



Submission on the draft National Waste Management Plan for a Circular Economy

06 July 2023



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission



Introduction

The Competition and Consumer Protection Commission ('CCPC') welcomes the opportunity to respond to the consultation on the draft National Waste Management Plan for a Circular Economy (NWMPCE) by Local Government Ireland and Regional Waste Management Planning Offices (RWMPOs). The CCPC has a statutory function under Section 10(3)(a) of the Competition and Consumer Protection Act 2014 to provide advice to policymakers on matters likely to impact on consumer protection and welfare, or competition and the CCPC's submission reflects this mandate.

The CCPC has had ongoing interaction with the waste sector, including the investigation of competition and consumer protection complaints and the assessment of mergers. In 2017, the Minister for Communications, Climate Action and Environment wrote to the Minister for Enterprise, Trade and Employment to request that the CCPC carry out a market study into the domestic waste collection market. In 2018, the CCPC published 'The Operation of the Household Waste Collection Market'¹ ('the Market Study'). The study was the first in-depth analysis of this market from a competition and consumer protection perspective and provided informed recommendations as to how the market could deliver better outcomes for the State, consumers and operators. The Market Study recommended the establishment of an economic regulator for household waste collection to perform four sets of tasks: economic licencing, data collection and analysis, market design and consumer protection. To date this recommendation has not been implemented.

In 2020, the CCPC further engaged in a public consultation by the Department of Communications, Climate Action and Environment on the 'Waste Action Plan for a Circular Economy – Ireland's National Waste Policy 2020-2025'² (WAPCE) and provided a number of recommendations informed by its Market Study.

In this submission, the CCPC will provide recommendations to improve competition and consumer protection in the household waste collection sector within the context of the proposed regulatory framework of the NWMPCE.

¹ CCPC (2018) '[The Operation of the Household Waste Collection Market](#)'

² Department of Communications, Climate Action and Environment (2020) '[A Waste Action Plan for a Circular Economy: Ireland's National Waste Policy 2020-2025](#)'

Regulatory Framework

Overall, the CCPC welcomes the proposals of the WAPCE and draft NWMPCE which aim to increase the cohesiveness of the governance framework for waste management and to strengthen consumer protection measures. The CCPC notes that the Organisation for Economic Co-operation and Development (OECD)'s review report on Ireland's environmental performance stated that fragmentation had been mitigated through increased coordination (for example through advisory committees and groups)³. We therefore welcome the NWMPCE's proposals to further improve coordination and create organisational improvements which will avoid duplication, inconsistencies and errors within the complex regulatory structure for waste management.

The CCPC particularly welcomes the proposed establishment of the National Coordinating Group for Waste and the Circular Economy (NCGWCE), as it is anticipated to lead to greater coordination between the three main structures responsible for waste management policy, the Department of Environment Climate and Communications (DECC), the Environmental Protection Agency (EPA) and the Local Authority sector. We further welcome the establishment of the Local Authority Waste Programme Coordinating Group (LAWPCG), which will play key policy roles for the Local Authority sector.

Policy context and current challenges

The CCPC acknowledges that policy affecting the household waste collection sector has undergone a number of developments since the publication of its Market Study. The CCPC welcomes measures set out in the WAPCE and the accompanying legislative changes. This includes the Circular Economy and Miscellaneous Provisions Act 2022⁴, which strengthens the enforcement powers of Local Authorities, by providing for the extended use of fixed-penalty notices, and the Waste Management (Collection Permit) (Amendment) (No. 2) Regulations 2023⁵ (the '2023 Regulations'), which provide for enhanced consumer protection measures. However, based on a high-level review of the household waste collection market, the CCPC believes that many of the findings of the Market Study remain relevant.

