

PRO EUROPE calls for the clarification of market rules in the packaging & packaging waste management sector

I. Introduction

The successful collection and recycling of household waste packaging depends on the commitment of all stakeholders; from national governments, industry and their service providers as well as municipalities and waste management companies, but also householders. To secure this commitment from householders in particular, they must be convinced in the value of the collection and recycling system. In addition, the collection system has to be very convenient, user friendly and straight forward to use. To achieve the optimum infrastructure and high participation rates, national governments need to have clear long-term strategies. Industry needs to play its role by providing steady financial support and all other stakeholders involved in the handling and recovery of the packaging materials need, in so far as is possible, to work together to foster a spirit of mutual cooperation and trust .

II. Situation Analysis

It has been PRO EUROPE's long-held belief that the optimum system to achieve the highest possible recycling rates for household packaging waste is based on a single, independent compliance scheme. In principle, competition is used to give a purchaser the choice between various service/ product providers so that he can take into account different quality and price characteristics and change his decision if he is not content with the service product. However, there are issues with this model in relation to household waste in that the obligated producer purchases compliance but does not control the collection service at the household level. The householder is not able to change the collection service provider if the service is poor, and usually does not know which compliance scheme has been mandated by the producer of the packaged product.

PRO EUROPE therefore believes that if national priorities are to achieve the highest collection and recycling rates, particularly in a short timescale, the best solution is likely to be a single compliance scheme, accredited by the government and funded by producers (i.e. those who are obliged and pay). The single compliance scheme should seek tenders for collection, sorting and recycling in order to ensure competition on these three levels. A single compliance scheme would also have the ability to run coordinated communication and education campaigns aimed at businesses and households to increase awareness of waste packaging sorting and recycling.

DG Competition published a study "Concerning Issues of Competition in Waste Management Systems" which also states that "the sorting of household packaging waste is characterized by very specific supply-side conditions (strong network economies, disposal traditions of consumers, container installment constraints). For this reason, efficiency gains, but also considerations of reliability and continuity favor contracting with only one collector".¹

¹ DG Competition Paper "Concerning Issues of Competition in Waste Management Systems", http://ec.europa.eu/competition/sectors/energy/waste_management.pdf

However, where a single, independent compliance scheme is not the chosen system of a national government or the relevant stakeholders, PRO EUROPE believes that there are several key factors that have to be taken into account to ensure a level playing field for all involved.

III. PRO EUROPE key recommendations

Ideally a clear and consistent legislative framework should be put in place, in order to ensure that competition is fair and does not disrupt the efficient operation of the system to the extent that recycling rates are jeopardized.

PRO EUROPE members believe that market rules, once introduced in the system, should be equally respected by all stakeholders in a transparent and fair manner.

These are our suggested key principles for the efficient functioning of an open market in the packaging & packaging waste management sector:

- **A level playing field is necessary to ensure that free riders as well as irresponsible compliance schemes who exploit loop holes in the legislation, should not be permitted to jeopardize the existing selective collection infrastructure.**

Key issues here are;

- a significant number of free-riders amongst obligated companies,
- lack of enforcement by national authorities
- collected packaging that is not properly recycled
- service providers acting in an area not clearly legally determined

These issues can significantly undermine the system as a whole because they reduce the funding available for legitimate activity.

- **Clear definitions in packaging legislation are essential to ensure that common standards are applied**

Definitions of key terms such as obligated packaging and any exemptions must be clear and certifiable to avoid the creation of legal loopholes, which can be potentially exploited by organisations or companies to circumvent required quality standards. PRO EUROPE observes that there primarily is a need for clear and binding definitions to differentiate between e.g. packaging vs. product and household packaging vs. transport/commercial packaging. This latter definition is essential in order to clearly specify the household sector on which the impact of unregulated competition can be particularly detrimental.

- **Competent authorities must ensure that legislation is properly enforced on the ground**

In cases where legislation allows for an open market with multiple compliance schemes, competent authorities need to take a very active role in enforcing legislation and monitoring the performance of the competing schemes to ensure that standards are applied equally to all without discrimination. Exemptions from joining a compliance scheme such as self-compliance, voluntary point-of-sale programs, etc. must be clearly defined and strictly monitored to ensure that obligated producers are strictly complying with their obligation. In particular, governments must commit sufficient resources to ensure that EU Directives and national regulations are adequately enforced, thus ending the continued prevalence of free riders.

