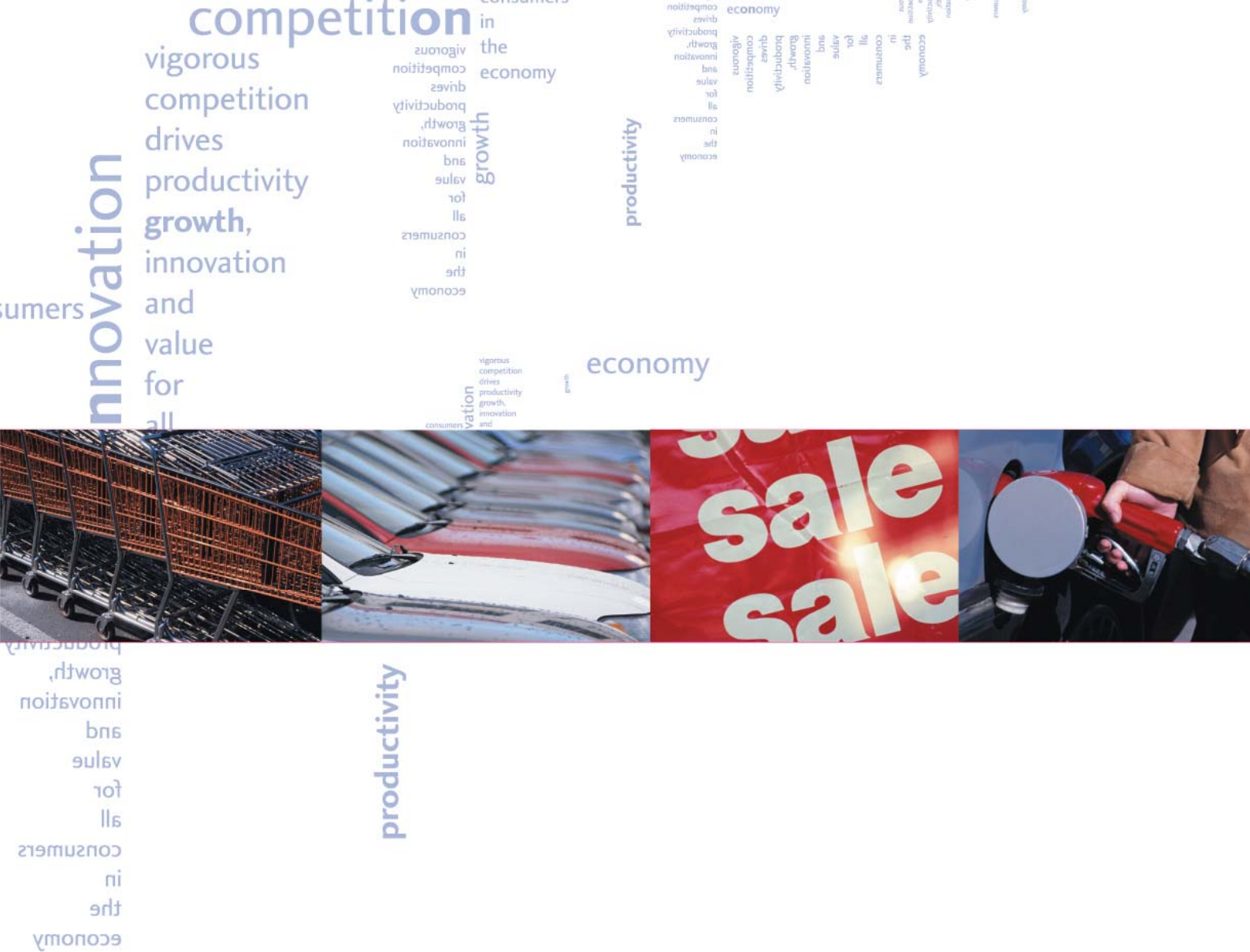




Submission to the Department of the Environment, Heritage and Local Government

**(Response to Consultation Paper “Regulation of the Waste
Management Sector”)**

Submission S / 06 / 007

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The Competition Authority
An tÚdarás Iomaíochta