³ OECD (2021), '[OECD Environmental Performance Reviews: Ireland 2021](#)' OECD Publishing Paris

⁴ [Circular Economy and Miscellaneous Provisions Act 2022](#)

⁵ [Waste Management \(Collection Permit\) \(Amendment\) \(No. 2\) Regulations 2023](#), S.I. No. 104/2023

Market concentration

The CCPC notes that the trend of consolidation within the market is continuing with the number of active competitors declining. The Market Study found that the number of active household waste collection operators in Ireland had declined from 82 in 2012 to 63 in 2016. The trend continues, with 51 household operators that hold a valid waste collection permit listed on the National Waste Collection Permit Office (NWCPO) website⁶. There have also been a number of recent mergers in the waste collection industry with one notified merger being investigated by the CCPC at the time of writing⁷.

The Market Study found that there was considerable variation in the coverage of households by a waste collection service. The percentage of households having access to a residual bin collection service also varies across counties, with the lowest percentage being in Kerry County Council (54%) and the highest in Fingal County Council (98%)⁸. The CCPC understands that the number of service providers in some counties has been steadily decreasing, particularly in suburban agglomerations⁹.

The CCPC believes that there should be appropriate structures in place in the household waste management sector with market design functions. These functions would enable the adaptation of the delivery of household waste collection services to the characteristics of the local market, and help to address market concentration where appropriate. We elaborate further on this below.

Barriers to entry

Barriers to entry in the household waste collection market remain high due to economies of scale and density. The market is dominated by a small number of large companies with significant market power, with the remaining providers operating on a local level. Incumbents can selectively price cut in the event a new operator enters the market, and

⁶ NWCPO, [Permit Search tool](#)

⁷ See for example <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-22-067-thorntons-recycling-carducci-holdings-the-city-bin-co/>; <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m18005-thorntonsa-plus/>; <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m16008-pandagreen-greenstar/>

⁸ EPA (2022) 'Household Waste Statistics for Ireland'

⁹ Agglomeration can be defined as a large, densely and contiguously populated area consisting of a city and its suburbs. A high-level review shows that the number of waste collectors providing services has been consistently falling since 2016 in South Dublin County Council, Fingal County Council, Kildare County Council, Dun Laoghaire-Rathdown County Council and Wicklow County Council

operators in adjacent geographic markets are unlikely to enter each other's market due to fear of retaliation. The threat of retaliation thereby acts as a barrier to entry.

The CCPC notes that vertical restraints, such as the lack of appropriate facilities to dispose of waste, could also provide further challenges to both existing and new providers. According to the EPA, only three landfills in Ireland accepted municipal waste in 2022, compared with 28 in 2010¹⁰. Although the reduction of landfills is correlated with the EU waste policy to cut the amount of waste sent to landfill¹¹, there are currently waste infrastructure deficits in Ireland with growing volumes of waste and stagnating recycling rates. Two of the three operational landfills will approach their maximum lifetime consented capacity by 2027 if additional capacity is not authorised¹². Moreover, the country's two incinerators are already at maximum capacity¹³. The CCPC notes the NWMPCE proposal to secure contingency landfill capacity for waste disposal and the recognition of the need for continued and expanded waste treatment capacity in the State.

The lack of appropriate infrastructure has the potential to create competition issues in the wider waste collection market by providing further barriers to entry or expansion. While the CCPC's recommendations in this submission concern the household waste collection market, there may be a need to consider them at a broader sector-wide level.

Economic regulation of the household waste sector

In light of the above, the CCPC believes that the recommendations from its Market Study remain valid. It is noted that the allocation of a consumer protection role to the NWCPO will go some way toward delivering the function identified for an economic regulator. In addition, an enhanced role for the Price Monitoring Group in data collection and analysis would similarly deliver a function identified as key to economic regulation of the household waste sector.

Nevertheless, the CCPC is of the view that there should be structures responsible for the delivery of market design functions in the household waste management sector. Such

¹⁰ EPA (2023) '[Biodegradable municipal waste to landfill](#)'

¹¹ EEA (2022) '[Diversion of waste from landfill in Europe](#)'

¹² EPA '[Waste Management in Ireland](#)'

¹³ O'Doherty C (2023) '[Officials may have to lift decade-long ban on landfill and give go-ahead for more incinerators](#)' Independent

functions would help improve waste collection services for consumers and assist in the transition to a circular economy.

