



IWMA Critique of CCPC Report

On

‘The Operation of the Household Waste Collection Market’

(dated 28th September 2018)

The Competition and Consumer Protection Commission (CCPC) published their report on *“The Operation of the Household Waste Collection Market”* on 28th September 2018. The report culminated from research carried out by the CCPC in the preceding 12 months, including public and industry consultation.

The recommendations of the report were summarised on the CCPC website as follows:

“CCPC Recommendations

- *Recommendation:* Establish an economic regulator for household waste collection, with consideration to be given to the function of the regulator in relation to economic licensing, data collection and analysis, market design and consumer protection.
- *Recommendation:* A review is undertaken of the Government’s 2012 policy document, “A Resource Opportunity: Waste Management Policy in Ireland”. The CCPC suggests that this review could be usefully informed by the evidence collected in the course of this study and that the review be conducted in the context of the recommendation to establish an economic regulator.
- *Recommendation:* Ensure that all of the State’s resources are co-ordinated to deliver optimal outcomes for this market. The introduction of a new regulatory regime should also have a central objective to use these existing bodies in a manner that creates efficiencies, wherever possible. Consideration should also be given to utilising and extending existing structures to create a new regulatory regime.”

The genesis of the report was a Government Counter Motion of June 2017 which required that Dáil Eireann:

“ask the Competition & Consumer Protection Commission to report on the operation of the household waste collection market in order to inform the future development of national waste management policy before year end, which will provide an evidence base to establish a regulator to prevent price gouging.”

That agreed Motion was the basis upon which the report was commissioned, as mentioned in Section 1.6 of the report and it is no surprise that the report reached the conclusion that an economic regulator for household waste collection should be established. The evidence presented in the report was very selective in pointing to faults or potential future faults in the market, thereby supporting the conclusion that a Regulator is needed.

The CCPC identified a number of issues that it found to be problematic in this market, as follows:

- a) The market is highly concentrated in places, giving operators considerable market power
- b) The Irish household waste collection market is atypical in a European context
- c) The household waste collection market exhibits characteristics of a natural monopoly
- d) The current market structure benefits incumbents
- e) The market structure acts as a barrier to entry
- f) Operator numbers are falling and are likely to continue to do so
- g) The current market structure is impacting the State's ability to implement environmental policy
- h) The regulatory regime is fragmented and incomplete
- i) A sector-specific complaints procedure is not in place to resolve consumer issues
- j) Most households do not, or cannot, influence operator behaviour
- k) No service available to many households

Some of these issues are indisputable and some are debatable. Some are seen as actual problems in the market and some are seen as potential future problems in the market. Some are not problems at all or would be bigger problems in a competitively tendered market.

The prices charged for household waste collection were addressed briefly in Sections 4.2 and 4.3 of the report as follows:

"The CCPC has assessed the level of household charges from 2012 to 2016 to develop an initial indication of average national charges. This analysis has used the average operator revenue data received from operators in 11 local authorities, as part of this study. The CCPC notes that the average household charges represent a lower bound estimate of national average household collection charges, as the sample was skewed towards the Dublin region, where the collection charges are the lowest in the country. The findings indicate that the average annual household charge for waste collection, when adjusted for inflation, was €228 in 2016. This represents an increase of 11% from 2012 levels."

Behaviour & Attitudes (B&A) carried out market research on behalf of the CCPC and this was included in an Appendix to the CCPC Report. B&A surveyed 1,000 people and the survey is claimed to have a margin of error of 3.2%. The survey found that, on average, households pay €278 per annum on waste collection services.

In our review of the CCPC report, we found a lot of bias and selective evidence in support of the view that there are problems in the market and a regulator is required to address those problems. Evidence submitted during the consultation process proved that the consumer is getting a good price and a good service and that environmental targets are being achieved. This evidence was largely ignored by the CCPC in the report.