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SUMMARY

- 1.1 One of the statutory functions of the Competition Authority is to provide Ministers, Government Departments and legislators with an informed competition perspective on proposed primary and secondary legislation, so as to discourage the passing of legislation that may unnecessarily inhibit competition. It is in this context that the Competition Authority makes the following submission to the Department of the Environment, Heritage and Local Government in response to its Consultation Paper *“Regulation of the Waste Management Sector”*.
- 1.2 This submission is structured as follows:
- Background to waste collection in Ireland;
 - Overview of the work of the Competition Authority on waste issues and what that work revealed;
 - Consideration of the need for a waste regulator; and
 - Conclusion and recommendations
- 1.3 While the Competition Authority has in the past investigated the household waste sector, the comments made in this submission apply equally to the commercial waste sector.
- 1.4 **Main Points and Conclusions**
- The dual role played by some local authorities, who act as both regulator and competitor in local markets, can create difficulties for their private sector competitors and for local authorities themselves;
 - The significant number of complaints received by the Competition Authority, combined with the results from the Competition Authority's investigation, indicates that the current model of competition created by the Waste Management Act is not working well for consumers;
 - The Competition Authority sees no clear need for a waste regulator;
 - International evidence points to competitive tendering as the best way to achieve lower per unit operating costs for the service provider and lower prices for consumers;
 - The competitive tendering system should be designed to ensure that the objectives of the tendering process are met;
 - If a waste regulator is appointed, the Competition Authority strongly recommends that the regulator should not have responsibility for price-setting, either on a national or a regional basis.

1.5 Recommendations

Recommendation 1.

The Department of the Environment, Heritage and Local Government should undertake a radical overhaul of the current regulatory framework for household waste collection services. In that respect the Competition Authority recommends that the Department introduce competition **for** the market, i.e. where service providers compete for the right to be the sole provider in the market for a specific length of time. This system should replace the existing model of competition **within** the market, i.e., where waste providers “compete” side-by-side with each other.

Recommendation 2.

As part of its draft Waste Management (Facility Permit and Registration) Regulations, the Department of the Environment, Heritage and Local Government should ensure that clear guidelines are laid out for the appropriate authorities detailing how such permit applications should be evaluated and what timescales should be attached to the evaluation and approval process. The current S.16 of the draft Regulations satisfies this criterion and should be implemented as currently drafted.

Recommendation 3.

In the event of the introduction of local-authority run competitive tendering for waste collection services, local authorities should be given advice and guidance on how to best design their tendering process by the Department of the Environment, Heritage and Local Government.

Recommendation 4.

In the event that a Waste Regulator is appointed, the Competition Authority strongly recommends that the regulator should **not** have responsibility for price setting, either on a national or a regional basis.

OVERVIEW

Background

- 2.1 Prior to 1996, local authorities were responsible for waste collection in Ireland, disposing of waste in local landfill facilities. Since the mid 1990s the situation has changed radically. Private operators have entered the market in a number of areas and have a significant presence in 20 of the 34 major local authority areas. There is a much greater emphasis on waste minimisation and recycling with the aim of significantly reducing the amount of waste which goes to landfill.
- 2.2 The market for household waste collection operates under rules set by the *Waste Management Act 1996* ("the Waste Management Act"). After the enactment of the Waste Management Act local authorities could withdraw from such activities and allow private operators to provide such services instead or opt for a public/private mix in the supply of waste collection services. In Wicklow for example, the changeover to exclusively private collection occurred in 2000, while in Dublin city the local authority still continues to provide household waste collection services (although the private sector is involved in collecting recyclables). Under the Waste Management Act local authorities are required to provide waste collection services in cases where there is "*no adequate waste collection service in a part of the local authority functional area*" unless the local authority is of the opinion that the estimated costs are "*unreasonably high*".
- 2.3 There are currently three main models of service provision in waste collection around the country:
- Provision by the local authority only;
 - Provision by both the local authority and the private sector;
 - Exit of the local authority from the market and provision by the private sector only.
- 2.4 The aim now is to reduce the quantity of waste produced and minimise disposal by landfill. The number of landfills has been reduced and due to objections by local residents and stringent environmental requirements there are difficulties in opening replacement sites.