The CCPC continues to hold the view that the establishment of an economic regulator would be the optimal solution to address the issues present in the household waste collection market. However, in light of the rationalised framework contained in the draft NWMPCE, and in recognition of the current policy context for the sector, the CCPC suggests that the remaining functions and powers of an economic regulator could instead be delivered through the structures it proposes.

The CCPC notes that the future LAWPCG as proposed in the NWMPCE will have a number of strategic responsibilities for the Local Authority sector including identifying waste priorities and issues of strategic importance, as well as contributing to the review of existing shared services arrangements and making recommendations to ensure optimum alignment with legislative and policy challenges. The CCPC suggests that it could therefore be appropriate for the LAWPCG to consider which structures would be most appropriate for the delegation of economic licensing and market design functions. In the complex governance structure for waste management, it will be important to ensure that any such roles and functions, and the tools available to discharge them, are clear and legally robust.

Economic Licencing

In 2018, the Market Study suggested that a system of economic licensing should be introduced. The recommended regulator would have the power to grant an exclusive licence or licences in specified geographic areas. To support this function, the regulator would first analyse the local market and its characteristics (such as a monopoly area or areas with no service) to identify a market design that best meets policy objectives. Market design reviews should also involve a cost-benefit analysis for consumers. Market designs could include competitive tendering for certain areas or the creation of markets which combine less commercially viable areas with more commercially viable areas. The CCPC contends that the implementation of market design functions and an economic licensing system in the waste collection sector would enable the adaptation of the waste collection service delivery model to the specific characteristics of a local area.

The CCPC recommends that the LAWPCG should consider which structures would be most appropriate for the delivery of market design reviews, as well as the appropriate structures to make recommendations around economic licensing, and the process to make final decisions. The CCPC considers that in many instances, a local authority is likely to have information and knowledge concerning local conditions and preferences, and should therefore be part of the review process. The CCPC is aware that a number of stakeholders have called upon the re-municipalisation of waste services¹⁴. However, it is also important that local reviews be carried out following the same principles and methodology, which would involve coordination at a national level.

Currently, the Waste Management Act 1996¹⁵ (the '1996 Act') sets out the conditions under which the NWCPO can authorise, reject or revoke waste collection permits which allow undertakings to carry-out waste collection for an economic reward. The CCPC recommends that provisions should be made to enable the inclusion of allocation of routes as a possible condition attached to a waste collection permit¹⁶.

Other Powers and Functions

The CCPC recommends that consideration be given to the allocation of the power to set price controls where appropriate¹⁷. In addition, it is noted that the WAPCE sets out that the NWCPO will be responsible for managing consumer rights and a complaints mechanism. The WAPCE also states that it aims to strengthen customer service charters and to render them enforceable with appropriate penalties for non-compliance, including fines. However, the CCPC notes that no specific provisions to implement this were included in the 2023

¹⁴ Malone E, ['Local authorities need to take back control of waste collections, councillors and unions tell TDs'](#)
Irish Times

¹⁵ [Waste Management Act, 1996](#)

¹⁶ Section 34(11) of the 1996 Act provides that the Minister for the Environment can make regulations in relation to waste collection permits, including for example for "matters in respect of which a local authority must be satisfied prior to the granting of a permit". It appears that it would be open for the Minister to provide regulations requiring market analysis under this section.

¹⁷ There may be circumstances where it is appropriate to introduce price controls for a period of time; for example, in a situation where there is a monopoly provider with considerable market power. The CCPC is aware that the WAPCE aims to expand the role of the NWCPO to have oversight over charging structures in the market. Furthermore, the Price Monitoring Group (PMG) will also be expanded to monitor more of the market and to examine whether fair and transparent pricing is consistent in the market and how it is disclosed to customers. These new roles could help to inform whether price controls would be required.

Regulations. The CCPC therefore recommends that the appropriate structure, such as the NWCPO, to have the power to levy fines should be clearly identified and delegated.

