator in the household waste market. The proposed variation demonstrates that local authorities have chosen to cherry-pick between their regulatory and market roles in order to address a competitive issue.

Costs to Consumers

- In Galway City, consumers have a choice of operator and almost 35% of the market has chosen the private sector provider. There were no differences in the profile of the areas compared to the socio-economic demographics of the areas not covered. Indeed, it makes sense that the greatest demand for a cheaper more efficient service would be in areas where the average disposable income would be lower. Private sector consumers save an average of €155 per annum on waste charges. Consumers that have remained with the local authority have seen their charges reduce by an average of €90 per annum. The private sector is providing an equivalent but more efficient three-bin service.
- In the Dublin region, consumers have a choice of operator with cost savings of 20-30% by choosing a private operator.
- Competition works. IWMA submit that encouraging competition, reducing costs to consumers and ensuring coverage can be achieved without granting exclusive rights to local authorities.

4.4 Environmental/Technical Assertions on Proposed Variation

IWMA believe that private sector involvement in the Irish waste market is both significant and positive in terms of meeting policy/legal objectives. As detailed below, the IWMA submit that the proposed variation is not reasonable and necessary in terms of meeting environmental objectives.

The Dublin Authorities and their consultants make the following environmental/technical assertions to justify the proposed variation:

- Potential impact of multiple refuse collection vehicles servicing individual routes on air, noise, carbon emissions and traffic

- Potential cherry picking of service routes by the private sector could result in unauthorised waste activities in areas left without service, leading to potential environmental problems such as illegal tipping, backyard burning and other pollution.
- Private sector competition could potentially undermine the current pay-by-use schemes, thus discouraging householders from reducing the level of waste disposed to their black/grey bin, which is a high-level environmental policy objective.

IWMA Observations:

Impact of Collecting Recyclables on the Environment.

- IWMA submit that flexibility and efficiencies in private sector collection and treatment mean that the private sector achieves higher recycling rates in terms of carbon emitted compared to local authorities.
- By the reasoning of the Dublin Authorities and their consultants, the Plan should actively discourage the public delivering recyclables to bring banks, civic amenity sites or other recycling infrastructure in order to avoid potential traffic congestion, air, noise and greenhouse gas emissions.

Coverage and Unauthorised Waste Activities

- As stated in Section 4.3. IWMA rejects accusations of cherry-picking and refutes any implication that private sector involvement in household waste management leads directly to unauthorised waste activities (UWAs).
- There is no statutory obligation on householders to choose a waste collection service. UWAs are a matter of enforcement. The Dublin Authorities suggest that the private sector do not fund enforcement. Firstly, the private sector does fund enforcement, through regulatory fees and the 'Environment Fund' as part national policy. Secondly, unlike the Dublin Authorities, the private sector does not self-regulate. Our Association has consistently opposed unauthorised waste activities. IWMA membership has worked with local authorities in several regions to ensure coverage, including the Midlands Region. Finally, the Dublin Authorities and their consultants have provided no evidence to link professional, regulated private waste collection activities to increased unauthorised waste activities.

Pay By Use

- The private sector provides pay by use (PBU) schemes in 90% of the country (DEHLG, October 2006) and are providing PBU schemes in the Dublin region. IWMA is committed to encouraging householders to move up the waste hierarchy and the value chain.
- Private operators have spent €263,000 in awareness campaigns promoting recycling and PBU schemes in Galway City.

IWMA submit that the stated environmental policy objectives can be achieved without granting exclusive rights to local authorities, to the detriment of competition and consumer choice.