Current system of regulation of the waste management sector

- 2.5 Currently, the regulation of the waste management sector is the responsibility of a number of actors:
- Central Government, through the Department of the Environment, Heritage and Local Government, sets the policy and legislative framework;
 - The Environmental Protection Agency is responsible for the licensing of landfills, transfer stations, hazardous waste disposal and other waste disposal and recovery activities; and
 - Local authorities are responsible for issuing waste collection and waste facility permits to private sector operators.

2.6 The dual role played by some local authorities, who are simultaneously an operator in the market and the regulator, can create difficulties. The Consultation Paper sets out a number of issues highlighted by the private sector in this regard:

- Unlike the private sector, local authorities do not require collection permits in order to collect waste;
- Local authorities are required to undergo a registration process for certain waste activities which is less onerous than the permitting process required of private sector operators for the same activities;
- The planning system operates differently for private sector and public sector projects with a longer timescale needed for private sector projects;
- Local authority waste infrastructure projects are part-funded by the Environment Fund but there is no funding for private sector waste projects.

2.7 The dual role of regulator and competitor can also create difficulties for local authorities:

- Enforcing environmental restrictions such as the number of days on which waste can be collected in an area can be a problem for local authorities because of the risk that enforcing such regulations might make it more difficult for private sector competitors to compete, thereby leaving the local authority open to allegations of abuse of a dominant position.
- In some areas local authorities operate waiver schemes for certain users of their waste collection services such as the elderly. As the overall waste collection service has to be self-funding, the cost of such schemes must come from the income generated by the local authority's paying customers. This cost is not imposed on the customers of private sector collectors.
- In contrast to the private sector, local authorities are limited in their ability to control their cost base as wage rates and working practices are often centrally determined. This can lead to comparatively higher input costs for local authority waste collection services.

COMPETITION AUTHORITY INVESTIGATION ON WASTE

- 3.1 The Competition Authority regularly receives complaints in regard to waste collection. Investigation of these complaints has built up the Authority's knowledge of the waste collection market.
- 3.2 In October 2005 the Competition Authority published Enforcement Decision E/05/2002 concerning allegations of excessive pricing of household waste collection services in northeast Wicklow.¹ Although the Authority did not find that an abuse of dominance had occurred, it did find that the market for household waste collection was not working well for consumers and identified the following remedies:
- Eliminate delays in processing applications for the provision of waste management infrastructure such as transfer stations; and
 - Introduce a system of competitive tendering.
- 3.3 While the Competition Authority's decision focused on household waste collection, the regulatory failures it identified apply equally to the collection of commercial waste.
- 3.4 The Competition Authority found that, while additional waste management infrastructure would constitute a significant and necessary step towards the promotion of competition in household waste collection in Ireland, it would not in itself be considered sufficient to remedy the existing problems in a number of local markets across Ireland. In that regard further options need to be considered to improve the competitive framework in this sector. The Competition Authority has considered evidence from a broad range of international experience and this international evidence favours competitive tendering as a way of ensuring that household waste collection undertakings provide consumers with a good service at competitive prices.

Competitive Tendering

- 3.5 The significant number of complaints received by the Competition Authority, combined with the results from the Authority's investigation, indicates that the current model of competition created by the Waste Management Act is not working well for consumers. The call for change by the Minister for the Environment, Heritage and Local Government is also consistent with this conclusion.² Furthermore, there is a general consensus from international experience that a combination of economies of scale and density is sufficient to lead to something close to natural monopolies in local geographic areas. This is further reinforced by the existence of regulatory barriers to expansion in this market.
- 3.6 On the basis of its analysis, the Competition Authority recommended that a radical overhaul of the current regulatory framework for household waste collection services should be undertaken by the Department of the Environment, Heritage and Local Government. In

¹ This decision may be viewed online at http://www.tca.ie/decisions/enforcement/e_05_002.pdf

² Department of Environment, Heritage and Local Government press release, "Roche Announces Review of Waste Regulations" 5 July 2005.

that respect, the Competition Authority recommended that the Department introduce competition **for** the market, i.e. where service providers compete for the right to be the sole provider in the market for a specific length of time. This system should replace the existing model of competition **within** the market i.e. where waste providers “compete” side-by-side with each other.