Enabling a Variety of Service Delivery Models

Legislative changes may also be necessary in order to ensure markets can be changed to adapt to local characteristics following a market review. In a recent research report commissioned by Dublin City Council (DCC)¹⁸, the Institute of Public Administration (IPA) indicated that if DCC were to recommence waste collection, it may be necessary to amend the Waste Management Act 1996 to avoid a situation where its activities could be deemed anti-competitive¹⁹. The IPA report further states that the risk of a legal challenge to any legislation that seeks to implement such a change would be very high.

Competitive tendering

As highlighted by the Market Study, competitive tendering for a market allows for the stipulation of requirements in relation to many relevant factors, including the level and type of service to be provided to households and the adherence to environmental standards. Competitive tendering may also bring about other benefits for public organisations when distributing rights to the provision of public utilities. It might be easier to deal with one (or limited) supplier(s), or there may be efficiencies in the administration of the procurement process or lower costs from awarding a single contract. In the household waste collection sector, some argue that competitive tendering can provide further benefits such as lower household waste charges than side-by-side competition since not only are economies of scale and density realised but monopoly rents are eliminated²⁰. A limited number of suppliers may also lead to reduced CO² emissions and congestion costs²¹.

However, it is important that procurement processes must be appropriately set up to enable those benefits. The tender should be structured to:

- Minimise the costs of bidding and so attract the maximum number of bidders to the extent possible.

¹⁸ IPA (2023) '[Research in respect of the remunicipalisation of waste services in Dublin City Council](#)'

¹⁹ Ibid

²⁰ Gorecki, P.K (2020) '[Household Waste Policy in Ireland: Options for Competition, Environment and Regulation](#)'. The Economic and Social Review Vol 51, 2

²¹ Ibid

- Meet various policy goals such as including waste segregation, pay by weight charging, and mandatory reporting of illegal dumping²².
- Ensure that the length of licences, franchises or contracts is no longer than necessary, given the particular characteristics of the market under consideration.
- Avoid disproportionately favouring large suppliers.

Local authorities may be the appropriate structure to tender for waste collection services in their functional areas. However, some national coordination may be required in order to ensure the methods to prepare tenders and public procurement processes are consistent across the country.

Legislative changes may also be needed to enable competitive tendering for household waste collection services in Ireland. The IPA report states that any initiative by DCC to recommence waste collection through a concession type contract would need to be preceded by amendment of the 1996 Act to unqualifiedly oblige local authorities to provide or arrange for waste collection services²³. The Act should expressly allow for such obligation to be met by the appointment of a waste collection operator for the functional area of a local authority (or its part) and prohibit operators other than the appointed operator(s) from collecting waste in the area.

Universal Service

Competitive tendering may also enable universal service coverage for waste collection in Ireland. Many public utility services provide for a service provider of last resort, including in the telecoms sector²⁴, and the electricity and gas supply sector²⁵. The CCPC therefore reiterates its recommendation that tenders for the market could be designed to address potential service disruption, by building the certainty of having a supplier of last resort into a tendering process. Universal Service Provision could also be delivered through licensing, by setting out conditions for authorisation of waste collection that less commercially viable areas are serviced.

²² Ibid

²³ IPA report (n 19)

²⁴ ComReg, '[Universal Service Obligations](#)'

²⁵ CRU (2023) '[Panda Power Exits Electricity and Gas Supply Market](#)'

Data Collection

The CCPC notes the range of waste data currently being collected and the proposed data collection measures outlined in Volume III, Part C, Chapter 8 of the NWMPCE. The CCPC welcomes the proposed enhanced data management and analysis role of the NWCPO. As outlined in the WAPCE, and acknowledged in the NWMPCE, the role of the NWCPO will be expanded to become a collection market oversight body.

The CCPC reiterates the recommendation that data should be collected on a granular (route) level to enable an appropriate structure to determine the number of active operators and concentration levels in local areas. This will help to provide evidence for all future decisions regarding appropriate intervention in geographical areas where it is identified that competition is not providing the desired outcomes. It is further recommended that this data should include apartments and households who do not currently have access to a collection service, in order to identify areas where intervention may be required.