It is therefore crucial that a competent and independent authority is designated and made responsible, ideally at national or federal level, to implement monitoring procedures and implement effective enforcement action when necessary. The example of the UK shows that such an authority can play a major role in a market shared by over 20 different compliance schemes through its rigorous checking of operational plans provided by the schemes as well as regular audits.

At the very least a voluntary code of practice, agreed and established between all schemes to ensure a level playing field, is necessary. In this case, strict contract guidelines are necessary, as well as control and sanctioning measures to avoid non-compliance or breach of the agreement terms. In short, competition should be decided by performance, not by the level of creativity in exploiting legal loopholes and lack of enforcement.

➤ **Competition should not have a negative impact on the packaging collection system the householder is accustomed to.**

Competition should be enabled to make use of synergies and to provide a high level of convenience for consumers, (i.e. competition by means of cooperating in the use of a single infrastructure rather than building up parallel collection systems at the households, which will only confuse consumers). Participation of competitors entering the market in the existing collection scheme should be achieved by contractual engagement directly with each system, or if appropriate, with Public Administration or with the system already organizing collection. Such arrangements should not inhibit innovation and communication, and overhead costs for running and optimizing the collection should be shared among those providing the service.

➤ **Abuses such as cross-subsidy should be prohibited**

PRO EUROPE believes that where compliance schemes also deliver the collection of packaging (so called “vertical integration”), legislation needs to ensure this practice is neither anti-competitive nor unfair. In principle, PRO EUROPE has no issue with compliance schemes or recyclers of packaging using this packaging to meet the obligation of their member companies, but only providing it is like-for-like. For example, schemes should never be permitted to use low-cost commercial packaging to offset a member company’s obligation for higher cost household packaging. Neither should they cross subsidise the collection of one material with another, unless this is consistent with clear and enforced rules which are applied equally to all operators. There should be clear recycling targets for all materials as well as requirements guaranteeing execution of actual recycling in accordance with the European Directive on Packaging and Packaging Waste.

➤ **Vertical integration should be very carefully monitored**

If compliance schemes are vertically integrated, i.e. have as shareholders businesses generating most of their revenues from the collection, sorting and/or recycling of used packaging, particularly secondary materials, there may be a risk that these compliance schemes favor contracting with their own shareholder companies for the collection, sorting and/or treatment/recycling of the materials. This could carry risks regarding the negative impact on

these markets, distorted competition, opportunities for abuse of dominant position and unfair competition practices. To mitigate this risk, governments have to ensure that all compliance schemes use transparent and non-discriminatory tendering procedures. Effectively they have to put in place “Chinese-wall” mechanisms to avoid potential conflicts of interest.

While urging the competent authorities to prioritise and address the issues outlined above, PRO EUROPE members are committed to providing any necessary information and contributing to finding constructive and innovative solutions to these important issues for our members.

About PRO EUROPE

PRO EUROPE (PACKAGING RECOVERY ORGANISATION EUROPE), founded in 1995, is the umbrella organization for packaging and packaging waste recovery and recycling schemes which mainly use the "Green Dot" trademark as an identification symbol. In its primary role, PRO EUROPE is the general licensor of the "Green Dot" trademark. It also acts as the authoritative voice and common policy platform representing the interests of all packaging recovery and recycling organizations founded and run by or on behalf of obliged industry.

- PRO EUROPE has 34 member organizations active in 34 countries in 2012 of which 27 use the Green Dot, financing and / or running the infrastructure for the collection, sorting and recycling of (mainly household) packaging waste
- PRO EUROPE member organizations ensure access for over 400 million inhabitants to separate collection of used packaging
- PRO EUROPE member organizations recover yearly about 33,300,000 tons of packaging
- PRO EUROPE member organizations recycle yearly more than 3,300,000 tons of plastic packaging
- PRO EUROPE member organizations run communication and education campaigns, support anti-litter campaigns and cleaning projects