- 3.7 A competitive tendering system would result in one supplier being granted an exclusive monopoly to provide waste collection services in a particular area for a defined period of time. The request for tender could specify that tenders should be on the basis that everyone in a particular area should be served, to avoid cherry-picking of more lucrative customers. In the case of a potential conflict of interest, for example if a local authority wished to continue to provide a service, the local authority’s in-house service provider could be re-constituted as a Direct Service Operator to compete for the tender.
- 3.8 International experience³ indicates that:
- Competitive tendering yields significant cost savings compared to side-by-side competition (side-by-side competition is the form of service provision for household waste collection used in much of the State at present);
 - Competitive tendering does not lead to a lower quality of collection service;
 - Competitive tendering yields significant cost savings compared to provision by public authorities.
- 3.9 Competitive tendering processes are an effective way of ensuring value for taxpayers’, consumers’ and businesses’ money in situations where competition within the market is not working effectively.

Inefficient Regulatory Procedures

- 3.10 The Competition Authority’s investigation found that regulatory delays in processing transfer station application requests appear to be widespread, not only in Wicklow, but also nationwide, with reports of some requests taking 3 to 4 years to complete. Faced with such long delays in getting regulatory approval, potential entrants may decide not to enter the waste collection market and to invest their capital elsewhere, in markets where they are able to enter more quickly and earn a rate of return sooner. For firms already competing in the market, such delays may prevent them from expanding in a timely manner in order to meet consumer demand and take advantage of economies of scale and scope.
- 3.11 The granting of permits to commercial waste companies is governed by the *Waste Management Act 1996*, the *Waste Management (Amendment) Act 2001* and by the various Waste Management Regulations. In September 2005, the Minister for the Environment, Heritage and Local Government published *draft Waste Management (Facility Permit and Registration) Regulations*. The draft regulations amend the *Waste Management (Permit) Regulations 1998* and the

³ See Appendix 1 for more detail on international experience of competitive tendering.

Waste Management (Collection Permit) Regulations 2001. The Minister has not yet published the final regulations.

3.12 Following the precepts of *Regulating Better*⁴, the Competition Authority recommends that the Waste Management Regulations establish clear guidelines for local authorities responsible for granting permits. The purpose of these guidelines should be to ensure that applications for permits are processed in a timely, efficient, transparent and effective fashion. Lengthy delays in the processing of applications serve no purpose except to hinder competition in the waste management sector. In this respect, the Authority notes that section 16 of the draft Regulations lays out the following timelines for determination of an application:

- Within 12 weeks from the receipt of a valid application Period for determination of an application; or
- Within 6 weeks of the receipt of further information from applicants, where such extra information is deemed necessary in order to make a reasoned decision.

⁴ *“Regulating Better”* is the Government White Paper designed to improve national competitiveness and policy implementation by ensuring that new regulations and legislation are more rigorously assessed in terms of their impacts, more accessible to all and better understood.

FUTURE REGULATION OF THE WASTE SECTOR

The need for a Regulator

- 4.1 Part 5 of the Consultation Paper sets out some possible powers and functions for a waste regulator including responsibility for all waste recovery and disposal facilities; price setting; and price capping.
- 4.2 This is potentially a very wide-ranging role and would include parts of the market such as skip hire where there is no obvious market failure.
- 4.3 The Competition Authority is not aware of any examples internationally of a waste regulator with such extensive powers. In most cases, waste collection is provided through one of the following models:
- Public provision;
 - A mix of public and private provision;
 - Competitive tendering for the market.
- 4.4 The Competition Authority, in its note on Decision E/05/2002, considered the option of a waste regulator and concluded that there was no clear need for a regulator and that competitive tendering was the best means of ensuring a quality service at competitive prices.
- 4.5 This view is consistent with both the recent Forfás Report on *Waste Management Benchmarking Study* and the *Indecon Review of Local Government Financing* which states “Waste management is an example of one area where regulation is needed. In cases where a competitive tendering process arrangement is implemented additional regulation may not be necessary”.⁵
- 4.6 In addition, the cost of a regulator will fall to the users of the service, through a levy on market operators, resulting in the cost of the levy being passed on to consumers.
- 4.7 In the note on Decision E/05/2002, the Competition Authority also considered the possibility that a regulator would be involved in setting charges for the collection of waste, either on a national level or for smaller geographical areas such as local authority functional areas.