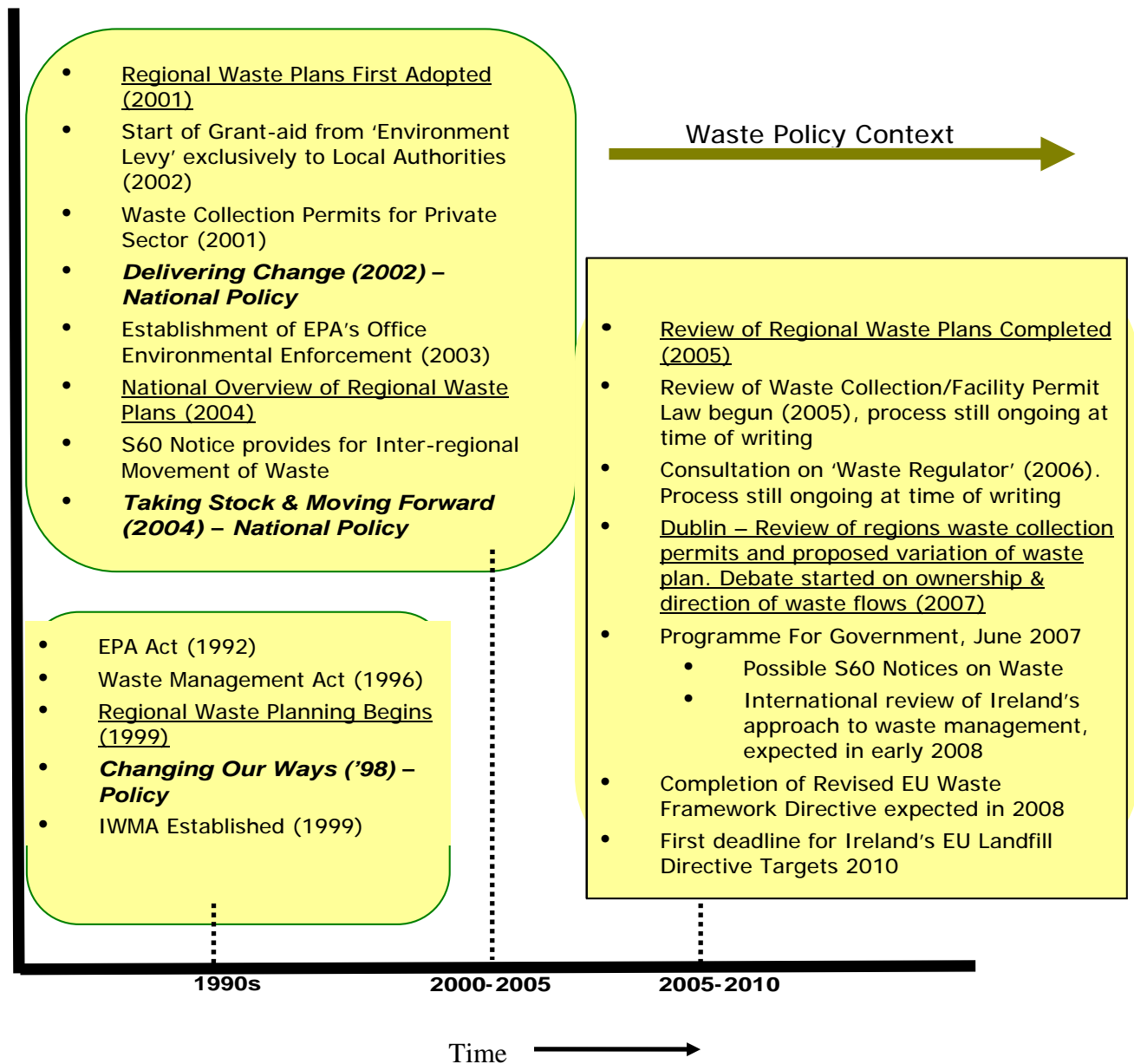
5 Conclusion on Proposed Variation

IWMA believe that private sector involvement in the Irish waste market is both significant and positive.

IWMA submit that:

- The proposed variations are not reasonable and necessary in terms of stated policy, socio-economic and environmental objectives.
- The import and effect of the proposed variations are to restrict and distort competition in the regional and national household waste market. Reference to competitive tendering in the proposed variation is currently aspirational and ambiguous rather than a firm commitment.
- The timing, legality and structure of the process involved in varying the plan are questionable at this time given ongoing policy developments in the waste sector e.g. the upcoming international review of Ireland's waste management policy. The Dublin Authorities' proposed variation encompasses issues that have implications for the State and the national waste market e.g., the ownership of waste flows, encouraging competition, securing investment and meeting national environmental and socio-economic policy objectives. The IWMA submits that such issues are best addressed at national policy level first rather than at regional level by local authorities, who are market operators with a vested interest in the sector.

Appendix 1: Waste Management Policy Context 1992 - 2007



IWMA Observations

- There has been a significant level of policy and regulation in the waste sector over the last 15 years.
- While better regulation is welcome, the private sector concern is that a lot of the policy and regulation, described above, has been inconsistent and poorly sequenced, leading to regulatory uncertainty that affects the delivery of infrastructure and service by operators.
- The private sector has played a key role in meeting National and EU waste policy objectives despite this regulatory uncertainty.

Appendix 2: Private Sector Involvement in Waste Management

Table 1: Overview of Irelands Performance in Waste Management

Waste Material	Total Arising (Tonnes)	National Recovery Rate	EU/National Recovery Target
Household Waste	1,543,468	349,596 Tonnes (23%) in 2005	50% by 2013
Commercial Waste	1,244,967	614,772 Tonnes (50%) in 2005	None
Municipal Waste (MW)	2,788,433	964,367 Tonnes (34.6%) in 2005 67% MW collected by private sector with a further 5% under public contract	35% by 2013 On track to meet target
Packaging Waste	925,221	554,632 Tonnes (60%) in 2005	60% by 2011 Target Met
WEEE	20,892	7.89 Kg WEEE collected per head of population in 2006, 16,258 Tonnes recovered in 2006. Irish treatment facilities developed IWMA estimates private sector investment to be €30 Million in WEEE infrastructure and services.	Collect 4 Kg WEEE per head of population by 2008 Target Met
Hazardous Waste	673,631 (366, 291 tonnes excluding contaminated soil)	70,791 tonnes treated in Irish facilities in 2004 157,479 tonnes Hazardous Waste, excluding Contaminated Soil, recovered in 2004 (43%) 50,392 tonnes Contaminated Soil recovered in 2004 (16%)	None
Industrial Waste	7,536,384	2,666,302 Tonnes recovered (35%) in 2004	None
Construction & Demolition Waste	14,931,486	12,979,337 Tonnes recovered (86.9%) in 2005	85% by 2013 Target Met

Sources:

- EPA National Waste Report – 2004 and Data Update, 2005
- EPA Environment in Focus 2006, Environmental Indicators for Ireland
- WEEE Ireland Annual Report 2005/2006

