



Submission to the Department of the Environment, Heritage and Local Government: Consultation on the draft WEEE and RoHS Regulations

Submission S/05/004

May 2005



The Competition Authority
An tÚdarás Iomaíochta



1. Introduction and Summary

- 1.1** The Competition Authority welcomes the Minister's consultation on the draft regulations on Waste Electrical and Electronic Equipment (WEEE) and the Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS). In implementing the WEEE and RoHS Directives, the Minister is faced with the complex task of ensuring that Ireland fulfils its obligations under the Directives¹, while minimising the implementation costs. By facilitating entry into the waste management services market and rivalry between firms providing such services, the Minister will facilitate the pursuit of these objectives.
- 1.2** This submission identifies areas where the regulations may negatively impact on competition between providers of waste management services or between producers with obligations under the Directive. The Authority will be happy to discuss further its concerns and suggestions with the Department of Environment, Heritage and Local Government.²

¹ European Parliament and Council Directives 2002/95/EC and 2002/96/EC

² In making this submission, the Authority is pursuing its function under Section 30(1)(c) of the Competition Act, 2002, i.e. to advise the Government, Ministers of the Government and Ministers of State concerning the implications for competition in markets for goods and services of proposals for legislation.

2. Collective Schemes

- 2.1 The proposed Section 53I of the Waste Management Act, 1996³ defines the obligations of distributors and retailers for the take back, treatment and recovery of waste electrical and electronic equipment. In particular it enables the making of regulations for the establishment of a collective scheme. Subsection (5) ensures that the collective scheme offers no shelter to distributors and producers to indulge in cartel activities or anti-competitive behaviour that would contravene Irish or European competition law. These safeguards are very welcome.
- 2.2 Article 31(2)(I) of the Draft Waste Management (Waste Electrical and Electronic Equipment) Regulations, 2005 provides that a collective scheme's application for approval should be accompanied by a declaration that no producer applying for membership of the collective scheme will be discriminated against on the grounds of:
- (i) *“the quantity, or as appropriate, type of electrical and electronic equipment that he or she places on the market, or, as appropriate,*
 - (ii) *that the body concerned is only catering for or will only cater for –*
 - *a maximum pre-determined share of waste arising from electrical and electronic equipment, or, as appropriate,*
 - *waste arising from electrical and electronic equipment from a particular geographical location or locations in the State,”.*
- 2.3 While the Authority appreciates that these provisions intend to alleviate concerns about anti-competitive behaviour by members of collective schemes, the Authority is not convinced of their necessity. Our reservations stem from the following:
- Competition law enforcement mechanisms are available to address anti-competitive behaviour;
 - The provisions could create disincentives for providers of waste management services or the producers themselves to enter the market, and may ultimately work against the purpose of the legislation. For instance, the provisions could prevent producers willing to set up their own schemes to cater for their own products (e.g. a supplier of hair dryers to hairdressers setting up its own scheme for its own hairdryers).
- 2.4 Such regulations should only be introduced if a regulatory impact analysis of these provisions shows that the positive impact of the restrictions on the market outweighs the expected negative impacts.

³ To be inserted by Article 4 of the Draft Waste Management (Electrical and Electronic Equipment) Regulations, 2005.

3. The Proposed Registration Body

- 3.1 The draft Regulations⁴, will give the Minister the power to enable the establishment of a registration body and specify the powers vested in it. It is not clear from the draft Regulations what kind of registration body (or bodies) would be established, how accountable it/they would be and to whom. The Competition Authority is concerned by the absence of provisions guaranteeing that the body will make its decisions in a transparent, non-discriminatory and proportionate fashion. Such provisions are especially necessary if the Registration Body is to emanate from industry, as, typically, such a body has more incentive and potential to discriminate against new entrants to the market. Procedures to appeal against the decisions of the registration body should be considered.
- 3.2 The Authority welcomes the safeguards proposed⁵ to protect the commercial sensitivity of the information gathered by the Registration Body, as these are key in determining firms' strategy to compete in the market place. To ensure compliance with the prohibition, adequate penalties may need to be introduced in the case of 'transgressing' individuals employed by (or managing or directing) the body(ies) concerned.
- 3.3 The draft Regulations⁶ allow the Minister to review existing approvals, or require re-applications to provide for new conditions to ensure equitable distribution of producer responsibility obligations. These new conditions have the potential to increase the costs of providing waste management services. To ensure that any such additional costs are minimised and proportionate to the policy objective, the Authority suggests that the proposal be subjected to a regulatory impact analysis. Such an analysis should involve a public consultation that goes beyond the consultation of the approved body provided for by Article 33 (2), as any interested party should be able to respond to the consultation.

⁴ Article 4 of the Draft Waste Management (Electrical and Electronic Equipment) Regulations, 2005, inserting proposed Section 53(J) into the Waste Management Act, 1996, together with Article 5 of the Draft Waste Management (Waste Electrical and Electronic Equipment) Regulations, 2005.

⁵ Article 9(3) of the Draft Waste Management (Waste Electrical and Electronic Equipment) Regulations, 2005.

⁶ Article 33(1) of the Draft Waste Management (Waste Electrical and Electronic Equipment) Regulations, 2005.

4. The Registration Body and the EPA and Compliance

- 4.1 There may be benefits in introducing a formal reporting mechanism from the registration body and the EPA to the Minister for the Environment, Heritage and Local Government. Such reporting would, for instance, inform the Minister's decisions regarding whether to amend the legislation/regulations or to introduce new targets or ensure equitable distribution of producer responsibility under Article 33 of the Draft Waste Management (Waste Electrical and Electronic Equipment) Regulations, 2005. It would also allow the EPA to inform the Minister on the adequacy of its enforcement powers and resources. The adequacy of such powers and resources are not only critical to Ireland's ability to fulfil its obligations under the WEEE and RoHS Directives, but they are also critical to firms as they impact on their ability to compete in the market place. In the absence of adequate enforcement mechanisms, non-compliant firms could unlawfully gain a significant competitive advantage in the market place, putting their compliant competitor at a disadvantage.