The CCPC welcomes the proposed preparation of baseline data to support monitoring and tracking of national reuse and repair targets and consumption and contamination by RWMPOs. It is suggested that baseline registries could be prepared in relation to other areas within the waste management sector, including household waste collection facilities.

The CCPC notes that the Public Service Data Strategy 2019-2023²⁶ provides further recommendations for effective data collection and management, including opting for data reuse over data collection wherever possible through the promotion of cross-agency data-sharing underpinned by a clear legal basis and driven by improved efficiencies for citizens and businesses.

Consumer Protection

The Market Study highlighted a number of consumer protection issues in the household waste collection sector. The CCPC therefore welcomes measures in the 2023 Regulations which strengthen existing consumer protection provisions for waste collectors' consumer charters²⁷. The CCPC also welcomes the WAPCE measures which aim to strengthen

²⁶ Office of the Government Chief Information Officer (2018) '[Public Service Data Strategy 2019-2023](#)' Department of Public Expenditure and Reform

²⁷ The regulations will require that waste collection companies update their customer charter for households with information on how the applicant will meet the requirements attached to a permit. Customer charters will now also need to be published on a provider's website.

consumer protection including ongoing monitoring of the market by the NWCPO. This will involve data analysis on the operation of the market, oversight of charging structures and penalties, and oversight of service provision. Appropriate monitoring and reporting arrangements enable the evaluation of provider compliance with their permit condition. Consumers and providers should also be clear as to what they can expect if permit conditions are not met. The establishment of a formal complaint resolutions procedure managed by the NWCPO, rendering customer charters enforceable with appropriate penalties for non-compliance, including fines, is therefore very welcome.

Consumer Information

The proposed WAPCE requirement that waste collection firms should ensure that they provide accurate and timely pricing information to the public over the phone and/or on their websites as well as easy access to waste data and pricing plans is very welcome. The current service delivery model for household waste collection in Ireland involving side-by-side competition relies on the ability of a customer to switch and choose another provider if they are unsatisfied with the customer service provided. In 2017, market research by the CCPC found that only 11% of consumers with a choice of operator had switched waste provider in the previous 12 months²⁸.

Consumers should therefore be able to easily compare information between service providers. Promoting the accessibility and clarity of information, and the empowerment and engagement of consumers, is key to driving competition and fostering consumer choice²⁹. The CCPC recommends that information on service provider websites and customer charters should be written in plain English, and that they should be made accessible and available to all end-users following relevant guidelines. Consideration should also be given to the requirement that a similar template for customer charters be used by all service providers to enable ease of comparison for consumers.

The CCPC also suggests that the mywaste.ie platform could be further developed to enable consumers to compare information about the waste service collectors in their area, such as

²⁸ CCPC (2017) '[Consumer Switching Behaviour Research Report](#)'

²⁹ Lowe, J. (2017) '[Consumers and competition: Delivering more effective consumer power in retail financial markets \(fs-cp.org.uk\)](#)'

prices³⁰ and quality of services offered. Waste collectors could be required to include a link to the platform in their customer charters.

While many consumers do not switch, a certain proportion of consumers simply cannot do so. In 2018, the Market Study indicated that between 18% and 25% of households had no choice of operator. The CCPC therefore recommends that the LAWPCG and the NWCPO should consider whether customer service standards should be developed for the sector to ensure that there is a minimum level of service for all. The CCPC recommends that a particular standard which should be considered is the right for customers to request human intervention when they interact with the service provider through fully automated online interfaces³¹. Forthcoming research conducted by the CCPC shows that non-switchers in regulated markets are more loyal to their current provider, more worried about problems occurring if they switch, and less likely to use online information and more likely to use a phone to engage with providers.

