



The Competition Authority

An tÚdarás Iomaíochta

McCann FitzGerald,
Riverside One,
Sir John Rogerson's Quay,
Dublin 2.

13th July 2010

Ref: SCR-2009-308

Subject: Complaint of the IWMA re Dublin City Council and the Poolbeg Incinerator

Dear Mr. Andrews,

I refer to the Irish Waste Management Association ("IWMA") complaint of the 7th December 2009 and the supplementary submission to that complaint of the 5th March 2010. The complaint concerns:

- Certain aspects of the Public Private Partnership contract ("PPP Contract") between Dublin City Council ("DCC") and Dublin Waste to Energy Ltd ("DWEL"); and,
- Certain issues surrounding the issuance of Waste Collection Permits by DCC on behalf of the Dublin Area Local Authorities.

From the outset, we would like to thank both you and your clients, DCC, for your assistance in the investigation of this complaint.

The Authority has, in the course of its investigation discerned nine distinct aspects to the complaint (including the supplementary complaint).

Four of these relate directly to the PPP Contract, while the remaining five relate to Waste Collection Permits. Set out below is the Authority's view on each of the complaints.

Complaints relating to the PPP Contract

There are four aspects to the complaint received in relation to the Contract between DWEL and DCC for the construction and operation of a Waste to Energy Incinerator ("the facility") at Poolbeg.

- That DCC and DWEL may have entered into arrangements that could amount to a concerted practice in breach of section 4 of the Competition Act 2002 ("the Act") ("Complaint 1").
- That DWEL and DCC could use the specifics of the 'put- or-pay' clause in the PPP Contract to engage in an abuse of a dominant position in the market for waste treatment by engaging in predatory pricing, thereby breaching section 5 of the Act ("Complaint 2").

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- That the PPP Contract between DCC and DWEL amounts to a State Aid in breach of European Law ("Complaint 3").
- That the PPP Contract between DCC and DWEL contains price-fixing arrangements between the parties in breach of section 4 of the Act ("Complaint 4").

Following the Authority's investigation of the contract between DWEL and DCC, taking account of the proposed Poolbeg incinerator's context in the waste treatment market, the Authority has come to the conclusion that there is no breach of Irish competition law in relation to any of the above complaints.

Complaints Relating to the Waste Collection Permits

The latter part of the original complaint raises several issues relating to DCC's (as well as the other local authorities) role as both regulator(s) of, and operator(s) in, the waste collection market in the Dublin region. Although DCC (and the other councils') regulatory functions may include the granting of Waste Disposal Permits and Waste Treatment Permits (for small scale facilities), it is DCC's specific function in relation to issuing Waste Collection Permits that is the basis for the following complaints.

The complaints are as follows:

- That a stipulation in the Waste Collection Permits that could be construed as giving DCC the authority to direct waste collected by private operators to a waste treatment facility at its sole discretion, such as the Poolbeg facility, is anticompetitive. ("Complaint 5")
- That DCC, by virtue of its role as regulator of the waste collection market, can use its access to commercially sensitive information to behave in an anti-competitive manner on that market ("Complaint 6").
- That the ban on the kerbside collection of glass co-mingled with other dry recyclable material as found in the Waste Collection Permits is an attempt by DCC to foreclose the market for the collection of this material to private operators ("Complaint 7").
- That a condition of the Waste Collection Permit that allows DCC to unilaterally change the authorised facilities to which collected waste can be delivered allows DCC to exclude facilities owned by other parties and, as such, is anticompetitive ("Complaint 8").
- That a condition of the Waste Collection Permits which stipulates that a permit holder cannot collect waste from single dwelling households, except when under contract with the relevant local authority, is anticompetitive and/ or is an abuse of a dominant position ("Complaint 9")

The Authority is of the opinion that there is no reason to proceed further with its investigation of complaints 5, 6, 8 and 9, at this time. Of course, should circumstances change or further information come to our attention, the Authority will revisit these matters.

With respect to Complaint 7, that the Waste Collection Permits stipulate that permit holders may not collect glass co-mingled with other dry recyclables, the Authority is continuing its investigation into this matter. Please note that the Authority will be in contact with you and / or your client on this complaint in early course.

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Conclusion

In summary the Authority is of the opinion that eight of the nine complaints made by the IWMA as outlined above do not raise competition concerns at this time.

The IWMA complaint relating to the co-mingling of glass and dry-recyclables for kerbside collection warrants further investigation by the Competition Authority. We will be contact with you in due course about this matter.

Please note that the Authority's decision to investigate this matter further does not indicate that the Authority is of the opinion that a breach of the Act has occurred.

If you have any question in relation to the above findings, please contact us.

Yours sincerely,

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