This selectiveness reminds us of the case of *Panda v Dublin City Council* in 2008¹ when the City Council tried to vary the regional waste management plan to halt the side-by-side competition that had commenced in Dublin in c.2006. The Judgement included the following text in Section 175:

“175. I would further note that in the course of the hearing a number of draft reports, prepared by Dr. Francis O’Toole and RPS, were handed up to the Court. The drafts of the former, contained comments written by the respondents indicating which parts of earlier drafts were acceptable to them, and either deleting or re-wording those parts which would not have supported their position. There were also e-mail references to meetings with the authors of these reports as well as notes of some meetings (including 31/01/07) which would indicate that the findings of the reports were a foregone conclusion. Whether or not the City Managers were aware of this fact is, in my opinion, immaterial: Mr. Twomey certainly was. Such massaging of reports, which were later, in their edited versions, released publicly, is a strong indicator, to me, of unacceptable influence in a process, supposedly carried out in the public interest, and further elucidates a high level of prejudgment in the decision to vary the WMP.”

We are not suggesting, at this time, that the CCPC Report was edited or massaged in this way, as we have not seen earlier drafts. However, we are suggesting that the authors included evidence that supported the need for the establishment of an economic regulator and excluded evidence, submitted in the consultation process, that was contrary to the argument that an economic regulator is needed.

In the following sections, we discuss each of the issues raised by the CCPC and we show that the report was biased and was selective in the evidence that was presented and used to reach the conclusions.

- **Prices** – The report looked at the price change over the 4 year period from 2012 to 2016 and this showed an 11% increase. The 2015 waste collection permit regulations required all household waste collectors to install weighing equipment on trucks, to install RFID chips on all bins and to install new data management systems to record and report the weights. This is thought to have cost hundreds of millions of euro and it was inevitable that this would lead to increased prices during that period. There were also significant increases in labour costs, but that was balanced by the fact that the price of diesel came down during that period.

The IWMA submission to the consultation provided data to the CCPC on prices for kerbside household waste collection in Ireland in 2004 and 2011. The 2004 prices included both private sector prices collated by the Competition Authority at the time and local authority and prices/costs collated by SLR Consulting from the local authority annual financial reports. This data was consistent with a report compiled by Trinity College Dublin for the EPA in 2005². The 2004 prices were much higher than current prices and that fact was not mentioned in the CCPC Report.

The ‘*Household Waste Collection Benchmarking Report*’ prepared by SLR for the IWMA was submitted to the CCPC as part of the consultation and showed that prices for household

¹ *Neurendale Ltd t/a Panda Waste Services -v- Dublin City Council & Ors* Neutral Citation: [2009] IEHC 588, High Court Record Number: 2008 420 JR, Date of Delivery: 21/12/2009, Judgment by: McKechnie J.

² A Nationwide Review of Pay-By-Use (PBU) Domestic Waste Collection Charges in Ireland: Extensive Survey Findings (2005-WRM-MS-33) Interim Report Prepared for the Environmental Protection Agency by Department of Geography, School of Natural Sciences, Trinity College, Dublin Authors: Abigail O’Callaghan-Platt and Anna Davies (Environmental RTDI Programme 2000–2006)

waste collection in Ireland compare favourably in an International context and once again the CCPC chose to ignore that evidence.

- **Natural Monopoly** – The CCPC report claims in Section 5.5 that *“The economies of scale and density which are prevalent in household waste collection markets mean that, at some local level, the market for household waste collection, which displays characteristics similar to other network and transport markets (such as economies of scale and density) is a natural monopoly.”*

The CCPC relied on a textbook³ as evidence for this assertion. In the High Court case between Panda and Dublin City Council in 2008 (referenced above), one of the authors of that textbook, economist Dr. Francis O’Toole, made the case for Dublin City Council that kerbside household waste collection is a Natural Monopoly. The judgement sided against Dr. O’Toole’s evidence in Section 119, as follows:

“I was also not impressed by the report of Dr. O’Toole. His assertions were of a hypothetical nature and of little application, in many situations, to this case. I found it extraordinary that he did not consider it necessary to define the potential number of markets within the Dublin region; such I would have thought would have been a prerequisite to determining if the Dublin region was a natural local monopoly, and if so to what extent. In this regard I would note that the general nature of his report may not be wholly his fault; he may have worked with what he was given. However, in circumstances where the burden is on the respondents to show that the Variation is objectively justified under s. 4(5) CA 2002, I would have expected far more empirical evidence showing that notwithstanding what potential forbearance with regards to the Variation’s effect on competition, it was in fact, when the figures were considered, both pro-competitive and to the benefit of consumers. No such evidence was presented in this case.