National Price

- 4.8 Setting a national price for waste collection would have substantial adverse effects on consumers and would be a very difficult process. Potential difficulties include setting the correct price and defining the product/service to be provided, for example in terms of the frequency and method of collection, relevant containers, the payment system etc. Imposing a standard price on an industry characterised by widely varying cost conditions (due to different population densities, distance from disposal facilities, transport costs, recycling/disposal arrangements etc) across different geographic markets and through time is likely to create inappropriate investment incentives in the sector.

⁵ Extract from recommendation no. 11 of the Indecon Report

4.9 The difficulties of setting a single State-wide price include:

- Set the price too high and regulation imposes additional costs on consumers. In setting a single State-wide price a regulator would need to ensure that every household, including those in more marginal locations, received a waste collection service at that price. The regulated price would therefore have to be set at a level that reflected the cost of delivering waste collection services to the highest cost consumers in the State. This is the price that would have to be paid by all consumers regardless of the cost of providing the service to them.
- Set the price too low and it will bring under-investment and is likely to lead to the provision of lower quality service and/or the exit of some operators from the market. In that scenario consumers in some areas may be left with no waste collection services.

4.10 It seems reasonable to assume that a regulator would, in setting prices on a fixed State-wide basis, ensure that a service is provided to all households, including those that have a higher cost of service delivery than others, and thus would lean towards a higher rather than a lower price.

Regional Price

4.11 To resolve the obvious difficulties of setting a State-wide price for household waste collection, smaller geographical areas could be selected such as counties, or local council boundaries or the existing market areas served by current operators. The smaller and more homogenous the geographic area, the less likely the sort of problems identified above are to arise. However, the regulator will have to set a large number of individual prices – a very substantial ongoing administrative and regulatory task.

Views of the Competition Authority

4.12 International experience indicates that competitive tendering of waste collection services could yield significant cost savings. In Finland, which has a system of side-by-side competition in the market for household waste collection similar to that found in Ireland, a number of local authorities have chosen to switch to competitive tendering. A 1997 survey found that collection costs were 20-25% higher in regions with side-by-side competition compared to those regions with a sole provider chosen by competitive tendering.⁶

4.13 Competitive tendering processes are an effective way of ensuring value for taxpayers' and consumers' money in situations where competition within the market is not working effectively.⁷ Consumer concerns regarding service quality can be more effectively addressed through competitive tendering of exclusive contracts rather than through ongoing regulation of the market. This is because penalty clauses can be built in to the contracts and contract defaults in respect of service quality can be easily detected by households thereby triggering

⁶ OECD, 2000, Competition in Local Services: Solid Waste Management, DAFNE/CLP(2000)13, Paris OECD, p112, which can be accessed from: <http://www.oecd.org/dataoecd/34/51/1920304.pdf>.

⁷ The Competition Authority recognises that there may be areas where the market is working well for consumers and where the need for competitive tendering is not so urgent.

enforcement of the penalty clauses. For example, if the contract specified that collection was to be between 8.00 am and 10.00 am only, consumers could complain to the local authority if the service provider failed to meet the condition and the penalty clause could be invoked.