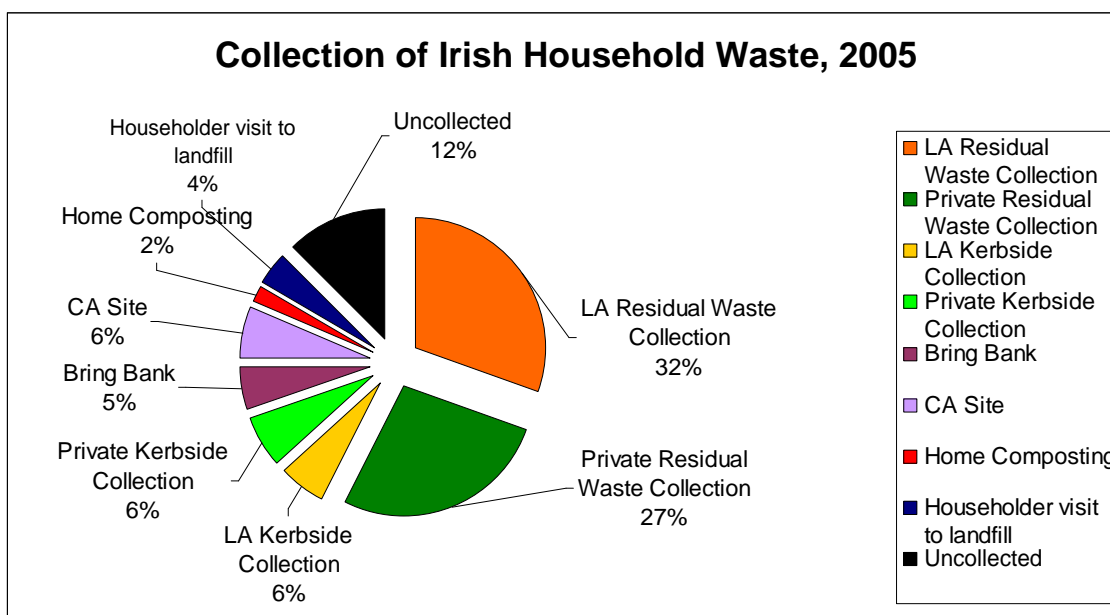
IWMA Observations

- The private sector currently operates
 - 30 Material Recycling Facilities (MRF)
 - 76% of Ireland's Composting Facilities, with a further 5% under public contract (Cré, 2006)
 - There are 2 waste to energy (WTE), and several Mechanical Biological Treatment/Energy from Waste (MBT/EfW) and composting projects in the development pipeline.
 - Local authorities operate the majority of landfills in Ireland.
- The private sector manages 50% of household waste in Ireland and 67% of municipal waste (Forfás, 2007).
- While acknowledging the positive role local authorities play, according to Repak, approximately 73% of the total packaging waste recovered in the Dublin region in 2006 was carried out by the private waste sector
- IWMA and its membership have been active participants in supporting awareness campaigns for our customers. IWMA provided technical input and support to the production and distribution of both the '*Small Change – Small Steps to Manage Business Waste*' initiative, produced as part of the *Race Against Waste* initiative and IBEC-AIB, '*Waste Management – A Practical Guide for Small Business*' initiative.
- National policy acknowledges that Ireland's major waste infrastructural projects require private sector input through direct investment and Public Private Partnership (PPP).
- The private sector (enterprise) has been the principal contributor to Producer Responsibility Initiatives (PRI), rates and the 'Environment Fund' that have financed capital and current spending by local authorities on waste management.
- Despite regulatory uncertainty affecting the economics of the composting industry, the private sector is developing composting facilities and has begun rolling out brown-bin services in Galway City and the North-east.
- The private sector is the principal player in the development and delivery of commercial, industrial, hazardous, WEEE and construction and demolition waste solutions. The private waste sector has played the principal role in achieving the national recovery rates and policy objectives achieved in these waste streams. The private sector is already playing a principal role in meeting other waste recovery targets

Table 2: National Overview of Household Waste Collection, 2005 (Source, EPA 2006)

Management of Household Waste in Ireland	Tonnes	%
LA Residual Waste Collection	499,388	32%
Local Authority (LA) Kerbside Collection	97,086	6%
Private Residual Waste Collection	438,528	27%
Private Kerbside Collection	105,438	6%
Bring Bank	84,982	5%
Civic Amenity (CA) Site	104,268	6%
Home Composting	29,567	2%
Householder visits landfill directly	71,075	4%
Uncollected	202,940	12%
Total	1,633,272	100%

Figure 1: National Overview of Household Waste Collection, 2005



Source, EPA, 2006

IWMA Observations

- The private sector collects approximately 50% of household waste, mainly in the rural areas of the country.
- Local authorities remain predominantly involved in the collection of household waste in large urban centres with the higher population densities: Galway, Cork, Waterford and Dublin. Approximately 20 out of the 34 local authority areas are serviced by the private sector in terms of household waste management (Table 3).

Table 3: Overview of Public and Private Sector Involvement in Household Waste Collection

Local Authority (A-Z)	Who is the household collection service provider?		
	Public (Y/N?)	Private (Y/N?)	Is there Private service under public contract (Y/N?) Is there Public-Private Competition (Y.N?)
Carlow County Council	No Public	Only Private	
Cavan County Council	Some Public	Some Private	
Clare County Council	No Public	Only Private	
Cork County Council	Public	Some Private	Public-Private Competition exists in the Market
Cork City Council	Public	Some Private	Public-Private Competition exists in the Market
Donegal Co. Council	No Public	Only Private	
Dublin City Council	Public		Operation of 2 CA Sites, Kerb-side Green Bin provided by Private sector under public contract
Dun Laoghaire-Rathdown	Public	Some Private	Operation of CA Site, Kerb-side Green Bin provided by Private sector under public contract Public-Private Competition exists in the Market
Fingal County Council	Public		Private operators services CA Site and provides Kerb-side Green Bin under public contract
Galway County Council	No Public	Only Private	
Galway City Council	Public	Some Private	Public-Private Competition exists in the Market
Kerry County Council	Public	Some Private	Public-Private Competition exists in the Market
Kildare County Council	Public*	Some Private	*Collection is provided by private sector under public contract
Kilkenny County Council	Public*	Some Private	*Public service provided by UDC
Laois County Council	No Public	Only Private	
Leitrim County Council	No Public	Only Private	Operation of CA Site provided by Private sector under public contract -
Limerick County Council	No Public	Only Private	Operation of CA Site provided by Private sector under public contract
Limerick City Council	No Public	Only Private	
Longford County Council	No Public	Only Private	Operation of 2 CA Site provided by Private sector under public contract
Louth County Council	No Public	Only Private	Operation of CA Site provided by Private sector under public contract
Mayo County Council	No Public	Only Private	
Meath County Council	No Public	Only Private	Operation of 2 CA Sites provided by Private sector under public contract
Monaghan County Council	No Public	Only Private	Operation of CA Site provided by Private sector under public contract
North Tipp County Council	No Public	Only Private	
Offaly County Council	No Public	Only Private	Operation of 2 CA Sites provided by Private sector under public contract
Roscommon County Council	No Public	Only Private	
Sligo County Council	No Public	Only Private	
South Dublin County Council	Public	Some Private	Kerb-side Green Bin provided by Private sector under public contract Public-Private Competition exists in the Market
South Tipp County Council	Public	Some Private	
Waterford County Council	Public	Some Private	Public-Private Competition exists in the Market
Waterford City Council	Public	Some Private	Public-Private Competition exists in the Market
Westmeath County Council	Public	Some Private	Operation of CA Site and Kerb-side Green Bin service provided by Private sector under public contract
Wexford County Council	Public	Some Private	
Wicklow County Council	No Public	Only Private	