In contrast the report of Dr. Jenkins contains figures obtained from Panda which at least attempt an empirical analysis of minimum efficient scales and the effects of changes in both scale and density on costs, as well as evidence of pricing in the local authority areas. I am left in no doubt but that the market is capable of supporting multiple operators in competition with each other, and that this is not a situation where a monopoly is either required or to be preferred.”

The IWMA submission to the CCPC Consultation provided reference and quotes from that High Court Case, including the above quote, so the CCPC was aware of the judgement and of Dr. Jenkins report that the Judge found to be more credible than Dr. O’Toole’s evidence, yet the CCPC selectively ignored Dr. Jenkins report and ignored the judgement in favour of Dr. O’Toole’s evidence.

- **Highly Concentrated Market** – The report recognises that there are currently 62 companies collecting kerbside household waste in Ireland. That suggests an average of about 20,000 customers per collector. This is very low by international standards, so we do not agree with the CCPC claim in this regard.

Further concentration of the market is likely in the future and should lead to greater efficiencies. The CCPC suggest that the market is a Natural Monopoly and the local authority areas are an appropriate size for tendering. However, there are approximately 30 local

³ Turley G. Maloney M. & O’Toole F., “Principles of Economics - An Irish Textbook” (2006).

authority areas in Ireland, so tendering those areas would immediately remove more than half the collectors from the market. Given that larger companies would undoubtedly win more than one tender, the number of players would reduce even further making the market a lot more concentrated than the existing situation. So if a highly concentrated market is seen by the CCPC as a negative trait, then the existing free market structure is positive in this context.

- **Barriers to Entry & The current market structure benefits incumbents** – The CCPC claims that the existing market structure favours incumbents and imposes barriers to entry. However, a new company can lease a single truck, seek access to a waste transfer station and start with a few hundred customers in the current market. This has happened several times in recent years in Ireland. This would be impossible in countries that competitively tender the waste collection market and that point was not considered in the CCPC report.
- **Atypical Market** - The CCPC claim that it has not identified any specific characteristic of the Irish market that require Ireland's market structure model to be different from other EU States. However, in other EU States, the municipalities generally control the infrastructure where the collected waste is delivered. That allows a simple tendering process based around collection of waste and delivering it to a facility or facilities. The situation in Ireland is much more complex whereby the collection companies control much of the infrastructure and other private companies control the rest. The CCPC is aware of that fact but the report did not consider the importance of that fact in their argument.

There are also significant synergies with household and commercial waste collections in Ireland, particularly outside the main cities. Many household waste collection routes in towns and villages around Ireland incorporate commercial waste collections. If household waste collections were tendered, these synergies would be lost. In that scenario, there would be potential for the company that wins a tender to have a dominant position in certain towns and villages, as other collectors cannot justify continued commercial collections in these towns and villages after the synergies with household collections are lost.

- **Operator numbers are falling and are likely to continue to do so** – Operator numbers fell during the 2012 to 2016 period as standards were raised with the additional requirements imposed by new Waste Management (Collection Permit)(Amendment) Regulations introduced in 2015 and 2016. The new regulations required major investment in weighing equipment, back office systems, installation of RFID chips in bins, interactive websites, etc. etc. It was not commercially viable for some smaller collectors to make these investments, so they sold their business to larger operators. As a result, we have less operators but much higher standards amongst those that operate in the household kerbside waste collection market.

As mentioned above, an average of one collector per 20,000 households is low by international standards and further consolidation may well occur, but we do not consider that this is a negative feature of the market. There are efficiency gains from consolidation that can result in better prices and a better service for customers.

- **The current market structure is impacting the State's ability to implement environmental policy** – In support of this claim, the CCPC report states that *"The mandatory provision of a dedicated bin for organic waste has been a legislative requirement since 2007"* and goes on

to state that *“The CCPC has estimated that by 2016, 50% of all households with a scheduled service had an organic bin”*.