- 4.14 Competitive tendering processes may also be used to address certain social and environmental concerns where, for example, the contract is awarded not only on the basis of price but also taking into account other environmental and social criteria such as the distance the waste is to be transported before reaching a transfer station or landfill facility.
- 4.15 Tendering can create more appropriate long-term incentives for firms to control their cost base, charge “competitive” prices and maintain an adequate quality of service for fear of being penalised in any future tender competitions. For example, the performance of a particular service provider would be taken into account when consideration was being given to awarding a future contract.
- 4.16 However, it is important that care is taken in designing the tendering system to ensure that the benefits of competitive tendering are actually achieved. Issues that should be taken into consideration in this regard are:
- The request for tender should be sufficiently detailed to allow prospective tenderers the greatest possible information on which to base their bids;
 - The contract should be offered for a defined period after which provision of the service will be subject to a further tender process;
 - There should be provision for adequate ongoing oversight to ensure that performance is satisfactory;
 - There should be provision for penalties, up to and including termination of the contract;
 - Mechanisms should be included to prevent collusion among bidders;
 - In evaluating tenders, the benefits to consumers should be considered; and
 - Tenders should be required to be submitted in a format which allows comparison between different bids.
- 4.17 The Competition Authority considers that local authorities would be best placed to organise those tenders as they would be most familiar with the structural and cost conditions of their local markets.
- 4.18 In relation to oversight of the service, local authorities, which are closer to the community and have extensive local knowledge, are ideally placed to deal with any issues which arise.
- 4.19 The Department for the Environment, Heritage and Local Government should provide guidance and support to local authorities on drawing up

contracts for the tender competitions based on international best practice. Such guidance should cover the issues identified in para 4.16 above.

- 4.20 International evidence suggests that contracting waste collection services out through competitive tendering processes could improve the competitive environment considerably and lead to lower per unit operating costs for the service provider and lower prices for consumers.
- 4.21 A system of competitive tendering for the market could operate even in areas where local authorities might wish to continue to operate in the market. In such a situation, the local authority could establish a Direct Service Operator (DSO) to tender for the contract.
- 4.22 If it is decided to appoint a regulator, the Competition Authority strongly recommends that the regulator should not have responsibility for price setting, either on a national or a regional basis, for the reasons set out above. A waste regulator could have a role in organising tender competitions for smaller geographic areas and could also take over the regulatory functions currently exercised by local authorities. This approach would allow those local authorities who wished to continue to provide a waste collection service to tender in competition with the private sector without the need to set up a Direct Service Operator.
- 4.23 The Competition Authority would be happy to meet the Department of the Environment, Heritage and Local Government to further discuss the issues raised in this submission.

APPENDIX 1: INTERNATIONAL EXPERIENCE

Studies on the cost savings associated with competitive tendering of household waste collection services

Kemper and Quigley (1976) estimated for the US that competitive markets are 25% to 36% *more* expensive than a single collector, and that contract or franchise agreements reduce the costs over municipal collections by another 13% to 30% (depending on the level of service). They found a loss of density economies to increase the costs of non-franchised suppliers.⁸

Having observed data for 340 cities in the US, Stevens (1978) found the allocation of exclusive market areas to private operators (e.g. via bidding procedures) to be 26% to 48% cheaper than a competitive private market and 27% to 37% cheaper than municipal provision.⁹

Before the introduction of compulsory competitive tendering in the UK in 1988, Domberger et al. (1986) published a study on the effects of contracting out household refuse collection in the UK. They found cost savings of 22% in those municipalities where there was competitive tendering of household waste collection services to private operators with no evidence that this was at the expense of service quality. They also found cost savings of 17% in those areas where the contract was awarded in-house.¹⁰

Szymanski and Wilkins (1993) and Szymanski (1996) have confirmed Domberger *et al's* results.¹¹ Szymanski also found no evidence for the UK to support the notion that cost savings were attributable to quality reductions.¹²

Ohlsson (1998) reported comparable efficiency gains for contracting out in Sweden.¹³

In Denmark, surveys showed that in 1990-1991 those Danish municipalities that had made use of competitive tendering experienced an average cost saving of 10%.¹⁴

A comparison by Reeves and Barrow (2000) of the costs for certain contracting local authorities in Ireland before and after they contracted out refuse collection services indicated average cost savings for those authorities of 33.5%. A comparison of the average unit cost of contracting authorities versus authorities still engaged in public provision of the service for the three

⁸ Kemper, P. and J. Quigley, 1976, *The Economics of Refuse Collection*, Cambridge, Mass.: Ballinger.