Note 1: Green colours denote private household waste collection service. Orange colours denote public household waste collection service. (Source: EPA, 2005 Waste Database and IWMA Survey, 2007)

Table 4: Dublin, Regional Overview of Household Waste Collection, 2005

Management of Household Waste in Dublin	Tonnes 2005	%	Tonnes 2006*	%
LA Residual Waste Collection	312,335	63%	310,386	64
Private Residual Waste Collection	29,815	6%	-	-
Local Authority (LA) Kerbside Collection	51,190	10%	64,884	14
Private Kerbside Collection	13,355	3%	-	-
Bring Bank	22,238	5%	33,815	7
CA Site	36,823	8%	35,337	7
Home Composting	7,446	2%	8,217	2
Householder visits landfill directly	15,136	3%	26,684	6
Uncollected	144	0%	0	0%
Total	488,482	100%	479,323	100%

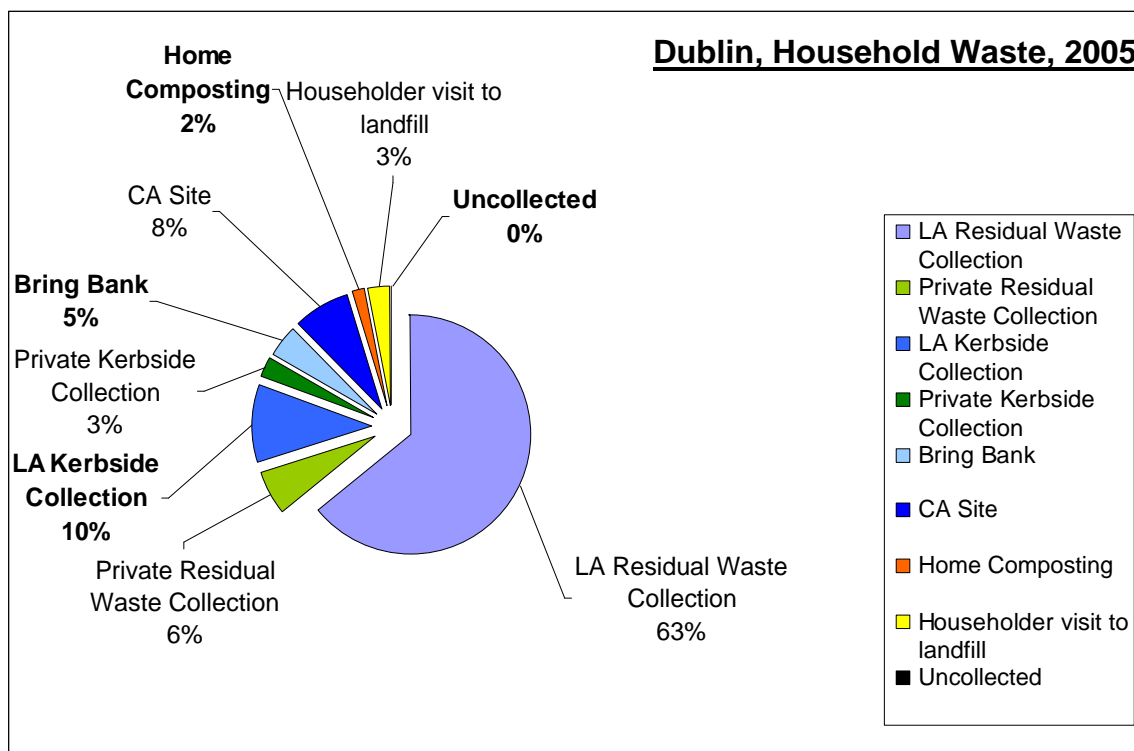
Sources:

EPA, 2006

*Draft Annual Progress Report, 2007, Waste Management Plan for the Dublin Region 2005 – 2010 (RPS, 2007). It is acknowledged that this report is incomplete at the time of writing.

**The 2006 Kerbside collection figure includes mobile hazardous waste, green bin and brown bin and kerb-side carried out by the private sector.

Figure 2: Dublin, Regional Overview of Household Waste Collection, 2005



Source: EPA, 2006

IWMA Observations

- In 2005, the private sector was directly involved in 9% of residual and kerbside collection of household waste in the Dublin region with a further 10% under public contract (local authority green bin collection). An estimated 62,000 tonnes of recyclables were collected by the private sector under public contract in the Dublin region in 2006 (RPS, 2007).

- The private sector is involved in managing CA sites in North Strand, Ringsend and Ballyogan on behalf of the Dublin Authorities. The private sector service the collection of hazardous waste and the majority of bring banks in the region on behalf of the authorities.
- The private sector also plays a significant role in processing, packaging recyclables collected and marketing the recyclates on behalf of the Authorities.
- There are now three private operators competing directly in the Dublin household waste market. IWMA estimates that these operators now service 23,000 household customers in the region.

Conclusion:

While acknowledging the role that local authorities play, the private sector is the principal player in the Irish waste sector and plays the key positive role in meeting Ireland's policy objectives on waste management.