The 2007 waste collection permit regulations gave the power to local authorities to include conditions in waste collection permits that required the provision of brown bins, it was not a mandatory legislative requirement on all collectors relating to all households. The 2013 European Union (Household Food Waste and Bio-Waste) Regulations required collectors to provide a brown bin service in obligated urban areas, but did not insist on the delivery of brown bins to all houses in those obligated areas. The requirement for the direct delivery of brown bins was introduced in a 2015 amendment to those regulations.

Even now, only households in agglomerations of 500 people or more are required to be provided with brown bins, so the suggestion that waste collectors are only 50% of the way towards a requirement that has been there since 2007 is incorrect. In actual fact, waste collectors in 2016 were about 75% compliant with a legislative requirement that was only introduced in 2015. We believe that approximately 700,000 houses currently have brown bins, out of a total obligated number of c.800,000 (two thirds of the market). Whilst we acknowledge that the brown bin roll-out is incomplete, it must also be acknowledged that many householders do not want a brown bin and there are obligations on both collectors and householders in the regulations.

The CCPC is also critical of the delays in removing flat fees, but ignores its own evidence in the form of market research that shows that the majority of households prefer flat fees. The CCPC generally favours consumer choice and so do the waste collectors, but when that choice conflicts with Government policy, it is unfair to put all the blame on waste collectors. The Government and the public also have a role to play in these circumstances.

The CCPC also fails to consider the political failure that occurred when the Government, with the support of the waste industry, tried to introduce mandatory ‘Pay By Weight’ charging in 2016. This resulted in a 12 month voluntary price freeze for the waste collectors, with no negative impact on the Government.

The waste collectors were then instrumental in the development of an incentivised charging system that was introduced over a 12 month period from September 2017 to September 2018. The CCPC report gives no credit to the waste industry for that initiative and the 100% compliance that was noted in the Price Monitoring Group reports. In fact, the CCPC appeared to completely ignore the findings of the Price Monitoring Group as they have proven that the market price is competitive and is working well for consumers.

The third reason presented by the CCPC in support of this claim is that *“the weight limits applied by individual operators may be so high as to not achieve the intended policy objective, which is to incentivise customers to stream their waste.”* Whilst it is recognised that this could happen, the CCPC did not provide evidence that it is happening. There is no real incentive for companies to behave in this way, as customers that overload bins or that produce excessive quantities of waste are not profitable for collectors.

We examined the latest data (August 2018) produced by the Price Monitoring Group to check for such behaviour. A total of 47 price plans are included in the report. The weight allowance on the residual waste on the fair usage policies (service fee plus excess weight charge) varies from 40kg to 86kg per month. We are satisfied that this provides an incentive in each case, although some plans clearly offer more incentive than others.

It was agreed that the 'one size fits all' approach did not work with the pay by weight plan in 2016, but there is still scope for the existing authorities to enforce greater incentivised charging upon those that have the highest excess weight limits. The establishment of an economic regulator is not needed to enforce that requirement.

- **The regulatory regime is fragmented and incomplete** – The waste sector is highly regulated. All waste collectors must have a valid waste collection permit issued by the National Waste Collection Permit Office (NWCPO). Collection permits issued to kerbside household waste collectors typically contain more than 100 conditions relating to all aspects of orderly and environmentally sound waste collection. Historically, the waste collection regulatory regime was somewhat fragmented as each local authority issued waste collection permits individually, but the current National system is consistent across the country clearly is not fragmented.

Waste facilities are regulated by local authority permits or by EPA licences, depending on their nature and scale. There is a degree of fragmentation with this system and the IWMA has consistently called for greater consistency in that regard. We believe that such consistency can be achieved by a structural change or by continued engagement between EPA and local authority personnel. In recent years, there has been improved co-ordination between the various authorities since the establishment of the Network for Ireland's Environmental Compliance and Enforcement (NIECE) and the Waste Enforcement Regional Lead Authorities (WERLAs).

We consider that there needs to be a reallocation of resources to tackle serious criminal gangs that operate on the margins of waste management in Ireland. The IWMA is calling for the establishment of a fully resourced Environmental Crime Unit with armed detectives that can tackle armed criminals that are burning and burying waste. The establishment of an economic regulator would have no bearing on this situation.