Vulnerable Consumers

The CCPC also recommends that the LAWPCG should consider whether consumers who are vulnerable should have guaranteed access to specific standards of waste collection service, and what those standards should be³². In the energy sector, there are specific consumer protection measures in place for registered vulnerable customers, which include rules regarding how suppliers must treat, and communicate with, vulnerable customers³³. Household waste collection is an essential service for the public, and it is therefore important to mitigate potential risks of those consumers experiencing detriment and ensuring that they have access to services. The CCPC recommends that Customer Charters should include

³⁰ A number of public price comparison tools are available for regulated services and products, including in the telecoms sector [Compare Value \(Services\) | Commission for Communications Regulation \(comreg.ie\)](#). There are also a number of requirements on regulated financial services providers to provide a link to the CCPC's Money Tools.

³¹ The current Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC would introduce a right for consumers to request and obtain human intervention in case a trader uses online tools (Article 16d. 3) [Proposal for amending Directive 2011/83/EU](#)

³² Definitions of vulnerability vary, although there is a growing recognition that consumer vulnerability is a fluid concept that can manifest in a number of ways and be driven by a multitude of causes. 'G20/OECD High-Level Principles on Financial Consumer Protection 2022' ([oecd.org](#)) The characteristics of vulnerability set out in the [Unfair Commercial Practices Directive \(UCPD\)](#) are 'mental or physical infirmity, age or credulity'. However, guidance from the European Commission provides that these characteristics are 'indicative and non-exhaustive' and that the concept 'covers also context-dependent vulnerabilities'.

³³ CRU (2022) ['Electricity and Gas Suppliers Handbook'](#)

a section outlining customer service commitments and policy provisions for vulnerable consumers, including the facility for customers with disabilities to register their requirements with their service providers³⁴.

Conclusion

Overall, the CCPC welcomes the proposed establishment of the NCGWCE and the LAWPCG which will further enhance greater cohesiveness in the oversight of the waste sector.

In this submission, the CCPC has made a number of recommendations which aim to facilitate the delivery of market design functions for the household waste collection sector within the policy framework proposed by the NWMPC, and to further enhance consumer protection in the sector. The recommendations are summarised in the Table below.

The CCPC would welcome the opportunity to discuss these recommendations further. The CCPC would also like to offer its assistance and expertise in dealing with competition and consumer protection issues in the waste sector.

Sections	Summary of Recommendations to the consultation on the NWMPC
Governance Framework	1. The LAWPCG should consider which structures would be most appropriate for the delivery of market design reviews, as well as the appropriate structures to make recommendations around economic licensing, and the process to make final decisions
	2. A system of economic licensing should be introduced with the power to grant an exclusive licence or licences in specified geographic areas
	3. Provisions should be made to enable the inclusion of allocation of routes as a possible condition attached to a waste collection permit
	4. A relevant structure should have the power to set price controls where appropriate
	5. A relevant structure should have the power to levy fines for specific breaches in order to ensure maximum compliance with the regulatory framework
Enabling Different Service Delivery Models	6. Legislative changes may be required and should be considered in order to ensure that different service delivery models can be put in place.
	7. If tendering is considered within market design, best practices should be used in the tender process to ensure fairness and consistency

³⁴ ComReg [‘Service Provider Accessibility Requirements’](#)

	8. Tenders and licencing can be designed to address potential service disruption, by building the certainty of having a supplier of last resort into a tendering process
Data Collection	9. Data collected by the NWCPO should include apartments and households who do not currently have access to a collection service
	10. Data should be collected on a granular (route) level in order to enable an appropriate structure to determine the number of active operators and concentration levels in local areas
	11. Baseline registries should be prepared in relation to various areas within the waste management sector, including household waste collection facilities
	12. Information on service provider websites and customer charters should be written in plain English, and they should be made available and accessible to all end-users following relevant guidelines
Consumer Protection	13. The LAWPCG and the NCGWCE should consider whether customer services standards should be developed for the sector. One such standard includes whether customers should be provided with the right to request human intervention when they interact with the service provider through fully automated online interfaces
	14. The LAWPCG should consider whether consumers who are vulnerable should have guaranteed access to a specific standards of waste collection service, and what these standards should be.
	15. Customer Charters should include a section outlining customer service commitments and policy provisions for vulnerable consumers

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