Appendix 3: Competition and Regulatory Analysis of Assertions Supporting Proposed Variation

1. Introduction

Economic literature demonstrates that private sector involvement in waste management can bring substantial cost savings and achieve policy objectives. It is also important to recognise that local authorities can sometimes be driven by self-interest, for example the desire to maximise revenue collection, rather than achieve the most cost-effective way of providing a service. Local governments in Ireland are heavily reliant on central funding and have very little autonomous control over their revenue streams. As a result they may have strong incentives to protect those revenue streams they do possess control over, such as waste collection and landfill.

This paper will explore the interactions of private and public sector involvement in the waste management sector in Ireland. Section two will examine the effects of private sector competition in public utilities, waste management in particular. The third section will examine the importance of regulation, with a particular focus on the impact of the dual role of local authorities as regulators and service providers, and the impact on competition. The fourth section includes an analysis of assertions made by the Dublin Authorities and their consultants on the household waste market¹⁸. The final section will draw conclusions.

2. Competition

A range of options is available for the provision of waste management services. In between the two poles of fully public and fully private provision lie various forms of competitive tendering. This paper will not deal directly with which type of competition is best in the waste management sector; rather, the purpose here is to make the argument that the existence of competition is key and that competition in waste management is both desirable and feasible.

While some argue that waste collection is a local monopoly (OECD 2000, O'Toole 2007), studies so far have focussed on waste collection only. This is partially missing the point, as waste management activity must be considered as a whole, collection and processing included. Massarutto (2007) makes the point that waste collection and waste management require different considerations. While waste collection is an individual concern (households want their waste removed) what actually happens to that waste is a collective concern. Therefore, in designing an efficient waste management system, the requirements posed by environmental sustainability need to be considered. As environmental goals become more important, cost of waste processing increases. Consequently, it is important that stakeholders receive the best value for money, while meeting environmental objectives.

¹⁸ Francis O'Toole, Trinity College Dublin, prepared on behalf of the Dublin Local Authorities (September 2007) *Household Waste Collection: An Economics of Competition Policy Perspective*

The debate between public and private ownership of public utilities raged for the best part of the last century. Since the 1980s the balance has begun to shift towards private sector ownership, with many nationalised entities being privatised even in this country. Shleifer (1998) makes the argument that only very few operations should be publicly owned. Private firms have incentives to invest in cost reduction and improved quality, as they reap the benefits of improved productivity and profitability. The same incentives do not exist for state-backed entities as the stakeholders do not reap the benefit of improved efficiency. While it is true that the cost reductions that private companies have incentives to implement can have adverse impact on non-contractible quality of the good or service, these adverse incentives are less of a problem when consumers buy the good or service themselves, and there is enough competition between the suppliers for consumers to have some choice.

Where there is choice between suppliers, the case for government provision is substantially weakened, as the incentives for inefficient cost reduction are weakened, while the incentives for efficient cost reduction and innovation are maintained. A further factor in reducing skewed incentives for private operators in reputation building: as they want to stay in business, they will not act in such a way as to damage their reputation.

Moreover, it is important to recognise that government does not always act to maximise welfare: incentives can range from maintaining political support to maximising income. In an Irish context, an incentive for local authorities can be to maximise revenue. Finally, Shleifer makes the case that concerns that private firms will fail to address social goals can be dealt with through government regulation and contracting, without resorting to government ownership.

Boardman and Vining (1989) looked at the effects of public, private and mixed ownership on company performance, across industry sectors. They find that where public and private enterprises compete in competitive markets, private firms outperform public firms.

Studies on private sector involvement in waste management stems mainly from the waste collection sector, where data are more readily available. Szymanski (1996) studied the impact of the introduction of compulsory competitive tendering (CCT) in the UK in 1988. Prior to 1988, most local authorities operated refuse collection under monopoly conditions, as the sole provider. In 1988 central government in the UK passed an Act that forced local authorities to competitive tender for a range of services, including waste collection. In-house divisions of local authorities, known as direct service operations (DSOs), tendering for contracts are subject to regulation. The Act laid down guidelines to ensure fair competition, including ring-fencing the DSO and a minimum rate of return on assets (5%). The Act has frequently been supplemented by guidance from the Department of the Environment as to the conduct of competitive tendering.

Szymanski found that after the implementation of CCT, DSOs achieved cost savings of 10%, while the cost savings for private firms were double that at 20%. Before the implementation of CCT, when contracts were awarded to DSOs, no cost saving was evident. Importantly, cost reductions achieved by DSOs were not sustained over time.

Reeves and Barrow (2000) study competitive tendering of waste collection by Irish local authorities. In their survey, they find that in 1995, 39% of local authorities

exposed their waste collection to competition: 15% tendered out the service to private operators while in 24% of local authorities the service was fully privatised. In the latter case, the consumer selects and pays the private producer of the service; as the local authority does not incur a cost, these were not included in the analysis. Reeves and Barrow (2000) find average savings in the region of 45% in those local authorities that had tendered waste collection to private firms. Importantly, the bulk of the savings appear to arise from real efficiency gains. As local authorities where waste collection was fully privatised were not included in the sample, there is no comparison between competition-for-the-market and competition-in-the-market costs.

Numerous studies have found that private contractors are cheaper and more efficient than public municipal collection. McDavid (1985), Dubin and Navarro (1988) looked at Canada and the US, respectively. Both studies found that private contractors were cheaper than municipal collection. Savas (1977) found that introducing private sector competition increased productivity and improved the cost-efficiency of waste collection for citizens of Minneapolis in the US. Dijkgraaf and Gradus (2003) find that in the Netherlands, introducing competition into waste collection brings about cost-savings. However, the Dutch fiscal system was similar to Ireland in that private firms are subject to VAT while local authorities are not. This decreases the benefit for households of private sector service provision. An interesting result is that when an inside firm is awarded the contract, there are no cost savings. When the firm is an outside firm, cost savings occur regardless of ownership. The implication is that it is competition that matters.

Finally, the ESRI also promotes a competitive environment in waste management in Ireland: 'The aim should be to facilitate the emergence of a commercialised, economically efficient and environmentally responsible waste management sector, not necessarily totally privatised, but exposed to competitive pressures.' (ESRI, 2006).