⁹ Stevens, Barbara J., 1978, "Scale, Market Structure, and the Cost of Refuse Collection", *Review of Economics and Statistics*, 60(3) August, p.445.

¹⁰ Domberger, S., A. Meadowcroft, and D.J. Thompson, 1986, "Competitive Tendering and Efficiency: The Case of Refuse Collection", *Fiscal Studies*, 7(4), 99. 69-87. For a criticism of this paper see Ganley, Joe and John Grahl, 1988, "Competition and efficiency in refuse collection: a critical comment", *Fiscal Studies*, 9(1), February, p/ 80. For the subsequent reply from Domberger et al. see Domberger, S., A Meadowcroft, and D.J. Thompson, 1988, "Competition and efficiency in refuse collection: a reply", *Fiscal Studies*, 9(1), February, p.86.

¹¹ Szymanski, S., and S. Wilkins, 1993, "Cheap Rubbish? Competitive Tendering and Contracting Out in Refuse Collection – 1981-88", *Fiscal Studies*, 14, pp. 109-130. Szymanski, S., 1996, "The Impact of Compulsory Competitive Tendering on Refuse Collection Services", *Fiscal Studies*, 17, pp. 1-19.

¹² Szymanski, 1996, *supra* note 6 pp. 13-17.

¹³ Ohlsson, H., 1998, "Ownership and Production Costs: Choosing Between Public Production and Contracting Out", Uppsala University Working Paper, 6, published in *Fiscal Studies*, 2003, 24, pp. 451-476.

¹⁴ OECD, 2000, *Competition in Local Services: Solid Waste Management*, DAF/CLP(2000)13, Paris: OECD, p. 32, which can be accessed from <http://www.oecd.org/dataoecd/34/51/1920304.pdf>.

years 1993-1995 indicated lower costs of around 46% on average for contracting authorities. Furthermore, it was found that the incidence of efficiency was much greater among authorities that contracted out the service.¹⁵

In a survey on solid waste collection services in Canadian municipalities in 2001, McDavid found that on average public producers had higher costs than contracted private producers and that municipalities that competitively bid their solid waste collection contract enjoyed significantly lower costs per household.¹⁶

In an analysis of the cost structure of a sample of Italian waste collection firms, Antonioli and Filippini (2002) found franchised monopoly, rather than side-by-side competition, to be the most efficient form of production organisation in the household waste collection industry and the only way of introducing competition into this sector to be via competitive tendering to assign the provision of the service. They found further that the majority of household waste collectors were not operating at the optimal scale.¹⁷

In 2003 Dijkgraaf and Gradus similarly estimated cost savings of approximately 15-20% from contracting out refuse collection in the Netherlands.¹⁸

A survey by the Norwegian Competition Authority suggests that quality was not significantly affected by competitive tendering in Norway. 39% of the municipalities surveyed said that quality had increased and 52% said that quality had stayed the same with competitive tendering. Only 8% of the municipalities said that quality had deteriorated.¹⁹

A UK study found that, in the case where a contract is competitively tendered to an outside private contractor, three quarters of the 22% cost savings identified can be attributed to improvements in technical efficiency (i.e. more efficient use of workers and capital equipment) rather than lower input prices.²⁰

¹⁵ Reeves, E. and M. Barrow, 2000, "The Impact of Contracting Out on the Costs of Refuse Collection Services: The Case of Ireland", *Economic and Social Review* 31, pp. 129-150.

¹⁶ McDavid James, 2001, "Solid-waste contracting-out, competition and bidding practices among Canadian local governments", *Canadian Public Policy*, 44(1), pp. 1-25.

¹⁷ Antonioli B., and M. Filippini, 2002, "Optimal Size in the Waste Collection Sector", *Review of Industrial Organization*, 20, pp. 239-252.

¹⁸ Dijkgraaf, E., and R.H.J.M. Gradus, 2003, "Cost Savings of Contracting Out Refuse Collection", *Empirica*, 30, pp. 149-161.

¹⁹ Supra note 9, p. 33.

²⁰ Cubbin et al, 1987, cited in OECD, 2000, see supra note 9, p. 33.

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