

Kluwer Competition Law Blog

A Price Freeze on Household Waste Collection Prices in Ireland: Consistent with Competition Policy and Law?

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Introduction

The Irish Waste Management Association (IWMA), an association of undertakings accounting for 75% the household waste currently managed in Ireland, announced that it is committed “to freezing prices at current rates for twelve month period from 20th June 2016 to 1 July 2017.”^[1] What position should Ireland’s Competition and Consumer Protection Commission (CCPC), which has yet to comment, adopt?^[2]

Precedent & Guidance

The first port of call for the CCPC is its own enforcement record and guidance.

On the 1st December 2008 the two trade associations representing publicans in Ireland announced a twelve month price freeze. The CCPC^[3] was in no doubt that this was a breach of competition law: “It is inherent within both section 4 of the [Competition] Act [2002] and Article 81 [101] EC that each undertaking must determine independently the policy which that undertaking intends to adopt on the market... The fact that the announcement purports simply to freeze, as opposed to raise, prices does not exclude it in competition law terms. Any agreement or concerted practice among competitors or decision of a trade association which sets the price to be charged for a product has the potential to distort competition in the market to the detriment of customers.”^[4]

In a subsequent November 2009 guidance note on trade associations and compliance with competition law, the CCPC stated “the freezing of prices at a certain level in order to resist downward pressure on prices” is an example of coordinated pricing that breaches competition law.^[5]

No doubt mindful of the views of the CCPC, IWMA stated, four days before it announced its price freeze, that as “a trade association, the IWMA cannot and does not make recommendations on pricing structures to its members. That is a matter for individual operators and ultimately market forces will determine the prices charged for waste collection services.”^[6]

This Time Its Different?

There was, however, extensive government involvement in the IWMA's, but not the publican's, price freeze.

For environmental reasons pay-by-weight (PBW) charges for household waste collection were to be introduced as of 1 July 2016.^[7] It was estimated that almost 90% of households would save money through PBW.^[8] Nevertheless, substantial public disquiet was expressed over the introduction of PBW in mid-June 2016. There was a widespread concern that household waste collection prices would rise.

Against this background the relevant Minister negotiated with the IWMA a dual pricing structure, householders could either: switch to PBW; or remain on their existing pricing plan, which would be frozen for a year. Furthermore a Government press release stated that the "operation of the price freeze by the industry will be closely monitored by Government and, in the event of evidence of it not being honoured, the Minister will ensure that primary legislation is brought forward to legislate to enforce the freeze."^[9]

A Better Alternative

The CCPC is thus in a difficult position. How can it satisfy the Minister's concerns over pricing while ensuring that the solution is not a price freeze?

One solution is competitive tendering, in which the lowest bidder collects waste for a defined period of time for a defined local geographic area. Currently competition in the household waste collection market in Ireland takes place between individual household waste collectors. Collectors, once they have obtained the required regulatory approval and permits, can approach householders to collect their waste. This is referred to as side by side competition.

A series of studies have found that side by side competition is not working well for consumers in Ireland and that competitive tendering is the best alternative.^[10] Competitive tendering is able to take advantage of economies of scope, scale and density, while ensuring householders benefit.

The CCPC was initially in favour of competitive tendering.^[11] However, in 2011 the CCPC softened its support somewhat. While acknowledging in theory that competitive tendering was superior to side by side competition, the CCPC suggested that there were certain difficulties in the implementation of competitive tendering, such as designing the contract and ensuring that bid rigging does not take place. It reached this conclusion notwithstanding the fact that competitive tendering is common in many jurisdictions^[12] and had already been employed by some local authorities with respect to the collection of dry recyclables. Indeed, the CCPC went so far as to state that "From a competition perspective, there may be merits in retaining side-by-side competition in areas of high population density, if such an approach is not too administratively costly or legally difficult."^[13]

The CCPC should be in a strong position to provide guidance on the recent performance of the household waste collection market. In 2012 it was tasked with maintaining "ongoing oversight of household waste collection markets," with a report due in 2016 as part of the review of the

household waste collection market.^[14]

If based on that review the CCPC felt that side by side competition was not working well for consumers and that its earlier concerns over the practicality of competitive tendering were exaggerated, then it would be able to suggest competitive tendering as an option to replace the current market arrangements, including the price freeze.

One possible barrier to the switch to competitive tendering is that the property rights of incumbent collectors might be compromised. However, a 2015 High Court judgment ruled taxi license owners should receive no compensation consequent on the State's removal entry controls in the taxi market, which saw the value of such licenses decline dramatically in value.^[15] It could be argued that similar arguments apply with respect to the introduction of competitive tendering.

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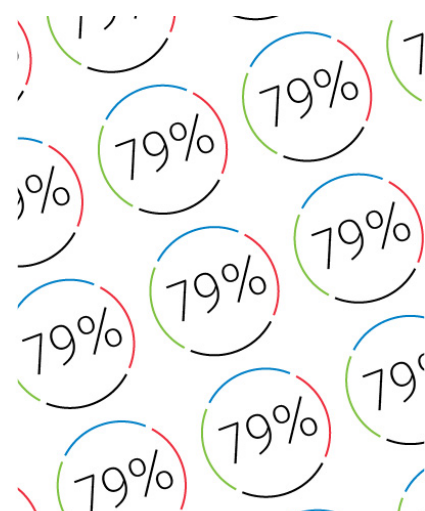
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