Attempts to eliminate or severely limit private sector involvement in the waste sector in Ireland go against expressed Government policy, international best practice and domestic policy advice. Competition can bring about substantial cost savings for the consumer.

3. The Dual Role of Local Authorities

Local authorities have a dual role in waste management, acting as both regulators of their competitors and service providers. Control of landfill facilities remains primarily with local authorities. Local authorities are also responsible for issuing waste collection and treatment permits to private sector operators, where the local authorities do not themselves require permits for their own activities. There is an obvious conflict of interest for local authorities when they are both the regulator and a market player: the market may become distorted in favour of the local authorities.

The dual roles of local authorities and the consequent potential skewing of the competitive environment is highlighted in numerous reports, including Eunomia Research & Consulting Ltd. in association with TOBIN Consulting Engineers (2007), Department of the Environment, Heritage and Local Government (2006), and the UK Office of Fair Trading (2006).

The Department of Environment, Heritage and Local Government (DEHLG) has acknowledged that there are significant structural problems in the waste management market, *‘Under current legislation, local authorities are responsible for waste management planning and the regulation of waste activities and facilities. They perform these roles whilst also competing with the private sector in the provision of waste services and waste infrastructure. This dual role of local authorities acting as both competitor and regulator may distort competition in the waste sector in favour of local authority provision of services.’*¹⁹ The DoEHLG consultation paper identifies the following concerns of the private sector:

- (a) Unlike their private sector counterparts, local authorities are not required to obtain collection permits in order to engage in the commercial collection of waste.
- (b) Local authorities are required to undergo a less onerous registration process for certain waste activities, whereas their private sector counterparts are required to obtain waste permits for the same activities. Permitting is also more costly for the private sector.
- (c) The planning system operates differently for private sector and public sector projects. It takes longer to obtain planning permission for private sector projects than it does to obtain permission for local authority projects. Disparities in planning and permitting timescales may give local authorities an advantage over private waste companies in setting up their own waste facilities. The Strategic Infrastructure Act seeks to address this issue.
- (d) The Environment Fund comprises monies raised through both the plastic bag levy and the landfill levy. The landfill levy is charged at €15 per tonne based on every tonne of waste which goes to landfill. Local authority waste infrastructure projects are part funded by the Environment Fund, however no funding is available for private sector waste projects despite the contribution that private sector waste companies make towards the landfill levy and ultimately the Environment Fund.
- (e) Local authorities and the private sector are both competing in the same market therefore it would be expected that they would operate under the same market conditions.

The ESRI also notes the potential conflicts in local authorities’ roles in its ex-ante assessment of the NDP: *‘Currently, Local Authorities act as suppliers, planning authorities and environmental regulators in the waste management industry. This means they are potentially conflicted in dealings with private operators, which could distort competition. With each Local Authority acting as regulator, there is scope for inconsistency geographically and temporally.’* (ESRI 2006)

There is also some salient evidence from the UK in relation to this issue. The Office of Fair Trading (OFT) examined compulsory competitive tendering in the UK waste market. They find that *‘where the DSO is the incumbent provider they are more likely to win the contract when it is re-tendered compared to when there is a private sector incumbent. This data covers all types of waste services contracts but still shows that whilst 48 per cent of contracts are won by the incumbent provider when it is a DSO provider, only 30 per cent of contracts were won by the incumbent provider when it was a private company.’* (OFT, 2006)

¹⁹ DEHLG (2006) *Consultation Paper – Regulation of the Waste Sector*

The detrimental effects of local government abuse of market power can result in significant cost increases to households: Szymanski (1996) showed that DSOs achieved cost savings of 10%, while the cost savings for private firms were double that at 20%. This illustrates the dangers of a situation where the local authority is a market player, as well as responsible for awarding the contract – particularly since contractors claimed that local authorities discriminated against private sector operators.

As local authorities can have such a negative impact on the competitive environment in waste management, it is important that an appropriate regulatory framework be set in place. The DoEHLG consultation paper goes on to state that ‘changes in the regulatory framework could address these issues to a significant degree’. Both local authorities and private sector operators should be subject to same regulation. The ESRI also recognises the importance of regulation: ‘a single regulatory structure applicable throughout the State would help encourage private participation in the market.’ (ESRI 2006)

4. Analysis of assertions made by the Dublin Authorities and their consultants on the household waste market²⁰

The assertions submitted by the Dublin Authorities and their consultants on the household waste market are interesting but fail to meet the requisite legal standard²¹ or deal with the practical situation on the ground. The assertions advocate a monopoly or, at the very least, a deliberate and substantial restriction on competition.

The assertions are aimed at ensuring that there is a *monopoly* operated by the local authorities. The Local Authorities are departing from sound Government policy. It is worth recalling that the Department of the Environment, Heritage and Local Government recognises the risk were “monopolies to develop within the waste sector, which may ultimately lead to higher charges and a loss of choice for the consumer.”²² A *public* monopoly is no more virtuous than a private one and both can be injurious to both society and consumer alike.

The law, whether EU or Irish law, has no exception or immunity from the competition rules for so-called “natural monopolies”. Therefore, while an economist may see some value in it, the law simply does not permit it.

It is both regrettable and disturbing that the Authorities should be seeking to entrench a monopoly and stifle competition to the prejudice of the consumer. This is despite these authorities being emanations of a Member State of the European Union (which espouses an open market economy) and therefore under a legal duty not to stifle competition.²³ This is despite Ireland having been a member of the European Communities for almost 35 years and one would have hoped that it was well-known that it was wrong for dominant undertakings to seek to entrench their position in this manner. In so far as the local authorities are engaged in economic activities (e.g., the collection of waste) then executives of such authorities potentially face criminal and

²⁰ Francis O’Toole, “Household Waste Collection: An Economics of Competition Policy Perspective”, September 2007.