- **A sector-specific complaints procedure is not in place to resolve consumer issues** – This is true and could be resolved by an Ombudsman rather than a Regulator. The ombudsman could be attached to the National waste Collection Permit Office and the issuing of future permits could be influenced by the findings of the ombudsman.

All waste collectors must have a customer charter and that charter must contain a section on complaints procedures that is fair and equitable. The IWMA would have no issue with the establishment of an ombudsman to address complaints that cannot be resolved between the company and the customer.

- **Most households do not, or cannot, influence operator behaviour** – In countries that use local authority monopolies or competitive tendering for kerbside household waste collection, there is even less possibility for the householder to influence the operator's behaviour as they cannot change their service provider, which is the best and simplest option for any dis-satisfied customer.

The CCPC report recognised that the majority of customers are satisfied with their service and the report should have pointed to the fact that side-by-side competition offers the best opportunity for householders to influence operator behaviour. The report focussed on the

18% of people that have no choice of provider, but ignores the 82% that do have a choice. In other countries that 82% figure drops to 0%.

- **No service available to many households** – The CCPC report is selective in a negative way in reporting that 23% of households do not have a waste collection service, based on CSO & NWCPO data and not referring to the Market Research provided in an Appendix of the report that suggests that 86% of homes indicate that they have an individual scheduled waste collection service. Some of these have communal services, some are on bag or tag collections and are not registered as customers to any collector, so they may be missed in the CSO/NWCPO data. Interestingly, the 1995 National Waste Report states on page 21 *“it is estimated that only 86% of the population is provided with a waste collection service”*. This was at a time when local authorities were the main collectors of household waste in Ireland, so privatisation has not impacted negatively on this situation. In fact, before private companies began collecting waste in rural areas in the 1970s and 1980s, a much greater percentage of the population had no waste collection service.

The heading is also incorrect. Many householders have access to waste collection services, but refuse to avail of one. Section 4.8 of the report correctly describes this as ‘a non-participation rate’. This is quite evident in the data presented in the report, where Figure 5 shows that only 80-85% of households in Dublin City participate in waste collection services. There is clearly 100% availability of such services in Dublin. The issue identified as a problem in the conclusions section is clearly inconsistent with the actual findings of the report.

Given the fact that the issue is one of ‘householder participation’ rather than ‘service availability’, the suggestion by the CCPC to introduce competitive tendering in certain areas is not an appropriate response. By contrast, the local authorities are addressing this issue by introducing bye-laws that require all householders to avail of a kerbside waste collection service or to otherwise explain how they manage their waste in an environmentally sound manner. The IWMA supports that approach and our members will assist the local authorities, where possible, in enforcement of those bye-laws.

In conclusion, we argue that none of the issues raised in the CCPC report provide adequate evidence that an economic regulator is currently required. The fundamental issues that would require resolution by an economic regulator are high prices and poor service and the evidence presented in the CCPC Report does not point to either of these issues.

In fact, we expect that the establishment of an economic regulator would add costs to the waste sector and would inevitably result in higher costs to the consumer. A regulator would need a large budget in order to implement the sort of changes to the existing household waste collection market that are proposed in the CCPC report and we would expect that budget to be covered by a levy on all households that avail of a waste collection service.

We would support the establishment of an Ombudsman to manage complaints and dispute resolution. We also support the continued work of the Price Monitoring Group, to give confidence to the public that all pricing structures incentivise waste prevention and source segregation. Their work has been very helpful in the last 12 months in terms of public and political confidence and that system is undoubtedly very cost effective compared with the establishment of an Economic Regulator for household waste collection.

The serious challenges for the waste sector are the achievement of future EU targets for waste prevention and recycling and enhanced enforcement of existing regulations. This extends beyond

household waste in both cases. The IWMA is committed to promoting and encouraging actions by all the relevant stakeholders to make progress in those areas. The functions of an economic regulator for household waste collection would not extend to many of these areas, so we suggest that the current needs lie elsewhere.

Prepared by: Conor Walsh, IWMA Secretary, in consultation with IWMA members.

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