²¹ The Submission is bereft of any legal analysis and proceeds on the notion that the surrounding law (including European Union (EU) and Irish law (both of which mandate competition) could be ignored.

²² Department of the Environment, Heritage and Local Government, *Regulation of the Waste Management Sector*, Consultation Paper, August 2006, pp.11-12.

²³ E.g., EC Treaty, Arts.3(1)(g) and 10.

civil liability under the Competition Acts 2002-2006 by virtue of any attempt to prevent, restrict or distort competition.

The argument in the Authorities' consultancy report²⁴ that the collection of household waste must be a monopoly is as hollow as saying that it would be better if airlines or telephone companies had monopolies on routes or regions so as to reduce congestion and confusion for consumers. The public can be trusted because they are able to cope with competition; for example, there is neither congestion nor confusion in Dun Laoghaire Rathdown where competition already exists.

The Authorities' consultancy report²⁵ fails to recognise or discuss the fact that different providers within a region can stimulate each other (e.g., enhanced offerings to the public such as expanding the range of products which can be taken in a particular type of bin) and if there was a "competition for the market" approach with a single provider having a "franchise" for several years then those improvements would be unlikely to flow during the franchise because of the absence of a competitive stimulus where others would be striving for the custom of consumers and consumers could switch.

Ireland is legally obliged to comply with EU law.²⁶ The EU is committed to an "open market" characterised by free "competition", entrepreneurship, the ability of businesses to establish a business anywhere in Europe and strong controls on any attempt by States to interfere with the marketplace.

Even *if* household waste collection had, as the Authorities and their consultants argue, the "economic characteristics of a natural (local) monopoly"²⁷ (which is denied), the test must be one of whether legally it is possible to have a monopoly. It may well be desirable for all sorts of reasons of economic theory to have a monopoly but, as a matter of law, Ireland's room for manoeuvre in creating or maintaining monopolies is limited by reason, for example, of our membership of the EU.

The European Court of Justice and the European Commission are considering a number of situations where Ireland conferred on various bodies various rights or contracts without any prior competition (e.g., the payment of social welfare allowances was given by the Government to An Post or the Dublin Ambulance service to the HSE) and the indications (e.g., from the opinion of the Advocate General) is that contracts such as these (e.g., the right to collect and organise household waste collection) should only be awarded after a public competition. Therefore, the very right of the Local Authorities to organise the collection of waste (or re-organise it as in the present situation) may be in doubt.

It is worth recalling that the Local Authorities are not *disinterested* third parties in this debate. The assertions made are therefore the arguments of an incumbent near-monopolist striving to protect its position.

The Local Authorities are (and want to be) both gatekeeper and operator: "[t]his report addresses...whether or not local authorities should be allowed to restrict multiple entry into household waste collection in a pro-competitive manner." The true import of that "term of reference" is that the local authorities would be both (a) gatekeeper (i.e., the

²⁴ O'Toole, 2007

²⁵ O'Toole, 2007

²⁶ EC Treaty, Art.10.

²⁷ O'Toole, 2007, Page 1.

entity which is “allowed to restrict” entry) and (b) operator (i.e., the party operating in the marketplace). In accordance with the principles of good regulatory practice espoused by parties as diverse as the Department of An Taoiseach, the EU and the OECD, it is now accepted as being bad policy to have the incumbent operator also acting as the gatekeeper or regulator of the market.

Even if the collection of household waste were a natural monopoly (which is not the case), the assertions seeks to make the dangerous link that if it is a monopoly then the *monopolist* should regulate entry into the market. Examples from other sectors where there are monopolies (e.g., airports) demonstrate the widely held belief that there should be a regulator independent of the incumbent. The Oireachtas has seen the danger of the monopolist being operator and regulator so it has legislated to deal with the issue (e.g. the Communications Regulation Act 2002 and the Aviation Regulation Act 2001). Indeed, even where there are several competitors in a field (e.g., telecoms) there is still a real value in having regulators. The argument must be even stronger in the present case for the roles of regulator and operator to be separated.

A natural monopoly has been defined as a situation where there cannot be (or ought not to be) more than one efficient provider of a good or service. It is generally recognised as being a rare and unusual phenomenon. There are some commentators who even doubt the very existence of the concept of a natural monopoly and virtually all commentators would be sceptical of the many claims that are made in regard to such monopolies. It is submitted that household waste collection is not a natural monopoly as a matter of law and should not be treated as such as a matter of policy. The examples which the Authorities consultancy report²⁸ cites (on page 5) relate to infrastructure networks (e.g., gas and railway) but the service at issue is the operation of mobile assets (i.e., trucks) to collect household waste.

The fact that household waste may or may not be a separate product market²⁹ does not mean that it is a natural monopoly. A particular flavour and type of drink may constitute a separate product market but that does not mean that the producer of that drink should have a “natural monopoly”.

The Authorities consultancy report states that it “rejects as unnecessarily inefficient the competition-in-the-market option”.³⁰ It fails to quantify or detail those inefficiencies. There is no investigation or analysis of such inefficiencies and costs. Even if it did, it failed to recognise that in all markets, there are competitors and producers who operate inefficiently to a greater or lesser extent.

In regard to the “economies of scope” argument on page 6 of the report, the argument that as a truck is passing all the houses in a housing estate then it makes sense for the truck operator to have a monopoly because it would be more efficient.³¹ This would be

²⁸ O’Toole, 2007

²⁹ O’Toole, 2007, section 2.

³⁰ O’Toole, 2007, page 1.

³¹ O’Toole, 2007, page 6: “...moving towards a consideration of the economies of density, consider a particular housing estate. To the extent that one truck is collecting a significant amount of household waste from that estate, it is obviously more efficient for that one truck to collect all bins in the estate, as it is inevitably “passing” each household/bin already. From the perspective of society, it can be viewed as a load (i.e. economies of density) issue. From the perspective of society, it can be seen as an efficiency issue as one truck collecting all the bins is more efficient than two trucks each collecting say half the bins. Either way, economies of density/efficiencies can be captured from using just one truck, or more generally just one firm, in certain well-defined territories, i.e. natural local monopolies.”

like saying that as Airline X is landing its aircraft at Airport Y then the airline should have a monopoly of all the passengers from that airport for a particular route (i.e., collect all the passengers at the airport for a particular route) so as to maximise efficiency and ensure that the aircraft was fully utilised.

The cost estimates mentioned in the Authorities' report do not take into account other considerations (e.g., efficiencies and costs which would be known only to the private sector operators and which would fall outside the scope of the knowledge of the DCC).

Even the report reveals how the Competition Authority could see the possibility of more than one provider operating at a minimum efficient scale in an area as small as northeast Wicklow.³² How many more could operate on an efficient scale in the area represented by the four Local Authorities? It is certainly more than one.

The Authorities' report "argues that local authorities [i.e. no one else] should be permitted (indeed encouraged) to enforce exclusive rights with respect of household waste collection in a pro-competitive manner".³³ This is a startling statement. It goes beyond even the unsupportable statement that there should be a monopoly and goes to the point of saying that *only* local authorities should provide the service.

With respect, it is unclear why the Authorities' report asserts that local authorities are better equipped, better suited and more efficient at providing household waste services than any of the national and multinational alternatives.

There is an obvious inconsistency in the report. It argues "that the actual identity of this single provider (i.e. public or private) is of secondary importance compared to the institutional environment within which the actual provider subsequently operates"³⁴ while simultaneously contending that the provider must be the local authorities (i.e. "local authorities should be permitted (indeed encouraged) to enforce exclusive rights with respect to household waste").³⁵

The report argues: "the actual identity of this single provider (i.e. public or private) is of secondary importance compared to the institutional environment within which the actual provider subsequently operates."³⁶

The report proceeds on an assumption that "if household collection is a natural (local) monopoly then the placing of certain pro-competitive restrictions by the relevant (local) Authorities on the number of providers allowed to enter the market would be justified."³⁷

The report does not define precisely or, indeed, at all the geographical regions where there would be competition for the market. For example, would each region happen to coincide with the particular geographical region operated by each local authority? Could it be that a case could be made for the optimum size (the "minimum efficient scale") being the area covering *all* of the local authorities and that three of the local

³² O'Toole, 2007, page 6.

³³ O'Toole, 2007, page 1.

³⁴ O'Toole, 2007, page 1.

³⁵ O'Toole, 2007, page 1.

³⁶ O'Toole, 2007, page 1.

³⁷ O'Toole, 2007, page 2.

authorities could lose out? In any event, the report fails to address that issue and should therefore be dismissed accordingly.

The report states that there “appears” (the report is not certain on the issue) to be a “level of disquiet with respect of the...activities of some of the private operators”.³⁸ It then cites “market consolidation”³⁹ stating that this “creates the opportunities for monopolies to develop within the waste sector, which may ultimately lead to higher charges and a loss of choice for the consumer.”⁴⁰ If there was some anti-competitive effect then presumably action could be taken by the local authorities, the Competition Authority or any other aggrieved person. The Competition Authority is well-placed to deal with the issues identified (e.g., market consolidation⁴¹ and vertical/horizontal integration.⁴² Assumptions that besmirch a professional, well regulated industry are unhelpful.

The Authorities’ consultancy report acknowledges that the current regime involves giving consumers a choice. However, the report contemplates removing a choice for consumers.

The Competition Authority is also neutral and only wants to achieve a competitive efficient outcome and does not favour a public or a private outcome.

The report’s argument that “economies of scale are typically derived from being able to spread some fixed (or indivisible) cost, such as certain overheads (e.g. a large waste collection truck), over an increasing level of output.”⁴³ The same argument could be made, with respect, that, for example, one airline should have the entirety of the “Dublin-Heathrow” market because, to paraphrase the report’s words economies of scale are typically derived from being able to spread some fixed (or indivisible) cost, such as certain overheads (e.g. an aircraft (a multiple of the cost of a truck), over an increasing level of output. Yet, no one would seriously contemplate that competition in the airline sector would be rolled back to the point of there being a monopoly.

The report contemplates that the Local Authorities would cherry pick particular types of household waste collection by not servicing apartment blocks. This would lead to clear discrimination between comparable households; for example, there could be discrimination within the same development (e.g., an apartment block and a house in a housing development would be treated differently with the owner of the single house dwelling being denied a choice while the apartment owner would have such a choice).

The collection of waste serves an important public health function. The report contemplates a single provider. It fails to consider the increased deleterious effects of a strike where there is a single provider.

The report contemplates a solution (i.e., a monopoly or near-monopoly) which is disproportionate and not necessary to achieve the aims contemplated by the Local

³⁸ O’Toole, 2007, page 3.

³⁹ O’Toole, 2007, footnote 3.

⁴⁰ Department of the Environment, Heritage and Local Government, *Regulation of the Waste Management Sector*, Consultation Paper, August 2006, pp.11-12.

⁴¹ E.g., the Competition Act 2002, Part III.

⁴² E.g., the Competition Act 2002, ss.4-5.

⁴³ O’Toole, 2007, page *.

Authorities and therefore the solution is contrary to EU law and not permitted by the EC Treaty or justifiable under Article 86 of EC Treaty.

5. Conclusions

Competition must be encouraged in the waste market. Economic literature shows that the private sector plays a significant and positive role in waste management. The dual role of local authorities as market operator and regulator of their private sector competitors is acknowledged in policy as a serious concern. Excluding the private sector or promoting public monopolies can be negative to achieving policy objectives. The Authorities' report is welcome in that it acknowledges that local authorities have no special advantage over private operators in the performance of their tasks. However, household waste collection is not a natural monopoly. The Authorities' consultancy report advocates a disproportionate response to meeting policy objectives that is not justifiable under competition law.

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